

**67 FLRA No. 25**

UNITED STATES  
DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
ST. LOUIS, MISSOURI  
(Agency)

and

NATIONAL TREASURY  
EMPLOYEES UNION  
CHAPTER 14  
(Union)

0-AR-4836

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DECISION

December 31, 2012

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester, Member

**I. Statement of the Case**

This matter is before the Authority on exceptions to an award of Arbitrator Howard S. Bellman 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 sustained a grievance alleging that the Agency violated the parties' agreements by imposing weekly and daily limits on the overtime hours individual employees could work. The Arbitrator ordered the Agency to make whole all bargaining-unit employees covered by the grievance who were deprived of overtime due to the imposition of the overtime limits. For the reasons that follow, we deny the Agency's exceptions.

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

The Agency unilaterally imposed overtime limits, limiting employees to ten hours of overtime per week and no more than two hours of overtime per day. Award at 3-4. Before, employees did not have weekly or daily limits on overtime hours, as long as overtime hours were available. *Id.* at 4.

The Union filed a grievance alleging that the Agency violated the Statute's unfair-labor-practice provisions and the parties' agreements by unilaterally imposing the overtime limits, and by imposing the overtime limits in a way that resulted in an inequitable distribution of overtime. *Id.* at 1-2, 4. The parties could not resolve the grievance and submitted it to arbitration.

The parties did not stipulate to the issue for the Arbitrator to decide. Exceptions at 3. Although the Arbitrator did not explicitly frame the issues, the Arbitrator addressed whether the Agency's decision to limit overtime hours for individual employees, and its implementation of the limits, violated the Statute's unfair-labor-practice provisions or the parties' agreements. Award at 7.

The Arbitrator first determined that the parties' dispute concerned only the Agency's compliance with the parties' agreements. In a ruling the parties do not dispute, the Arbitrator found that the Agency did not violate the Statute's unfair-labor-practice provisions because the parties' agreements were "sufficiently comprehensive" to encompass the issues raised in the grievance, "remov[ing] them from the coverage of the [Statute]." *Id.*

Next, the Arbitrator found that the Agency violated the parties' National Agreement because it failed to "contact" the Union before it implemented the overtime limits.<sup>1</sup> *Id.* The Arbitrator also found that the Agency violated the parties' agreements by enforcing the overtime limits because the agreements, when read together, "indicat[ed] that honoring seniority was [the parties'] shared understanding of equitable distribution" of overtime.<sup>2</sup> *Id.* In reaching this conclusion, the Arbitrator noted that "it is conventional in labor relations to reward relative seniority as a quid pro quo for greater length service, an obvious fairness concept." *Id.* at 8. Further, crediting the Union witnesses' testimony, the Arbitrator found that under the overtime limits, "senior employees . . . were not allowed as many overtime hours as they would have received had the limits not been specified." *Id.* at 7-8. He also found that senior employees suffered "reduced earnings" as a result. *Id.*

<sup>1</sup> The pertinent part of the National Agreement provides that "[w]hen overtime becomes available, the [Agency] will contact the impacted chapter(s) and provide how the overtime will be equitably distributed and the skills identified." Award at 2.

<sup>2</sup> The pertinent part of the National Agreement provides that "[o]vertime will be distributed as equitably as possible among equally qualified employees." Award at 2. A memorandum of agreement (MOA) in effect at the time the Union filed the grievance provides, in pertinent part, "[i]f there are more volunteers [for overtime] than needed, employees will be selected . . . using the earliest Entry on Duty (EOD) date." *Id.* at 3.

at 4. Consequently, the Arbitrator ordered the Agency to: (1) contact the Union and specify how it would equitably distribute overtime; and (2) make whole “all employees covered by the present grievance who have been deprived of overtime due to the imposition of [the] overtime limits.” *Id.* at 8. The Arbitrator retained jurisdiction for sixty days to resolve any disputes over implementation of the remedy. *Id.*

### III. Positions of the Parties

#### A. Agency’s Exceptions

The Agency excepts to the award on five grounds. First, the Agency argues that the award is based on nonfacts. Exceptions at 30-31, 32-34. The Agency contends that the Union presented no evidence that after the Agency implemented the overtime limits, senior employees did not receive as many overtime hours as they wanted, or that they had to share overtime hours with less senior employees. *Id.* at 31. The Agency also argues that the Union presented no evidence to support the Arbitrator’s “implicit” finding that after the Agency implemented the limits, there were more volunteers for overtime than needed, triggering the parties’ contractual requirement that the Agency select the most senior volunteers qualified to perform the overtime duties at issue. *Id.* at 32-34.

Second, the Agency asserts that the award fails to draw its essence from the parties’ agreements. *Id.* at 34-38. Specifically, the Agency claims that the award is deficient because the Arbitrator looked beyond the parties’ agreements in concluding that seniority is the parties’ shared understanding of equitable distribution of overtime, because he found that “it is conventional in labor relations to reward relative seniority as a quid pro quo for greater length service, an obvious fairness concept.” *Id.* at 36. The Agency contends that nothing in the parties’ agreements requires the assignment of overtime by seniority “as a general rule, *unless and until* [the Agency] receives more volunteers than needed.” *Id.* In support, the Agency claims that the language in the parties’ agreements requiring the Agency to contact the affected chapter to provide how overtime will be equitably distributed when overtime becomes available would be rendered meaningless if, as the Arbitrator concluded, the parties’ agreements truly reflect their understanding that “equitable distribution” means distribution by seniority. *Id.* at 36-37.

Third, the Agency argues that the award is deficient because the Arbitrator exceeded his authority. *Id.* at 38. But the Agency does not provide any argument to support this exception.

Fourth, the Agency asserts that the award is contrary to law because it violates management’s rights to determine its budget and assign work under § 7106(a) of the Statute,<sup>3</sup> *id.* at 38-40, and because the award is contrary to the Back Pay Act, 5 U.S.C. § 5596,<sup>4</sup> *id.* at 40-43. The Agency does not provide any argument in support of its contention that the award violates the Agency’s right to determine its budget. But, regarding its management right to assign work, the Agency contends that the parties’ agreements, as interpreted by the Arbitrator to establish seniority as the means for equitable distribution of overtime, are “not an enforceable arrangement,” *id.* at 39, because they would “abrogate[] management’s right to assign overtime work to the greatest number of employees,” *id.* at 40. As to the Back Pay Act, the Agency argues that the Arbitrator failed to make the required causal connection between the Agency’s actions and any loss of employee pay. *Id.* at 42-43. In particular, the Agency contends that the award is deficient because the Arbitrator did not “determine which of the grievants would have received the overtime assignment[s], or that all of them would have been assigned overtime, had the [A]gency complied with the agreement[s].” *Id.* at 42 (quoting *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Beckley, W. Va.*, 64 FLRA 775, 776 (2010) (*Beckley*)) (internal quotation marks omitted).

Finally, the Agency argues that the remedy is incomplete, ambiguous, or contradictory as to make implementation of the award impossible. *Id.* at 40. But the Agency does not provide any argument to support this exception.

<sup>3</sup> Section 7106 (a) of the Statute provides, in pertinent part, that “nothing in this chapter shall affect the authority of any management official of any agency . . . to determine the . . . budget . . . of the agency . . . and . . . to assign work.” 5 U.S.C. § 7106(a)(1) and (a)(2)(B).

<sup>4</sup> The Back Pay Act provides, in pertinent part:

(b)(1) An employee of an agency who . . . is found . . . to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or any part of the pay, allowances, or differentials . . . which the employee normally would have earned or received during the period if the personnel action had not occurred . . . .

## B. Union's Opposition

The Union asserts that the Agency's arguments do not provide a basis for finding the award deficient. Specifically, the Union argues that: (1) the Agency merely disagrees with the Arbitrator's determination of facts disputed at the arbitration, Opp'n at 6-7; (2) the award is consistent with the parties' agreements; (3) the Arbitrator did not exceed his authority, *id.* at 9; and, (4) the award is not contrary to the Agency's management rights to determine its budget and assign work, *id.* at 13-25. Regarding the right to assign work, the Union argues that under Authority precedent, "negotiated provisions outlining a process for the distribution of overtime are appropriate arrangements" that do not abrogate management's right to assign work. *Id.* at 19. Further, the Union claims that the award is not contrary to the Back Pay Act because the make-whole remedy sufficiently identifies the employees who are entitled to overtime. *Id.* at 21-24. Finally, the Union argues that the award is not incomplete, ambiguous, or contradictory as to make implementation of the award impossible. *Id.* at 24-25.

## IV. Analysis and Conclusions

### A. The award is not based on nonfacts.

The Agency first asserts that the award is based on nonfacts. Exceptions at 30-31, 32-34. 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. *U.S. DHS, CBP Agency, N.Y.C., N.Y.*, 60 FLRA 813, 816 (2005). The Authority has long held that disagreement with an arbitrator's evaluation of evidence, including the determination of the weight to be accorded such evidence, provides no basis for finding the award deficient. *See AFGE, Local 3295*, 51 FLRA 27, 32 (1995).

The Agency argues that the Arbitrator erred in finding that, after the Agency implemented the overtime limits, senior employees did not receive as many overtime hours as they wanted and had to share overtime hours with less senior employees. Exceptions at 31. The Agency contends the Union presented no evidence to support these findings. *Id.* However, the award clearly demonstrates that the Arbitrator relied on employee testimony when he found that "senior employees . . . were not allowed as many overtime hours as they would have received," *id.* at 7, because the limits forced them to share overtime opportunities with less senior employees. Award at 4, 7-8. Furthermore, as stated previously, disagreement with an arbitrator's evaluation of evidence provides no basis for finding the award deficient as based on a nonfact. *See AFGE,*

*Local 3295*, 51 FLRA at 32. Therefore, we find that the Agency fails to show that the award is based on a nonfact in this regard.

The Agency also claims that the Arbitrator erred in "implicit[ly]" finding that, after implementing the limits, there were more volunteers for overtime than needed. Exceptions at 32-34. The Agency contends that the Union presented no evidence to support this finding. *Id.* at 32. However, such a claim does not demonstrate that a central fact underlying an award is clearly erroneous, but for which the Arbitrator would have reached a different result. *See, e.g., U.S. DOD Educ. Activity, Arlington, Va.*, 56 FLRA 836, 842 (2000) (finding claim that "no evidence has been presented" to support arbitrator's factual finding did not demonstrate that a central fact underlying the award was clearly erroneous); *NAGE, Local R4-45*, 55 FLRA 695, 697, 700 (1999) (noting agency argument that "[n]o evidence" supported finding, and holding that an "absence of facts" does not demonstrate that award is based on nonfact). Therefore, we find that the Agency fails to show that this finding is a nonfact. Accordingly, we deny the Agency's nonfact exceptions.

### B. The award does not fail to draw its essence from the agreement.

Next, the Agency claims that the award fails to draw its essence from the parties' agreements. Exceptions at 34-38. When 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. 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, e.g., U.S. Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990). The courts defer to the arbitrator's interpretation of the collective-bargaining agreement "because it is the arbitrator's construction of the agreement for which the parties have bargained." *Id.* at 576.

The Agency contends that the Arbitrator erred in finding that "when the parties adopted . . . the seniority preference expressed in [their agreements], they were indicating that honoring seniority was their shared

understanding of equitable distribution” of overtime under their National Agreement. Award at 7; *see* Exceptions at 35-37. The Agency argues that this interpretation of the term “equitable distribution” renders meaningless the agreements’ provisions requiring the Agency to contact the Union when overtime becomes available to “provide how overtime will be equitably distributed.” Exceptions at 36. We disagree.

The term “equitable distribution” is not defined in the parties’ agreements. However, in the memorandum of agreement (MOA) in effect at the time the Union filed the grievance, the parties expressly identified seniority as the standard to use for selection of volunteers for overtime when there are more volunteers than necessary. *See* Award at 3 (setting forth pertinent language of the MOA). The Agency does not dispute this, and, in fact, concedes that the agreements require it to distribute overtime according to seniority when too many employees volunteer for overtime. *See* Exceptions at 35-36. Thus, we find that the Arbitrator’s conclusion that seniority constitutes a shared understanding between the parties as to the meaning of equitable distribution is not irrational, unfounded, implausible, or in manifest disregard of the parties’ agreements. *See, e.g., FDIC*, 62 FLRA 356, 359 (2008) (deferring to arbitrator’s interpretation of fair and equitable, and finding that the interpretation draws its essence from parties’ agreement).

In reaching this conclusion, we reject the Agency’s claim that the Arbitrator erred by looking beyond the parties’ agreements and relying on “fairness.” Exceptions at 36. To the contrary, the award demonstrates that the Arbitrator based his finding that the parties adopted a preference for seniority, for purposes of equitable distribution of overtime, on his interpretation of the language in the parties’ agreements. Award at 7-8. Further, there is no basis for finding that the Arbitrator’s interpretation of equitable distribution as including fairness is irrational, unfounded, implausible, or in manifest disregard of the parties’ agreements. *OSHA*, 34 FLRA at 575. Thus, the Agency’s claim does not provide a basis for finding the award deficient.

We also reject the Agency’s argument that such an interpretation would render meaningless other provisions of the parties’ agreements. The particular provision the Agency references requires the Agency, “[w]hen overtime becomes available,” to “contact the [Union] to provide how the overtime will be equitably distributed.” Award at 2 (quoting the parties’ National Agreement). But the Agency does not take issue with the provision’s plain meaning. Moreover, as this case illustrates, a contact with the Union by the Agency disclosing that it planned to place weekly and daily limits on the overtime individuals could work would have conveyed significant information. Therefore,

we find that the Agency’s argument does not provide a basis for finding the award irrational, unfounded, implausible, or in manifest disregard of the parties’ agreements, and deny the Agency’s essence exception.

C. The award is not contrary to law.

The Agency also asserts that the award is contrary to law.<sup>5</sup> When exceptions involve an award’s consistency with law, the Authority reviews any question of law raised by the exceptions and the award *de novo*. *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 the standard of *de novo* review, the Authority assesses whether an arbitrator’s legal conclusions are consistent with the applicable standard of law. *U.S. Dep’t of Def., Dep’ts of the Army & the Air Force, Ala. Nat’l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998). In making that assessment, the Authority defers to the arbitrator’s underlying factual findings unless the appealing party establishes that those factual findings are deficient as nonfacts. *See, e.g., AFGE, Local 1164*, 66 FLRA 74, 78 (2011).

1. The award is not contrary to § 7106(a) of the Statute.

The Agency asserts that the award is contrary to § 7106(a) of the Statute. Exceptions at 38-40. Specifically, the Agency argues that the award affects management’s rights to determine its budget and assign work.<sup>6</sup> *Id.* Concerning the right to assign work, the Agency objects particularly to the Arbitrator’s determination that the parties’ agreements establish seniority as the means for equitable distribution of overtime. In the Agency’s view, the agreements, so interpreted, are not an enforceable appropriate arrangement under § 7106(b)(3) of the Statute because they would “abrogate[] management’s right to assign

<sup>5</sup> In conjunction with its contrary-to-law argument, the Agency claims that the Arbitrator exceeded his authority. Exceptions at 38. However, the Agency does not offer any argument or support for this claim, as required by § 2425.6(e)(1) of the Authority’s Regulations. Section 2425.6(e)(1) of the Authority’s Regulations provides that an exception “may be subject to dismissal or denial if . . . [t]he excepting party fails to raise *and* support a ground” listed in 5 C.F.R. § 2425.6(a)-(c). 5 C.F.R. § 2425.6(e)(1) (emphasis added); *AFGE, Local 405*, 66 FLRA 437, 437 n.1 (2012). Accordingly, we deny this exception under § 2425.6(e)(1) of the Authority’s Regulations. *See, e.g., U.S. Dep’t of the Treasury, IRS, Wash. D.C.*, 66 FLRA 712, 715 (2012) (*IRS*).

<sup>6</sup> The Agency does not offer any argument or support for its claim concerning its right to determine its budget. Accordingly, we deny this exception under § 2425.6(e)(1) of the Authority’s Regulations. *See, e.g., IRS*, 66 FLRA at 715.

overtime work to the greatest number of employees.” *Id.* at 39-40.

The legal framework the Authority applies when reviewing exceptions alleging that awards are inconsistent with management rights is well-established. *See U.S. EPA*, 65 FLRA 113, 115 (2010) (*EPA*); *FDIC, Div. of Supervision & Consumer Prot., S.F. Region*, 65 FLRA 102 (2010). Under this framework, the Authority first assesses whether the award affects the exercise of the asserted management right. *EPA*, 65 FLRA at 115. If so, then, as relevant here, the Authority examines whether the award enforces a contract provision negotiated under § 7106(b)(3) as an appropriate arrangement. In making its appropriate-arrangement determination, the Authority assesses: (1) whether the contract provision constitutes an arrangement for employees adversely affected by the exercise of a management right; and (2) if so, whether the arbitrator’s enforcement of the arrangement abrogates the exercise of the management right. *See id.* at 116-18.

It is undisputed that, as enforced by the award, the parties’ agreements affect management’s right to assign work. *See* Exceptions at 39; Opp’n at 18; *see also AFGE, Council 215*, 60 FLRA 461, 464 (2004) (finding that the right to assign work includes the right to assign overtime). It is also undisputed that the enforced provisions are arrangements. The only question before the Authority is whether the Arbitrator’s enforcement of the arrangement reflected in the parties’ agreements abrogates the Agency’s exercise of its right to assign work.

The Arbitrator enforced provisions in the parties’ agreements pertaining to the “equitable distribution” of overtime. Award at 7. Authority precedent holds that “provisions requiring management to exercise its management rights fairly and equitably . . . constitute [appropriate] arrangements” within the meaning of § 7106(b)(3) of the Statute. *U.S. Dep’t of Justice, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 65 FLRA 1040, 1044 (2011) (quoting *SSA, Dallas Region*, 65 FLRA 405, 409 (2010)) (internal quotation marks omitted). Authority precedent also holds that arrangements pertaining to the equitable distribution of overtime do not abrogate management rights. *U.S. Dep’t of the Treasury, IRS, Austin, Tex.*, 65 FLRA 474, 476 (2011) (finding provision requiring agency to distribute overtime equitably does not abrogate management rights). Therefore, because the Arbitrator enforced an arrangement that does not abrogate management rights, and thus constitutes an appropriate arrangement under § 7106(b)(3) of the Statute, we deny the Agency’s exception, based on its right to assign work, that the award is contrary to § 7106(a) of the Statute.

2. The award is not contrary to the Back Pay Act.

The Agency argues that the remedy is contrary to the Back Pay Act. Exceptions at 40-43. In particular, the Agency contends that the Arbitrator failed to make findings that specify which employees are entitled to backpay. *Id.* at 41-43.

An award of backpay is authorized under the Back Pay Act only when an arbitrator finds that: (1) the aggrieved employee was affected by an unjustified and unwarranted personnel action and (2) the personnel action resulted in the withdrawal or the reduction of an employee’s pay, allowances, or differentials. *U.S. DHS, U.S. CBP, Laredo, Tex.* 66 FLRA 567, 568 (2012) (*Customs*); *U.S. Dep’t of the Air Force, Tinker Air Force Base, Okla. City, Okla.*, 63 FLRA 59, 61 (2008) (*Tinker*). In determining whether a backpay award is deficient, the Authority examines whether there is a causal connection between the unwarranted action and the loss of pay, allowances or differentials. *U.S. Dep’t of Transp., FAA*, 63 FLRA 646, 648 (2009).

As to the first requirement, a violation of the parties’ agreement constitutes an unjustified and unwarranted personnel action. *Tinker*, 63 FLRA at 61. The Arbitrator found that the Agency violated the parties’ agreements in two instances – first, when it failed to contact the Union to provide how it would equitably distribute overtime and second, when it enforced overtime limits precluding senior employees from obtaining as many overtime hours as they would have received without the limits. Award at 7-8. Thus, we find that the first requirement of the Back Pay Act is satisfied. *Tinker*, 63 FLRA at 61.

With respect to the second requirement, even if employees did not actually work overtime, the Authority has found that such employees may receive backpay under the Back Pay Act if a contract violation resulted in their failure to work overtime. *Customs*, 66 FLRA at 568. If an arbitrator makes such a finding, then the Authority will not find an award deficient under the second Back Pay Act requirement, unless the agency demonstrates that the award is based on a nonfact. *Id.* Further, if an award sufficiently identifies the specific circumstances under which employees are entitled to backpay, there is no additional requirement that the Arbitrator identify specific employees entitled to the remedy. *U.S. Dep’t of the Treasury, U.S. Customs Serv., El Paso, Tex.*, 55 FLRA 553, 560 (1999).

Here, the Arbitrator found that senior employees failed to work overtime because the Agency violated the parties’ agreements. Award at 7-8. As we have denied the Agency’s nonfact exception regarding this factual

finding, we defer to it. We also defer to the Arbitrator's finding that the Agency's actions caused senior employees to suffer "reduced earnings," Award at 4, as the Agency does not challenge this finding as a nonfact. *See U.S. Dep't of Transp., FAA*, 63 FLRA 502, 504 (2009) (*FAA*). Therefore, because the Arbitrator's factual findings support his legal conclusion that these employees are entitled to backpay, we find that the award satisfies the Back Pay Act's second requirement.

The Agency also claims that the Arbitrator failed to make the required causal connection between the Agency's actions and loss of employee pay because he did not "determine which of the grievants would have received the overtime assignment, or that all of them would have been assigned overtime, had the [A]gency complied with the agreement[s]." Exceptions at 42-43 (internal quotation marks omitted). This contention concerns compliance and implementation matters and does not implicate the requirements of the Back Pay Act.<sup>7</sup> *FAA*, 63 FLRA at 504.

Moreover, the Agency's reliance on *Beckley* is misplaced. In *Beckley*, the Authority set aside the arbitrator's award because he awarded backpay despite finding that "there [was] no certain way to know which employees would have received the [overtime] payments." 64 FLRA at 776. Here, unlike *Beckley*, the Arbitrator identified the category of employees entitled to backpay – namely, employees who "were not allowed as many overtime hours as they would have received had the limits not been specified," Award at 7, that is, employees "who have been deprived of overtime due to the imposition of the overtime limits," *id.* at 8. Accordingly, we deny the Agency's Back-Pay-Act exception.

- D. The award is not incomplete, ambiguous, or contradictory as to make implementation impossible.

Finally, the Agency argues that the award is incomplete, ambiguous, or contradictory as to make implementation impossible. Exceptions at 40. The Authority will find that an award is deficient on this ground when the excepting party shows that implementation of the award is impossible because the meaning and effect of the award are too unclear or uncertain. *E.g., AFGE, Local 1395*, 64 FLRA 622, 624 (2010). Here, the Agency offers no explanation of how implementation of the award is impossible other than the arguments that it makes concerning alleged deficiencies with the remedy under the Back Pay Act. As

we find that the remedy is not deficient under the Back Pay Act, we likewise reject this argument.

## V. Decision

We deny the Agency's exceptions.

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<sup>7</sup> The Arbitrator retained jurisdiction for sixty days "to resolve any disputes over the implementation of th[e] remedy." Award at 8.