FOREIGN SERVICE LABOR RELATIONS BOARD
WASHINGTON, D.C.

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UNITED STATES DEPARTMENT OF STATE
(Agency)

and

AMERICAN FOREIGN SERVICE ASSOCIATION
(Union)

FS-AR-0006

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DECISION

April 20, 2016

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Before the Board: Carol Waller Pope, Chairman, and
Stephen R. Ledford and Herman J. Cohen, Members

I. Statement of the Case

Each year, the parties would negotiate an agreement concerning, in relevant part, procedures for identifying which employees were eligible to receive an award called a "[m]eritorious [s]ervice [i]ncrease[]" (MSI).[1] While the parties were negotiating their 2013 agreement (the agreement), the government enacted automatic budget cuts (the sequester), and the Office of Management and Budget (OMB) issued guidance instructing agencies not to pay certain monetary awards during the sequester (the awards freeze). As a result, the parties included wording in the agreement permitting the Agency to confer only the "nonmonetary" benefits of MSIs while the Agency was "restricted" from paying cash awards.[2] When the awards freeze ended, the Union asserted that the agreement required the Agency to pay MSIs retroactively, but the Agency declined to do so. Consequently, the Union filed, with the Agency, an "implementation dispute" alleging that the Agency violated the agreement.[3] When the Agency rejected the Union's implementation dispute, the Union filed a complaint with the Foreign Service Grievance

[1] Decision at 2.
[2] *Id.* at 6 (quoting the agreement) (emphasis omitted).
[3] 22 U.S.C. § 4114(a)-(b).

Board (the Grievance Board).[4] The Grievance Board found that the Agency violated the agreement, and it directed the Agency to pay the MSIs retroactively.

There are three questions before us.

The first question is whether the Grievance Board's decision fails to draw its essence from the agreement. Because the Agency does not show that the Grievance Board's interpretation of the agreement is irrational, unfounded, implausible, or in manifest disregard of the agreement, the answer is no.

The second question is whether the Grievance Board's decision is based on two nonfacts. Specifically, the Agency argues that the Grievance Board erroneously found that: (1) the awards freeze applied to MSIs; and (2) the "[s]election [b]oards" – groups that rank employees in order to recognize their performance – recommended employees for MSIs while the awards freeze was in effect.[5] Because these arguments challenge the Grievance Board's interpretation of the agreement – not factual findings – they do not provide a basis for finding that the decision is based on nonfacts. Therefore, the answer is no.

The third question is whether the decision is deficient because it is based on the Grievance Board's allegedly erroneous conclusion that the Agency was obligated to pay MSIs to employees recommended by the selection boards. Specifically, the Agency argues that this conclusion was: (1) based on the nonfact that the parties had a consistent past practice with respect to paying MSIs; and (2) contrary to law because the Grievance Board reached it by relying on evidence outside of the record, in violation of the Foreign Service Act[6] and its implementing regulations.[7] The Grievance Board's interpretation of the agreement's *wording* is a separate and independent ground for the Grievance Board's conclusion that the Agency was obligated to pay MSIs to the pertinent employees. Because the Agency has not established that this ground is deficient, its arguments concerning additional evidence that the Grievance Board discussed do not provide a basis for setting the decision aside.

II. Background and Grievance Board's Decision

As discussed above, the Union filed, with the Agency, an implementation dispute alleging that the Agency's refusal to pay certain MSIs violated the agreement. The Agency rejected the Union's implementation dispute, and the Union filed a complaint asking the Grievance Board to resolve the matter.

The Grievance Board found that, each year, the parties would negotiate an agreement concerning procedures for identifying "employees who were not promoted,

[4] *See id.* § 4114(a)(3).
[5] Exceptions at 13.
[6] 22 U.S.C. § 4137(a).
[7] 22 C.F.R. §§ 907.1(b), 909.1, 911.3.

but whose performance was of sufficient quality that an MSI was deemed appropriate."[8] Under these agreements, "[s]election [b]oards"[9] would rank employees, thereby creating "rank[-]order lists."[10] Using those lists, the Agency typically paid MSIs to the top-ranking employees whom the Agency did not promote, up to a set percentage of employees in each competitive class.

As the parties were negotiating the agreement, the government implemented the sequester and OMB enacted the awards freeze by issuing guidance instructing agencies to restrict certain monetary awards until further notice. This guidance did not mention MSIs specifically, but the Agency informed the Union that it was necessary to suspend MSIs. According to the Grievance Board, the Union was concerned that the Agency would be required to implement furloughs unless the Union agreed to suspend monetary awards. Thus, the Grievance Board found that the parties negotiated the agreement in the context of "the budget[-]sequestration situation"[11] and the "government-wide awards freeze."[12]

The Grievance Board found that, in some ways, the agreement was similar to prior agreements between the parties. For example, the agreement stated that selection boards would rank employees to create lists that would "be used in conferral of . . . MSIs."[13] Under the agreement, employees on these lists whom the Agency did not promote would "be deemed qualified for MSIs up to the appropriate levels and their names [would] be submitted in accordance with the rank order to the [Agency] for approval of the MSI's conferral."[14] And the agreement stated that "[n]o more than ten percent of members in a competition group shall receive MSIs."[15] Further, the agreement stated that the approval of MSIs was "subject to the same guidelines for approval and enactment as recommendations for promotion."[16]

However, in light of the sequester, the parties also included new wording drafted by the Agency (the note paragraph). The note paragraph stated that "[i]f restricted by policy, regulation[,] or budget from granting . . . awards," the Agency would "nonetheless recognize employees ranked for MSI" through a notation to the employees' files and other "nonmonetary . . . privileges."[17] The note paragraph also stated: "If authorized, [the Agency] will implement all MSIs . . . as of the effective date of the promotions."[18]

After the parties negotiated the agreement, OMB and the Office of Personnel Management (OPM) jointly issued a memorandum instructing agencies to "honor all

[8] Decision at 4.
[9] *Id.* at 2.
[10] *Id.* at 5 (quoting the agreement).
[11] *Id.* at 20.
[12] *Id.* at 21.
[13] *Id.* at 5 (quoting the agreement).
[14] *Id.* (quoting the agreement).
[15] *Id.* at 6 (quoting the agreement).
[16] *Id.* at 5-6 (quoting the agreement).
[17] *Id.* at 6 (quoting the agreement) (emphasis omitted).
[18] *Id.* (quoting the agreement) (emphasis omitted).

collective[-]bargaining obligations and agreements" regarding monetary awards (the OMB-OPM memo).[19] Subsequently, the government enacted appropriations legislation that funded the executive branch, including the Agency. At that point, the Union asked the Agency to pay MSIs retroactively, and the Agency refused.

The Grievance Board found that the parties' dispute revolved around three ambiguities in the agreement's wording. Because the Grievance Board found the wording at issue ambiguous, it stated that it would use recognized standards of contract interpretation to determine the parties' intent.

"The first area of ambiguity," according to the Grievance Board, was whether, under the agreement, the Agency was obligated to pay MSIs based on the selection boards' rankings.[20] Although the Agency argued that it retained the discretion to grant *or withhold* MSIs, the Grievance Board stated that "[e]xamining the MSI portion of the [agreement] as a whole,"[21] it "believe[d] the language"[22] demonstrated that the Agency's approval of the MSIs recommended by the selection boards was "mandatory."[23] For support, the Grievance Board noted that the agreement stated that "[n]o more than ten percent of members in a competiti[on] group *shall* receive MSIs."[24] The Grievance Board found that this language "strongly suggest[ed]" that the Agency *would* pay MSIs "to all those recommended by the [selection boards], up to a ceiling of [ten] percent of the competition class."[25] The Grievance Board also noted the agreement's statement that approval of MSIs was "subject to the same guidelines for approval and enactment as recommendations for promotion."[26] In this regard, the Grievance Board found that the Agency's manual governing promotion made promotion mandatory, absent evidence of "impropriety."[27] Thus, based on the agreement's wording, the Grievance Board concluded that the Agency was obligated to pay MSIs to those employees recommended by the selection boards, up to the ten percent limit specified in the agreement.

The Grievance Board noted that this conclusion was "further buttressed by the parties' past practice" of paying MSIs to those employees recommended by the selection boards, up to the percentage limitation negotiated by the parties in their agreement.[28] In particular, the Grievance Board stated that the Union had alleged – and the Agency had not disputed – that the parties had followed such a practice for "at least [thirty] years."[29] Additionally, the Grievance Board noted that wording in the parties' prior agreements

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[19] *Id.* (quoting the OMB-OPM memo).
[20] *Id.* at 14.
[21] *Id.* at 16.
[22] *Id.*
[23] *Id.* at 17.
[24] *Id.* at 16 (emphasis added) (quoting the agreement).
[25] *Id.* at 16-17.
[26] *Id.* at 17 (quoting the agreement).
[27] *Id.* (citing Foreign Affairs Manual).
[28] *Id.* at 18.
[29] *Id.* (noting that the Agency had not produced any evidence that it ever denied MSIs to employees recommended by the selection boards); *see also id.* at 15 ("The [Agency] did not, in the record before us, dispute that [the Union's] characterization of this past practice is accurate.").

"undercut[] [the Agency's] argument that it always had . . . the sole discretion to decide how many, if any, MSIs were to be awarded in any given year."[30]

The "second and third areas of ambiguity" concerned the note paragraph.[31] The second ambiguity concerned the note paragraph's statement that "[i]f restricted by policy, regulation[,] or budget from granting . . . cash awards," then the Agency would confer only the "nonmonetary . . . privileges" of MSIs.[32] The Agency asserted that the triggering "policy, regulation[,] or budget" restriction was the Agency's own determination that awards should be suspended.[33] In contrast, the Union argued that the triggering restriction was the awards freeze instituted by OMB.

The third ambiguity concerned what type of authorization would lift the MSI restriction under the note paragraph's statement that "[i]f authorized, [the Agency] will implement all MSIs."[34] The Union argued that when the Agency received the OMB-OPM memo, followed by its appropriated funds, "the conditions that created the need for the freeze on . . . awards no longer existed, and the MSIs were therefore 'authorized' within the meaning of the [note paragraph]."[35] In contrast, the Agency asserted that because the OMB-OPM memo did not "specifically mention MSIs," it did not "'authorize' their payment" under the agreement.[36]

In resolving the second and third ambiguities, the Grievance Board acknowledged that the note paragraph did not identify the "source" of either the "'policy, regulation[,] or budget'" that restricted MSI payments, or the authorization for lifting that restriction.[37] The Grievance Board found that, because the "entire impetus" for the note paragraph was "the budget[-]sequestration situation" and the OMB guidance to restrict awards,[38] both the restriction on the payment of MSIs and the authorization to lift that restriction were linked to the sequester and the OMB awards freeze. And the Grievance Board found that, to the extent that the bargaining-history evidence submitted by the parties was relevant, it supported this interpretation.

Further, the Grievance Board recited the contract-interpretation rule that "ambiguous agreement language will be construed against the party who drafted it."[39] And the Grievance Board stated that if the Agency – as the drafter of the note paragraph – had meant that the Agency's own actions would trigger both the restriction on MSIs and the authorization to resume MSI payments, then "it certainly should have said so in

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[30] *Id.* at 18.
[31] *Id.* at 20.
[32] *Id.* at 6 (emphasis omitted) (quoting the agreement).
[33] *Id.* at 20 (quoting the agreement).
[34] *Id.* (quoting the agreement).
[35] *Id.* at 8 (quoting the agreement).
[36] *Id.* at 9.
[37] *Id.* at 20 (quoting the agreement).
[38] *Id.*
[39] *Id.* at 22; *see also id.* at 13 ("[I]t is a well-established principle of contract interpretation that ambiguous agreement language will be construed against the party who drafted it, because [that party] bears the responsibility for creating the ambiguity.").

the language it drafted."[40] In this regard, the Grievance Board rejected the Agency's argument that, under the note paragraph, it "could make its own independent assessment of whether it should maintain a freeze even after the government-wide OMB . . . freeze ended."[41] The Grievance Board found that this interpretation "[did] not square with the circumstances surrounding the agreement to the [note paragraph]."[42]

Based on the foregoing, the Grievance Board concluded that the awards freeze was the "policy, regulation[,] or budget" restriction that triggered the parties' suspension of MSI payments.[43] "Correspondingly," the Grievance Board concluded that the parties intended for "OMB's and OPM's lifting of the awards freeze" to "constitut[e] the authorization for [the Agency] to 'implement all MSIs and cash payments.'"[44] And, regarding the Grievance Board's resolution of the "first area of ambiguity"[45] to conclude that MSI payments to the pertinent employees were "mandatory,"[46] the Grievance Board found that nothing in the note paragraph altered that obligation. In this regard, the Grievance Board concluded that, once the "external" restrictions on awards imposed by OMB were lifted, the note paragraph required the Agency to pay the MSIs retroactively.[47] Thus, the Grievance Board found that the Agency's refusal to pay MSIs retroactively violated the agreement, and the Grievance Board directed the Agency to make retroactive payment of the MSIs, with interest.

The Agency filed exceptions to the decision, and the Union filed an opposition to the Agency's exceptions.

III. Preliminary Matter: We will consider all of the Agency's exceptions.

In its opposition, the Union argues that the Agency is barred from raising several of its exceptions because they include arguments that the Agency could have – but failed to – make before the Grievance Board.[48] As discussed below, we find that none of the Agency's exceptions provide a basis for setting aside the Grievance Board's decision. Thus, because consideration of the challenged Agency exceptions would not alter our ultimate decision, we assume without deciding that all of the Agency's exceptions are properly before us.

IV. Analysis and Conclusions

Under 22 U.S.C. § 4107, decisions of the Foreign Service Labor Relations Board (the Board) "shall be consistent with decisions rendered by" the Federal Labor Relations

[40] *Id.* at 22.
[41] *Id.* at 21.
[42] *Id.*
[43] *Id.*
[44] *Id.* (quoting the agreement).
[45] *Id.* at 14.
[46] *Id.* at 17.
[47] *Id.* at 26.
[48] Opp'n at 17, 20, 22-23.

Authority (the Authority).[49] In other words, "Congress has directed the . . . Board . . . to follow . . . Authority . . . precedent, except when the [Board] finds special circumstances that require otherwise."[50] Because no special circumstances are asserted or apparent in this case, the following analysis applies Authority precedent where there is no relevant Board precedent.[51]

A. The decision does not fail to draw its essence from the agreement.

The Agency argues that the decision fails to draw its essence from the agreement because the Grievance Board's interpretation of the note paragraph is implausible and ignores both the context of negotiations and evidence of the parties' intent.[52]

To demonstrate that a decision fails to draw its essence from a collective-bargaining agreement, an excepting party must establish 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.[53] The Authority has found that an award fails to draw its essence from an agreement when an arbitrator's interpretation of an agreement conflicts with the express provisions of that agreement.[54] Additionally, where an arbitrator's interpretation of contract language is one of several possible interpretations, the Authority will not find that the arbitrator's interpretation fails to draw its essence from the agreement.[55]

The Agency asserts that the Grievance Board erred by concluding that "the source of both the restriction [on paying MSIs] and authorization [to resume paying MSIs] . . . in the [note paragraph] referred only to actions by OMB or OPM."[56] As the Grievance Board stated, the note paragraph does not identify the source of either the restriction on MSI payments or the authorization to resume paying MSIs.[57] The Agency contends that because the "express terms" of the note paragraph make "no reference" to OMB, OPM, "or any other specific source of authorization,"[58] it is "implausible" that the parties would intend for "external" sources to control whether or not the Agency would pay MSIs.[59] And the Agency argues that the Grievance Board mischaracterized bargaining-history

[49] 22 U.S.C. § 4107(b).
[50] *USDA, Farm Serv. Agency, Foreign Agric. Serv.*, FS-AR-0004 (1998) at 6 (*Agriculture*) (citing 22 U.S.C. § 4107(b), (c)(2)(F)).
[51] *See, e.g., id.*
[52] *See* Exceptions at 10, 16-23.
[53] *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990); *see also NTEU, Chapter 32*, 67 FLRA 354, 355 (2014).
[54] *NTEU, Chapter 83*, 68 FLRA 945, 948 (2015) (*Chapter 83*) (citing *SSA*, 63 FLRA 691, 693 (2009)).
[55] *U.S. DOJ, Fed. BOP, Fed. Med. Ctr., Lexington, Ky.*, 69 FLRA 10, 12 (2015) (*Lexington*) (citing *U.S. Dep't of the Army, Corpus Christi Army Depot, Corpus Christi, Tex.*, 56 FLRA 1057, 1061 (2001)).
[56] Exceptions at 19.
[57] Decision at 20.
[58] Exceptions at 19.
[59] *Id.* at 19-20.

evidence as supporting the Grievance Board's erroneous interpretation of the note paragraph.[60]

The Grievance Board stated that, because the wording of the note paragraph was ambiguous, it would construe the ambiguity against the drafter – here, the Agency – and that, if the Agency had intended to retain the discretion to both suspend and resume paying MSIs, it should have included wording to that effect.[61] In making this finding, the Grievance Board rejected the Agency's argument that the parties intended the disputed wording to mean that the Agency had the sole discretion to determine when, or if, to pay MSIs.[62] The Agency's alternative interpretation of the note paragraph does not, without more, establish that the Grievance Board's interpretation fails to draw its essence from the agreement.[63]

According to the Agency, the Grievance Board did not consider the "unique" circumstances that led to the note paragraph's inclusion.[64] But the Grievance Board discussed the circumstances surrounding the parties' negotiations and concluded that the Agency's "entire impetus" for proposing the note paragraph was "the budget[-]sequestration situation."[65] Thus, the Grievance Board found that the Union agreed to the restriction on MSIs to avoid furloughs,[66] but intended for the Agency to have discretion to withhold MSIs only while the sequester and awards freeze were in effect.[67] And the Grievance Board noted the Agency's argument that, under the agreement, the Agency "could make its own independent assessment of whether it should maintain a freeze [on MSIs] even after the government-wide OMB . . . freeze ended."[68] But the Grievance Board found that this interpretation "simply [did] not square with the circumstances surrounding the agreement to the [note paragraph]."[69] Further, the Grievance Board found that, to the extent that the bargaining-history evidence submitted by the parties was relevant, it supported the Grievance Board's interpretation of the note paragraph.[70]

Based on the foregoing, the Grievance Board found that the ambiguity of the note paragraph, the circumstances surrounding negotiations, and bargaining-history evidence all supported the conclusion that – by including the note paragraph – the parties intended to link the duration of their restriction on MSI payments to the sequester and awards freeze.[71] While the Grievance Board's interpretation of the note paragraph is arguably

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[60] *Id.* at 21-22.
[61] Decision at 22.
[62] *Id.* at 19-22.
[63] *Lexington*, 69 FLRA at 12 ("where an arbitrator's interpretation of contract language is one of several possible interpretations, [the Authority] will not find that the arbitrator's interpretation fails to draw its essence from the agreement").
[64] Exceptions at 17-18.
[65] Decision at 20.
[66] *Id.* at 6.
[67] *Id.* at 23-24.
[68] *Id.* at 21.
[69] *Id.*
[70] *Id.* at 23.
[71] *See id.* at 20-26.

not the only possible interpretation, the Agency does not demonstrate that this interpretation is irrational, unfounded, implausible, or in manifest disregard of the agreement. Accordingly, the Agency's arguments do not demonstrate that the decision fails to draw its essence from the agreement.[72]

B. The Agency's challenges to the Grievance Board's interpretation of the agreement do not establish that the decision is based on nonfacts.

The Agency argues that the decision is based on two nonfacts.[73] Under Board and Authority precedent, 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.[74] However, an arbitrator's interpretation of a collective-bargaining agreement does not constitute a fact that can be challenged as a nonfact.[75]

First, the Agency argues that OMB's award freeze did not apply to MSIs, and, thus, the Agency – not OMB – suspended MSI payments.[76] According to the Agency, if the Grievance Board "had correctly determined that there was never any [OMB-mandated] . . . freeze on MSIs caused by the . . . sequester,"[77] then the Grievance Board would not have erroneously concluded that the "trigger" requiring the Agency to pay the MSIs under the note paragraph was the OMB-OPM memo.[78] But this "nonfact" argument actually challenges the Grievance Board's contract interpretation.[79] As discussed above, the Grievance Board found that, because the parties negotiated the note paragraph in the context of the sequester and the OMB guidance to restrict awards,[80] they intended to link both the restriction on the payment of MSIs – and the authorization to lift that restriction – to the sequester and the awards freeze.[81] In other words, the Grievance Board concluded that the parties agreed to tie the Agency's suspension and resumption of MSI payments to the actions of third parties. And this conclusion is the Grievance Board's contract interpretation, not a factual finding. Thus, the Agency's argument about what triggered the suspension of MSI payments under the note paragraph challenges the Grievance Board's interpretation of the agreement. As that interpretation does not constitute a fact that can be challenged as a nonfact, we find that the decision is not based on a nonfact in this regard.[82]

[72] *See, e.g.*, *Lexington*, 69 FLRA at 12.
[73] Exceptions at 11-14.
[74] *Agriculture*, at 8; *NFFE, Local 1984*, 56 FLRA 38, 41 (2000).
[75] *AFGE, Local 3320*, 69 FLRA 136, 140 (2015) (Member Pizzella concurring) (citing *NLRB*, 50 FLRA 88, 92 (1995) (*NLRB*)); *Lexington*, 69 FLRA at 13 (citation omitted).
[76] *See* Exceptions at 11-13.
[77] *Id.* at 12.
[78] *Id.* at 11.
[79] *Id.*
[80] Decision at 20 (finding that the "entire impetus" for the note paragraph was "the budget[-]sequestration situation" and the OMB guidance to restrict awards).
[81] *Id.* at 20-21.
[82] *E.g.*, *Lexington*, 69 FLRA at 13; *NLRB*, 50 FLRA at 92.

Second, the Agency argues that the Grievance Board's decision is based on the alleged nonfact that selection boards recommended employees for MSIs while the awards freeze was in effect.[83] The Agency acknowledges that the selection board ranked employees during the awards freeze.[84] But the Agency claims that the selection board ranked employees only for purposes of awarding promotions,[85] and that, under the agreement, "the [Agency] had bargained for [the] authority to determine whether to pay MSIs on the basis of those rankings."[86] Again, the Agency's argument challenges the Grievance Board's interpretation of the agreement rather than a factual finding. The Grievance Board found that, *under the terms of the agreement*, the Agency had agreed to confer MSIs based on the selection boards' rankings.[87] The Agency has not challenged that aspect of the Grievance Board's interpretation of the agreement on essence grounds. And, as the interpretation of a collective-bargaining agreement does not constitute a factual finding, the Agency's argument provides no basis on which to find the decision deficient on nonfact grounds.[88]

For the foregoing reasons, we deny the Agency's nonfact exceptions.

C. The Agency's challenges to the Grievance Board's findings regarding the parties' past practice and prior agreements do not establish that the decision is deficient.

The Agency argues that the Grievance Board's decision is also based on the alleged nonfact that the parties had a consistent past practice with respect to MSIs for more than thirty years.[89] Similarly, the Agency argues that the decision is contrary to law because the Grievance Board relied on evidence outside of the record – specifically, the parties' prior agreements – in order to reach conclusions about the parties' past practice.[90] According to the Agency, the Grievance Board's mistaken determination about the parties' past practice caused the Grievance Board to erroneously conclude that the Agency's payment of MSIs to employees recommended by the selection boards – up to the percentage limit specified by agreement – was mandatory rather than discretionary.[91]

The Authority has held that where an arbitrator bases his or her award on separate and independent grounds, an excepting party must establish that all of the grounds are deficient in order to demonstrate that the award is deficient.[92] In those circumstances, if the excepting party has not demonstrated that the award is deficient on one of the grounds

[83] Exceptions at 13-14.
[84] *Id.* at 13.
[85] *See id.* at 13-14.
[86] *Id.* at 14.
[87] Decision at 15-17.
[88] *E.g.*, *Lexington*, 69 FLRA at 13; *NLRB*, 50 FLRA at 92.
[89] Exceptions at 14-16.
[90] *See id.* at 23-24 (citing 22 U.S.C. § 4137(a); 22 C.F.R. §§ 907.1(b), 909.1, 911.3).
[91] *See id.* at 15-16, 24.
[92] *Chapter 83*, 68 FLRA at 951 (citing *U.S. Dep't of the Treasury, IRS, Oxon Hill, Md.*, 56 FLRA 292, 299 (2000)).

relied on by the arbitrator, and the award would stand on that ground alone, then it is unnecessary to address exceptions to the other ground.[93]

In resolving what it characterized as the "first area of ambiguity,"[94] the Grievance Board stated that "examining the MSI portion of the [agreement] as a whole,"[95] it "believe[d] the *language*"[96] demonstrated that the Agency's approval of the MSIs recommended by the selection boards was "mandatory."[97] And the Grievance Board supported that conclusion with specific references to the wording of the agreement. For example, the Grievance Board found that the statement that "'[n]o more than ten percent of members in a competition group *shall* receive MSIs' . . . strongly suggest[ed]" that the Agency *would* pay MSIs "to all those recommended by the [selection boards], up to a ceiling of [ten] percent of the competition class."[98] The Grievance Board also emphasized that, under the agreement's wording, approval of MSIs was "subject to the same guidelines for approval and enactment as recommendations for promotion,"[99] and the Grievance Board found that promotion was mandatory absent evidence of "impropriety."[100] The Agency does not establish that the Grievance Board's interpretation of the agreement's *wording* is deficient. Therefore, the Grievance Board's interpretation of the agreement's wording provides a separate and independent ground for the challenged conclusion – that the Agency was obligated to pay MSIs to employees recommended by the selection boards, up to the ten percent limit specified in the agreement.

After interpreting the agreement's wording to arrive at this conclusion, the Grievance Board discussed additional evidence proffered by the parties. In this regard, the Grievance Board noted that: (1) its interpretation of the agreement's wording was "further buttressed" by the Union's undisputed description of the parties' past practice;[101] and (2) wording in the parties' prior agreements "undercut[] [the Agency's] argument that it always had . . . the sole discretion to decide how many, if any, MSIs were to be awarded in any given year."[102] But the Agency has not demonstrated that the Grievance Board's interpretation of the agreement's wording is deficient, and this interpretation provides a separate and independent ground for the challenged conclusion. Therefore, the Agency's arguments concerning the Grievance Board's discussion of additional evidence provide no basis for setting aside the Grievance Board's decision. Accordingly, we deny the Agency's final nonfact exception and its contrary-to-law exceptions.[103]

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[93] *Id.* (citing *U.S. Dep't of VA Med. Ctr., Hampton, Va.*, 65 FLRA 125, 129 (2010); *Broad. Bd. of Governors, Office of Cuba Broad.*, 64 FLRA 888, 892 (2010)).
[94] Decision at 14.
[95] *Id.* at 16.
[96] *Id.* (emphasis added).
[97] *Id.* at 17.
[98] *Id.* at 16-17 (quoting the agreement) (emphasis added).
[99] *Id.* at 17 (quoting the agreement).
[100] *Id.*
[101] *Id.* at 18; *see also id.* at 15 ("The [Agency] did not, in the record before us, dispute that [the Union's] characterization of this past practice is accurate.").
[102] *Id.* at 18.
[103] *See, e.g., Chapter 83*, 68 FLRA at 951; *U.S. DOJ, Fed. BOP, Metro. Det. Ctr., Guaynabo, San Juan, P.R.*, 66 FLRA 81, 86 (2011).

V. Decision

We deny the Agency's exceptions.