

## 73 FLRA No. 38

UNITED STATES  
AGENCY FOR GLOBAL MEDIA  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1812  
(Union)

0-AR-5648

ORDER DENYING  
MOTION FOR RECONSIDERATION

August 24, 2022

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

### I. Statement of the Case

The Union requests we reconsider the Authority's decision in *U.S. Agency for Global Media (Global Media)*.<sup>1</sup> In that decision, the Authority held that an authorized official's exercise of discretion to grant or deny a debt-waiver request under 5 U.S.C. § 5584 (§ 5584) is not grievable. As the Arbitrator had held to the contrary, the Authority set aside the Arbitrator's award.<sup>2</sup>

For the reasons that follow, we find the arguments in the Union's motion for reconsideration (motion) merely attempt to relitigate conclusions reached in *Global Media*. Therefore, we deny the Union's motion as failing to establish extraordinary circumstances warranting reconsideration.

### II. Background and Authority's Decision in *Global Media*

The facts, summarized here, are set forth in greater detail in *Global Media*.<sup>3</sup>

The Union filed a grievance alleging the Agency improperly denied the grievants' debt-waiver requests pursuant to § 5584. The Arbitrator determined he had authority to hear the grievance because wording in § 5584 did not preclude him from reviewing the Agency's denials and the Agency failed to provide any contrary precedent. The Arbitrator concluded that: the grievants could not reasonably have known they were overpaid by the Agency, the waiver of the payments did not conflict with § 5584, and the Agency violated the parties' collective-bargaining agreement and § 5584 by denying the debt-waiver requests. The Agency filed exceptions to the award, arguing the grievance was not arbitrable as a matter of law and the Arbitrator lacked jurisdiction to grant the debt-waiver requests.

In *Global Media*, the Authority found the award contrary to law because the dispute was not grievable.<sup>4</sup> In the decision, the Authority noted its previous conclusion in *NLRB*<sup>5</sup> that, once an authorized official finds any amount of fault on an employee's part, the plain wording of § 5584 prohibits granting a waiver.<sup>6</sup> Consequently, the Authority reiterated that agencies have unreviewable discretion to deny or grant debt waivers because the Office of Management and Budget delegated its sole and exclusive discretion to review § 5584 debt-waiver requests to agencies.<sup>7</sup> As such, the Authority concluded the dispute was not grievable and the Arbitrator did not have jurisdiction under § 5584 to grant a debt waiver.<sup>8</sup>

On August 26, 2021, the Union filed this motion.

### III. Analysis and Conclusions: We deny the motion for reconsideration.

Section 2429.17 of the Authority's Regulations permit a party to move for reconsideration of an Authority decision if it can establish extraordinary circumstances.<sup>9</sup> The Authority has repeatedly recognized that a party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to

<sup>1</sup> 72 FLRA 447 (2021) (Chairman DuBester dissenting).

<sup>2</sup> *Id.* at 448.

<sup>3</sup> *Id.* at 447-48.

<sup>4</sup> *Id.* at 448.

<sup>5</sup> 72 FLRA 133, 135 (2021) (Chairman DuBester dissenting).

<sup>6</sup> *Global Media*, 72 FLRA at 448 (citing *NLRB*, 72 FLRA at 135).

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

<sup>8</sup> *Id.*

<sup>9</sup> 5 C.F.R. § 2429.17 ("After a final decision or order of the Authority has been issued, a party to the proceeding before the Authority who can establish in its moving papers extraordinary circumstances for so doing, may move for reconsideration of such final decision or order.")

justify this unusual action.<sup>10</sup> Although errors in the Authority's legal conclusions or factual findings may justify granting reconsideration in certain circumstances,<sup>11</sup> mere disagreement with or attempts to relitigate conclusions reached by the Authority – and the bases on which they were reached – are insufficient to establish extraordinary circumstances.<sup>12</sup>

Here, the Union argues extraordinary circumstances warrant reconsidering *Global Media* because Authority precedent establishes debt-waiver requests made under § 5584 may be raised through the negotiated grievance procedure.<sup>13</sup> The Authority considered and rejected this argument in *Global Media*.<sup>14</sup> Therefore, the Union's first argument is a mere attempt to relitigate the conclusions reached by the Authority.<sup>15</sup>

Additionally, the Union contends that, in *Global Media* and *NLRB*, the Authority failed to explain its departure from previous Authority precedent.<sup>16</sup> However, this also merely attempts to relitigate the Authority's conclusions in *Global Media* and the bases on which they were reached – specifically, the Authority's reliance on *NLRB*.<sup>17</sup>

Therefore, the Union's arguments do not establish extraordinary circumstances warranting reconsideration of the Authority's decision in *Global Media*.<sup>18</sup> Accordingly, we deny the Union's motion for reconsideration.<sup>19</sup>

#### IV. Order

We deny the Union's motion for reconsideration.

<sup>10</sup> *SPORT Air Traffic Controllers Org.*, 71 FLRA 25, 26 (2019) (then-Member DuBester concurring); *AFGE, Loc. 2238*, 70 FLRA 184, 184 (2017); *U.S. DHS, U.S. CBP, Swanton, Vt.*, 66 FLRA 47, 48 (2011); *U.S. DHS, Border & Transp. Sec. Directorate, Bureau of CBP, Wash., D.C.*, 63 FLRA 600, 601 (2009); *U.S. Dep't of the Interior, Wash., D.C. & U.S. Geological Surv., Reston, Va.*, 56 FLRA 279, 279 (2000).

<sup>11</sup> *AFGE, Loc. 2338*, 71 FLRA 723, 723 (2020) (Member Abbott concurring) (citing *SPORT Air Traffic Controllers Org.*, 70 FLRA 345, 345 (2017)); *Indep. Union of Pension Emps. for Democracy & Just.*, 71 FLRA 60, 61 (2019) (then-Member DuBester concurring) (citing *NTEU*, 66 FLRA 1030, 1031 (2012)).

<sup>12</sup> *U.S. DHS, U.S. CBP*, 67 FLRA 251, 253 (2014) (*DHS*) (Member Pizzella concurring) ("The Union's arguments are nothing more than an attempt to relitigate these conclusions and the bases on which they were reached . . ."); see *Int'l Bhd. of Elec. Workers, Loc. 1002*, 71 FLRA 930, 931 (2020) (*IBEW*) (finding a mere attempt to relitigate the Authority's conclusions insufficient to demonstrate extraordinary circumstances).

<sup>13</sup> Mot. at 9-13.

<sup>14</sup> 72 FLRA at 448.

<sup>15</sup> *IBEW*, 71 FLRA at 931.

<sup>16</sup> Mot. at 13-14.

<sup>17</sup> *DHS*, 67 FLRA at 253.

<sup>18</sup> *Id.*

<sup>19</sup> See *IBEW*, 71 FLRA at 931; *DHS*, 67 FLRA at 253.

**Chairman DuBester, dissenting:**

For the reasons set forth in my dissenting opinion in *U.S. Agency for Global Media (Global Media)*,<sup>1</sup> I believe the majority erred by vacating the Arbitrator's arbitrability award. As I explained in my dissent in *NLRB*<sup>2</sup> – the decision upon which *Global Media* is premised – the majority's decision failed to provide “any plausible basis for concluding that Congress intended to afford agencies unfettered, and unreviewable, discretion” over debt-waiver claims.<sup>3</sup> Nor did it explain its departure from long-standing Authority precedent rejecting this very premise. *Global Media* perpetuates this legal error.

For these reasons, I believe the Union has established extraordinary circumstances that warrant the granting of its motion for reconsideration. Accordingly, I dissent.

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<sup>1</sup> 72 FLRA 447, 449 (2021) (Dissenting Opinion of Chairman DuBester).

<sup>2</sup> 72 FLRA 133 (2021) (Chairman DuBester dissenting).

<sup>3</sup> *Id.* at 137 (Dissenting Opinion of Chairman DuBester).