**Social Security Administration and AFGE, Local 1923**

Federal Labor Relations Authority

0-AR-3336; 57 FLRA No. 93; 57 FLRA 530

September 27, 2001

The union filed a grievance that the agency violated the parties' collective bargaining agreement in its filling of Benefits Authorizer positions (GS-5 to GS-7). The grievance went to arbitration. The union argued that the agency promoted external selectees to a GS-7 position after 52 weeks instead of three months and that internal hires were not promoted at the beginning of the first pay period after selection as required by the CBA. The union also argued that the agency did not provide written explanations for non-selection to employees who exercised their priority consideration rights. The arbitrator found the agency violated the CBA. The arbitrator ordered the agency to make whole those external selectees who had not been promoted to GS-7 after three months, make whole internal hires who had not been promoted to their appropriate grade at the beginning of the first pay period after selection, provide written reasons for non-selection of those employees who exercised their priority consideration rights and to reinstate the priority consideration rights to those employees. The agency excepted to the award, arguing that the award was based on a nonfact, the award was contrary to law, the arbitrator exceeded his authority, and the award did not draw its essence from the agreement. The agency also argued that the union's opposition was not timely filed. The authority found the agency hand delivered a copy of its exceptions to the union. The authority noted that the first copy of the exceptions was slid under the union's office door and not handed to any union personnel until five days later. The Authority held that the agency's first delivery was not proper and the union's opposition was timely filed. The Authority found the agency's nonfact exception challenged facts in dispute before the Arbitrator and therefore the exception was denied. The Authority reviewed the contrary to law exception de novo and found the arbitrator's legal conclusions did not violate any law, rule or regulation. The exception was denied. The Authority also rejected the agency's exceeds authority exception. Finally, the Authority determined that the award was consistent with the parties' agreement and denied the agency's essence argument.

Before: Cabaniss, Chair; Pope and Armendariz, Members

Decision

I. Statement of the Case

This matter is before the Authority on exceptions to an award of Arbitrator Irwin Kaplan 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 upheld in part a grievance that alleged that the Agency had violated various regulations and portions of the parties, collective bargaining agreement in connection with the selection and promotion of employees to fill vacancies for Benefit Authorizer (BA) positions in the Agency's Office of Central Operations (OCO). As relevant here, the Arbitrator ordered the Agency to: (1) make whole the employees, hired through external selection procedures, who had wrongfully not been promoted to a GS-7 level for 52 weeks after their appointment to a BA position; (2) make whole the employees, hired through internal selection procedures, who had not been promoted to their appropriate grade level at the beginning of the first pay period following the announcement of their selection as a BA; (3) reveal the bona fide reason for non-selection to the employees who had exercised a priority consideration right to apply unsuccessfully for a position as a BA; and (4) reinstate the priority consideration rights of the employees who had exercised that contractual right in applying unsuccessfully for a position as a BA.

II. Background and Arbitrator's Award

The grievance arises out of the Agency's actions in connection with the filling of a large number of BA career ladder positions in the OCO in 1997.1 In January of that year, the Agency posted announcements of vacancies for those positions, at GS-5 to GS-9 levels. A number of the Agency's employees applied for these vacancies using internal application procedures. Some of those employees exercised a contractual "priority consideration" right in applying for a BA position.2

The Office of Personnel Management (OPM) also assisted the Agency in filling these vacancies. In this connection, OPM announced the vacancies on their website and in other locations. OPM then compiled certain information about the applicants for the BA positions. Next, OPM created certificates, listing the most-qualified candidates with their scores, and delivered them to the Agency. The Agency received two such certificates from OPM, one listing applicants certified at the GS-7 level. OPM certified some of the applicants at both levels.

On August 6, 1997, the Selecting Official announced, by memorandum, the applicants that he had selected to fill the BA vacancies. The Agency selected some of the applicants at the GS-5 level and others at the GS-7 level. The Agency hired applicants certified by OPM as being qualified as a GS-5 at the GS-5 level. Award at 4. The Agency hired applicants certified by OPM at a GS-5 and a GS-7 level at the higher level. Id. The Selecting Official's memorandum

indicated that the effective date of those selections was August 17, 1997. The employees promoted internally received their promotions on August 31, 1997.

The unsuccessful applicants, who had exercised their priority consideration rights to apply, received only a form indicating that they were not selected. Those employees did not receive an explanation for their non-selection.

The agreement requires the Agency to promote employees hired into career ladder positions to the next highest grade level as soon as the pertinent regulations permit their promotions, provided those employees are certified as successful in their position.3 The earliest legally permissible date of promotion for employees hired into a GS-5 career ladder position is three months following their appointment.4 To be eligible for promotion three months after appointment, the employee must be rated as qualified for the GS-7 position and satisfy the appropriate time-in-grade requirements. On the other hand, the Agency may promote an employee hired into a GS-5 career ladder position, who did not meet the criteria described above, to the GS-7 level only after 52 weeks in the position.5

Pursuant to the January 1997 announcement, the Agency selected an employee as a GS-5 who had, prior to her selection by the Agency, been employed at another agency as a GS-7, Step 9 ("external selectee"). According to the employee, OPM had sent her a letter saying that she was qualified as a GS-7, and Agency representatives told her that they would match the salary she was receiving at her previous position. However, when the external selectee began working at the Agency, she realized that she was being compensated at the GS-5 level. At that time, Agency representatives assured her that she would be promoted to the GS-7 level three months following her appointment. Despite these assurances, the Agency promoted her only after a full year at the GS-5 level.6

The Union then filed a class grievance against the Agency based on these and other actions taken in connection with the filling of the BA vacancies.7 After the parties could not resolve the matter, the parties submitted the grievance to arbitration.

As relevant here, the Arbitrator first considered the Agency's actions with regard to employees hired through external procedures. In this regard, the Union alleged that the Agency had failed to provide external hires with the proper grade at the earliest possible date. Specifically, the Union alleged that the Agency was obligated to promote the external selectee and other external hires, who had met the appropriate time-in-grade restrictions and satisfied the minimum qualifications for a GS-7 position, three months following their appointment to a BA position.

The Agency acknowledged that it could promote employees hired from OPM certificates at the GS-5 level to the GS-7 level three months following their

appointment. In this case, however, the Agency maintained that the external selectee was not, in fact, eligible for promotion after three months as a BA because OPM had not communicated to the Agency that she was qualified as a GS-7.

The Arbitrator determined, based predominately on the external selectee's testimony, that she met all of the qualifications for promotion three months after her assumption of the BA duties. Accordingly, he ordered the Agency to make the external selectee whole. Additionally, he ordered the Agency to make whole all other similarly situated employees hired though external procedures who can establish that they were qualified at the higher grade.

Next, the Arbitrator ruled on the Union's assertion that the Agency failed to promptly promote employees hired through internal selection procedures. The pertinent contractual provision requires the Agency to promote employees selected to career ladder positions to the next higher grade at the start of the first pay period following their "selection" to the position.8 The Union maintained that the term "selection" means notice of selection. Therefore, the Union asserted that the Agency had an obligation to promote affected employees at the start of the pay period following the announcement of their selection on August 6. The Agency, on the other hand, maintained that "selection" referred to the effective date of selection, as determined by the selecting official. In this case, the selecting official determined that the effective was August 17. Accordingly, it asserted that it had not violated the agreement by promoting employees on August 31 as that was the beginning of the first pay period following the "selection" of the employees.

The Arbitrator adopted the Union's interpretation of the agreement. In so ruling, the Arbitrator considered evidence from a Union representative who had participated in the negotiations over the pertinent language of the agreement. The representative testified that the parties included the relevant language to address delays following the announcement of the selectee to fill a position and the assumption of the duties of that position. Consequently, the Arbitrator found that the Agency's failure to promote the employees on August 17, the start of the pay period following the announcement of their selection, violated Article 26, Section 11, Paragraph F of the agreement. As a remedy, he ordered the Agency to make whole, with interest, the BAs whom the Agency had promoted on August 31.

Finally, the Arbitrator considered whether the Agency failed to give proper consideration to those unsuccessful employees who used a priority consideration right to apply. In this connection, the Union maintained that the Agency had a contractual obligation to provide those employees with a reason, in writing, at the time of their non-selection, for their non-selection. The Agency admitted that it had a duty to inform those employees of the reason for their non-selection.

However, it argued that it had no duty to inform them of that reason, in writing, at the time of their nonselection.

The Arbitrator ruled that the Agreement required the Agency to provide employees, who exercised their priority consideration rights unsuccessfully in applying, with a reason, in writing, for their non-selection. In so ruling, the Arbitrator found that it would be "illusory to rely merely on the Agency's unverified conclusion that it did not select a candidate for a bona fide reason." Award at 25. As a remedy for this violation, he ordered the Agency to provide bona fide reasons to the employees who exercised their priority consideration rights unsuccessfully in applying. Additionally, he ordered the Agency to reinstate the priority consideration rights that the employees had exercised unsuccessfully in applying.

III. Preliminary Matters

A. The Authority will consider the Union's Opposition

Once a party is served with a copy of exceptions to an arbitration award, that party has 30 days from the date of such service to file its opposition with the Authority. 5 C.F.R. § 2425.1(c).9 In the instant case, the Agency's statement of service indicates that it served the exceptions by hand on the Union on July 5, 2000. If the Agency actually served the Union on July 5, then any timely opposition would have been due no later than August 4. The Union filed its opposition with the Authority on August 7.

By Order dated August 18, the Authority directed the Union to show cause why its opposition should be considered. In its response to the Authority's Order, the Union argues that the Agency's exceptions were not properly served on any Union personnel until July 10. The Union provided a copy of the Agency's exceptions showing receipt of the exceptions on July 10. Additionally, the Union submitted affidavits indicating that an Agency representative had informed Union representatives that the exceptions were served on the Union before July 10 by pushing them under the door to the Union office. The Agency did not file any responses disputing the Union's affidavits.

Section 2429.27(b) of the Authority's regulations provides:

Service of any document or paper under this subchapter, by any party. . .shall be accomplished by certified mail, first-class mail, commercial delivery, or in person. Where facsimile equipment is available, service by facsimile of documents described in § 2429.24(e) is permissible.

Thus, the Agency's delivery of the exceptions to the Union by pushing them under the door to the Union office does not comport with the Agency's service requirements. See Social Security Admin., Office of Hearings and Appeals, Falls

Church, Va., 55 FLRA 349, 353 (1999) (service via interoffice mail not recognized as a valid form of service under § 2429.27). Instead, the Agency did not properly serve the Union with its exceptions until July 10 when it hand-delivered a copy of the exceptions to the Union's representative. Consequently, the Union's opposition was timely filed as it was filed within thirty days of the proper service of the exceptions on July 10. See id. Therefore, we will consider the Union's opposition.

B. The Authority will not take official notice of the National Promotion Plan

The Agency requests that the Authority take official notice of its National Promotion Plan (Plan).10 The Plan sets forth the merit systems principles that apply to positions in the bargaining unit represented, in part, by the Union. According to the Agency, various Agency witnesses and exhibits presented at the hearing referenced the Plan. Exceptions at 2. The Agency asserts that the Plan represents "commonly known understandings" regarding the administration of the 1993 Agreement between the parties. Id.

The Union objects to the Agency's request. The Union argues that the Agency already had an opportunity to present the document at arbitration and should not be permitted to present it now. Additionally, the Union asserts that the Plan merely constitutes one interpretation of the terms of the agreement and that the Agency should not be permitted to introduce evidence of the meaning of the agreement now.

The Plan was in existence at the time of the hearing but was not presented to the Arbitrator for his consideration. Normally, the Authority will not consider documents that were in existence at the time of the arbitration hearing but not presented to the Arbitrator. See United States Agency for Int'l Dev., 53 FLRA 187, 187 n.2 (1997); NAGE, Local R4-45, 53 FLRA 517, 520 (1997).11 Moreover, when the Authority has taken official notice of documents that could have been, but were not, presented for the arbitrator's consideration, those documents have been of widespread application or of an undisputed nature. See United States Dep't of Veterans Affairs, Ralph H. Johnson Med. Ctr., Charleston, S.C., 56 FLRA 381 (2000) (Authority took official notice of government-wide OPM classification standard because it was a public document); United States Dep't of Justice, 52 FLRA 1093, 1096 n.6 (1997) (Authority took official notice of relevant Executive Orders upon request of Agency after Union did not oppose their introduction).

Here, in contrast to a document of general application, the Agency seeks to have the Authority take official notice of an internal Agency document that applies only to the Agency. Moreover, the meaning and significance of the Plan is contested by the Union. Based on these considerations, it is not appropriate for the Authority to take official notice of the Plan.

IV. Positions of the Parties

A. Agency's Exceptions

The Agency first excepts to the Arbitrator's ruling concerning the hiring of individuals through external procedures. In this connection, the Agency maintains that the award is based on a nonfact and is contrary to law. With regard to its allegation that the award is based on a nonfact, the Agency focuses on the facts the Arbitrator used to support his determination that the external selectee was qualified to be promoted to the GS-7 level three months after her appointment as a BA. The Agency maintains that the Union produced insufficient evidence to support a finding that she met the specialized experience requirement that would make her eligible to be promoted three months following her appointment. Specifically, the Agency asserts that the employee's testimony that she received a letter from OPM indicating that she was qualified for the position at the GS-7 level, without production of any documentation of that certification, was insufficient evidence of her qualifications to become a GS-7 after three months.

Based on its assertion that the employee was, as a matter of fact, not eligible to be promoted at the time that the Union claims she was eligible, the Agency maintains that the award violated pertinent federal regulations. The Agency alleges that the promotion of the external selectee prior to her satisfaction of the appropriate specialized experience requirements violates 5 C.F.R. § 338.301, which incorporates OPM's Operating Manual: Qualification Standards for General Schedule Positions Operating Manual (Manual).12 Although the Agency's Exceptions do not specify which portion of the Manual it believes the Award violates, its exceptions challenge the Arbitrator's order that the Agency make whole the external selectee, and similarly situated employees, for not promoting them to the GS-7 level until 52 weeks following their appointment.

The Agency next excepts to the Arbitrator's ruling concerning the date of the selection of the employees. In this regard, the Agency asserts that the award violates 5 C.F.R. § 335.103(a) and the Plan, which was enacted to conform to this regulation.13 Specifically, the Agency argues that the Arbitrator's interpretation of the term "selection" as referring to the date of the announcement of selection was contrary to the terms of the Plan, and, therefore, violated the regulation pursuant to which the Plan was enacted.14

Additionally, the Agency asserts that this portion of the award is based on a nonfact. In this regard, the Agency maintains that the Arbitrator's interpretation of the term "selection" is contrary to evidence presented at the hearing. The Agency cites to the testimony of an Agency witness at the hearing who indicated that the effective date of selection was August 17.

The Agency also excepts to the Arbitrator's order to provide a bona fide reason for non-selection, in writing, to the employees who applied unsuccessfully using

priority consideration. In this connection, the Agency maintains that this portion of the award does not draw its essence from the parties' agreement and that the Arbitrator exceeded his authority by ordering this remedy. Specifically, the Agency notes that the relevant provisions of the agreement do not contain any requirement that the Agency provide a bona fide reason, in writing, for non-selection to employees who apply unsuccessfully for a position using their priority consideration. The Agency asserts that the imposition of such a requirement constitutes an attempt by the Arbitrator, in violation of the contractual limitations placed upon his power to modify the agreement, to add a term to the agreement.15

Finally, the Agency maintains that the Arbitrator's order to reinstate the priority consideration of applicants, who used that consideration to apply unsuccessfully for BA positions, exceeds the claimed violation. Specifically, the Agency asserts that the Union did not allege that the Agency failed to give employees their proper priority consideration. The Agency maintains that the award grants grievants compensation which would place them in a better position than they would have been without the violation.

B. Union's Opposition

As a preliminary matter, the Union claims that the Agency is merely attempting to re-litigate this case before the Authority. It maintains that each issue was raised, disputed and addressed at the hearing.

The Union first argues that the award is not based on a nonfact. With regard to the external selectee, the Union claims that the Agency already had a chance to contradict or impeach her testimony. The Union maintains that the Authority will not find that an award is deficient on the basis of any factual matter that the parties disputed at arbitration. Because the parties disputed the issue of the external selectee's qualifications at the hearing, the Union asserts that the award can not be found deficient on this ground. With regard to the Agency's allegation that the portion of the award concerning the date of selection was based on nonfact, the Union again maintains that the award should not be found deficient because the Arbitrator's factual findings were in dispute at the hearing and are not clearly erroneous.

Next, the Union claims that the Arbitrator did not exceed his authority. The Union claims that the Arbitrator did not fail to resolve an issue submitted to him, disregard specific limitations on his authority or award relief to those not encompassed within the grievance. More specifically, the Union asserts the agreement does not state that the arbitrator can not order the Agency to give a reason for non-selection to the employees who exercised a priority consideration to apply. Additionally, the Union maintains that the award is merely a make-whole order to provide relief to employees whom the Agency did not properly consider.

The Union also maintains that the portion of the award, mandating the reinstatement of the priority consideration rights of the unsuccessful employees, does not fail to draw its essence from the agreement. The Union claims that the Arbitrator, relying upon legal precedent supplied by the Union, merely interpreted the relevant terms of the agreement.

Finally, the Union asserts that the Agency has failed to establish that the award violated law, rule or regulation. The Union claims that the award does not violate 5 C.F.R. § 338.301 because, according to the Union, that section applies only to appointments, and, therefore, is inapplicable in this case. Moreover, the Union argues that even if that regulation were to apply to this situation, the Agency has not shown that the regulation contradicts the Arbitrator's finding that a properly qualified employee may be promoted after three months in grade. The Union also maintains that the award does not violate 5 C.F.R. § 335.103(a). The Union asserts that that regulation requires merely that an agency adopt and administer a promotion program.

In conclusion, the Union requests that the Authority award relief to the Union in the form of attorney's fees and expenses. The Union also requests that the Authority issue a cease and desist order to the Agency for its "failure to comply with settled law" and from continuing to file exceptions that "it knows are doomed to fail." Opposition at 18.

V. Analysis and Conclusions

A. The award is not based on a nonfact

To establish that an award is based on a nonfact, the appealing party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result. See United States Dep't of the Air Force, Lowry Air Force Base, Denver, Colo., 48 FLRA 589, 593 (1993). However, the Authority will not find an award deficient on the basis of an arbitrator's determination on any factual matter that the parties had disputed at hearing. Id. at 594 (citing Nat'l Post Office Mailhandlers v. United States Postal Serv., 751 F.2d 834, 843 (6th Cir. 1985)). Additionally, "[t]he mere fact that the appealing party disputes an arbitral finding does not provide a basis for finding that an award is based on a nonfact."AFGE, Local 1923, 51 FLRA 576, 579 (1995). These principles appropriately accord deference to an arbitrator's factual findings because the parties have bargained for the facts to be found by an arbitrator whom they have chosen. See AFGE, Local 1858, 56 FLRA 422, 424 (2000).

The Agency asserts that the Arbitrator's finding that the external selectee was eligible, as a matter of fact, for promotion three months following her appointment to a BA position was based on a nonfact. This question was in dispute before the Arbitrator and the Arbitrator, based on the record evidence, determined that the

employee was eligible for promotion at that time. Accordingly, the Agency has not demonstrated that that portion of the award is based on a nonfact. See, e.g., United States Dep't of the Air Force, Warner Robins Air Logistics Ctr., Robins Air Force Base, Ga., 56 FLRA 498, 502 (2000).

The Agency also maintains that the Arbitrator's determination of the date of "selection" was based on a nonfact. The parties, however, also disputed that issue at hearing. Accordingly, the Agency can not now challenge the Arbitrator's determination of that date. See id.

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

The Authority reviews questions of law de novo. See NTEU, Chapter 24, 50 FLRA 330, 332 (1995) (citing United States Customs Serv. v. FLRA, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying a standard of de novo review, the Authority determines whether the Arbitrator's legal conclusions are consistent with the applicable standard of law. See NFFE, Local 1437, 53 FLRA 1703, 1710 (1998). In making that determination, the Authority defers to the arbitrator's underlying factual findings. See id.

The Agency first alleges that the Arbitrator's order to make whole the external selectee, and other similarly situated employees, violates 5 C.F.R. § 338.301, which incorporates the Manual into the Code of Federal Regulations. The Agency maintains that the award is contrary to law because, in its view, the external selectee failed to satisfy the minimum standards for promotion contained in the Manual.

To the extent the Agency is arguing that the Arbitrator violated 5 C.F.R. § 338.301 by finding that the external selectee was qualified for the position without OPM's certification of those qualifications, it is the Agency's responsibility to ensure that OPM1s requirements are met. Nothing in that regulation prevents arbitral review of the Agency's actions in determining the qualifications of candidates for vacancies. Moreover, to the extent that the Agency is disagreeing with the Arbitrator's factual finding that the employee satisfied the minimum qualifications for promotion three months following her appointment as a BA, we will defer to that factual finding. See NFFE, Local 1437, 53 FLRA at 1710. As noted in the previous section, the Agency has not demonstrated that the award is based on a nonfact in that respect.

The Agency also claims that the Arbitrator's interpretation of the contractual term "selection" violates 5 C.F.R. § 335.103(a). This regulation, however, does not define the term "selection." Instead, it merely requires the Agency to have a program "designed to insure a systematic means of selection for promotion according to merit." The award does not require the Agency to abandon or dismantle its promotion program. Therefore, the award does not violate § C.F.R. § 335.103(a).

C. The Arbitrator did not exceed his authority

An arbitrator exceeds his or her authority when the arbitrator fails to resolve an issue submitted to arbitration, resolves an issue not submitted to arbitration, disregards specific limitations on his or her authority, or awards relief to persons who are not encompassed by the grievance. See United States Dep't of Defense, Army and Air Force Exchange Serv., 51 FLRA 1371, 1378 (1996).

The Agency alleges that the Arbitrator exceeded his authority by adding to the agreement a requirement that the Agency provide applicants, who had used their priority consideration rights to apply for one of the BA positions, with a written reason for their non-selection. In this regard, Article 25, Section 6 of the agreement states that the Arbitrator will have no authority to "add to, subtract from, disregard, alter or modify" the agreement. Exceptions at 11.

The Arbitrator, however, was merely interpreting the relevant terms of the agreement. The Arbitrator stated, "I interpret the contractual provision in question as requiring the Agency to provide its bona fide reason to employees properly exercising their priority consideration." Award at 25-26. Additionally, the agreement set forth no specific limitation that would preclude the remedy ordered by the Arbitrator.

The Arbitrator, then, exercised his power under both the agreement and Authority case law to interpret the relevant contractual provisions. The Agency's exception is merely an attempt to recast the Arbitrator's contract interpretation as an improper contract modification. However, the Agency has failed to establish that the Arbitrator added a term to the agreement and, thereby, disregarded specific limitations on his authority. See AFGE, Local 701, 55 FLRA 631, 633 (1999).

The Agency also claims that the Arbitrator's order to reinstate the priority consideration rights of unsuccessful employees exceeds the claimed violation. We construe this as a claim that the Arbitrator exceeded his authority by resolving an issue not submitted to arbitration. In this regard, the Agency maintains that the Union did not argue that employees did not receive their proper priority consideration.

The Arbitrator, however, considered that very issue. At the arbitration hearing, the parties stipulated to the following issue:

Whether the Agency violated the National Agreement, law, rule or regulation in its hiring, selection and/or promotion in the benefit authorizer position at Agency headquarters by. . . (3) Failing to give proper consideration to employees who used priority consideration. . .and, if so, what shall be the remedy?

Award at 2. Moreover, the Union, in its post-hearing brief, argued that the Agency failed to give proper consideration to employees who used priority consideration. Union post-hearing brief at 25. The Arbitrator, then, considered an issue that was submitted to arbitration and, in accordance with the power granted to him by the parties, determined a remedy for the Agency's violation of the agreement. Therefore, he did not exceed his authority.

D. The award draws its essence from the agreement

The Agency asserts that the portion of the award, requiring the Agency to reveal the bona fide reasons for nonselection to the unsuccessful priority consideration applicants, fails to draw its essence from the agreement. For an award to be found deficient as failing to draw its essence from the collective bargaining agreement, it must be established that the award: (1) can not 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 an arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement. United States Dep't of Defense, Defense Logistics Agency, Defense Distribution Center, New Cumberland, Pa., 55 FLRA 1303, 1307 (2000) (Member Cabaniss concurring); United States Dep't of Labor (OSHA), 34 FLRA 573, 575 (1990).

The Agency has not demonstrated that the Arbitrator's award cannot, in any rational way, be derived from the negotiated agreement. He did not fashion a new remedy or add a new type of consideration for which there is no basis in the agreement. Rather, his conclusion that bona fide consideration should be in written form and transmitted to the candidate constituted his interpretation of the agreement. The Agency's exception constitutes mere disagreement with the Arbitrator's interpretation and provides no basis for finding the award deficient. See United States Dep't of Health and Human Serv., Soc. Sec. Admin., 38 FLRA 28, 31 (1990) (arbitrator's order to provide written explanation for nonselection to the employees, who exercised a priority consideration right to apply unsuccessfully for a job vacancy, did not fail to draw its essence from the agreement). Accordingly, the award does not fail to draw its essence from the parties' agreement.

VI. Order

The Agency's exceptions are denied.16

1 Four hundred employees were involved in the grievance. Award at 6 n.3. The Agency selected eighty-two individuals to fill the BA vacancies. Id. at 29.

2 Article 26, Section 13, Paragraph A of the Agreement defines priority consideration as "the bona fide consideration for noncompetitive selection given to an employee on account of previous failure to properly consider the employee for selection because [of] a procedural, regulatory or program violation." Under this procedure, the names of employees wishing to exercise their priority consideration right in applying for a position will be referred to the selecting official prior to the referral of other qualified candidates. Award at 14. The agreement permits an employee to exercise only one priority consideration for noncompetitive promotion for each instance in which he or she did not receive proper consideration. Id.

3 Article 26, Section 4 of the agreement provides, in relevant part:

A. At the time the employee reaches his/her earliest date of promotion eligibility, the Administration will decide whether or not to promote the employee.

1. If an employee is certified as successful and is meeting the promotion criteria in the career ladder plan, the Administration will certify the promotion which will be effective at the beginning of the first pay period after the requirements are met.

Award at 10.

4 5 C.F.R. § 330.501 provides:

An Agency may promote an employee or reassign him to a different line of work, or to a different geographical area, and it may transfer a present employee or reinstate a former employee of the same or another agency to a higher grade or different line of work, or to a different geographical area, only after 3 months have elapsed since the employee's latest nontemporary competitive appointment. OPM may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principles of open competition.

5 5 C.F.R. § 300.604 provides, in relevant part:

The following time-in-grade restrictions must be met unless advancement is permitted by § 300.603(b) of this part:

(b) Advancement to positions at GS-6 through GS-11. Candidates for advancement to a position at GS-6 through GS-11 must have completed a minimum of 52 weeks in positions:

(1) No more than two grades lower (or equivalent) when the position to be filled is in a line of work properly classified at 2-grade intervals.

6 The parties stipulated that the Agency handled the promotion of other, similarly situated external hires in substantially the same manner that it had handled the promotion of the employee described above. Award at 6 n.3. In addition to the testimony of the external selectee, one other employee hired through external procedures testified that she had not received a promotion until 52 weeks following her selection. The Arbitrator ruled that the Agency had not violated the agreement or pertinent regulations in its actions towards that employee. The Union did not file exceptions on that issue and that matter is not before the Authority.

7 The Arbitrator also decided a number of related factual and legal issues not currently before the Authority. These issues concerned matters such as whether the Agency used an improper area of consideration, the use of supervisory checklists, and the improper posting of vacancies under a training agreement.

8 Article 26, Section 11, Paragraph F of the agreement provides:

Employees selected for career ladder positions will be promoted to the next higher-grade level at the beginning of the first pay period after selection, provided time in grade and any other legal promotion requirements are met.

Award at 14.

9 5 C.F.R. § 2425.1(c) provides:

An opposition to the exception may be filed by a party within thirty (30) days after the date of service of the exception.

10 5 C.F.R. § 2429.5 provides:

The Authority will not consider evidence offered by a party, or any issue, which was not presented in the proceedings before the Regional Director, Hearing Officer, Administrative Law judge, or arbitrator. The Authority may, however, take official notice of such matters as would be proper.

11 In support of its request to the Authority that it consider the Plan, the Agency, citing United States Dep't of the Treasury, Customs Serv., Washington, D.C., 38 FLRA 875 (1990), asserts that the Authority may take official notice of Agency directives where the authenticity of such documents is not at issue. That case, however, was submitted directly to the Authority on stipulations of facts. Where, as here, the parties previously had an opportunity to introduce internal agency regulations into evidence, the Authority has refused to take official notice of regulations of that nature. See Nat'l Park Serv., Nat'l Capital Region, United States Park Police, 48 FLRA 1151, 1163 n.10 (1993).

12 5 C.F.R. § 338.301 provides, in relevant part:

Agencies must ensure that employees who are given competitive service appointments meet the requirements included in the Office of Personnel Management's Operating Manual: Qualification Standards for General Schedule Positions.

13 5 C.F.R. § 335.103(a) provides:

Except as otherwise specifically authorized by OPM, an agency may make promotions under § 335.102 of this part only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. These programs shall conform to the requirements of this section.

14 Because we have not taken official notice of the Plan, we will not further articulate the Agency's argument that the award violated the Plan.

15 Article 25, Section 6 of the agreement provides:

The Arbitrator shall have no power to add to, subtract from, disregard, alter, modify any terms of this agreement.

Exceptions at 11.

16 We also deny the Union's requests for attorney's fees and for various sanctions against the Agency. The Authority will not consider a request for attorney's fees and costs for expenses incurred in the preparation of exceptions and oppositions in cases filed under 5 U.S.C. § 7122. See Nat'l Gallery of Art, Washington, D.C., 48 FLRA 841, 844 n.2 (1993); United States Dep't of Housing and Urban Dev., 47 FLRA 1053, 1064 (1993). Additionally, the Union makes no argument supporting its request that the Authority issue a cease and desist order to the Agency for its failure to comply with settled law and alleged filing of meritless exceptions. As such, the Union's claim is nothing more than a bare assertion, and in accordance with Authority precedent it must be denied. See, e.g., United States Dep't of Transp., FAA, Wash., D.C., 55 FLRA 322, 326 (1999); AFGE, Local 3615, 54 FLRA 494, 499 (1998).