64 FLRA No. 170

UNITED STATES
DEPARTMENT OF THE INTERIOR
UNITED STATES PARK POLICE
(Agency)

and

FRATERNAL ORDER OF POLICE
UNITED STATES PARK POLICE
LABOR COMMITTEE
(Union)

0-AR-4330
(64 FLRA 763 (2010))

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ORDER DENYING
MOTION FOR RECONSIDERATION

June 18, 2010

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on the Agency's motion for reconsideration (Motion) of the Authority's decision in *United States Department of the Interior, United States Park Police*, 64 FLRA 763 (2010) (*U.S. Park Police*). The Union filed an opposition to the Agency's Motion. In the Motion, the Agency seeks a stay of the decision pending resolution of the Motion.

For the reasons set forth below, we find that the Agency has failed to establish that extraordinary circumstances exist warranting reconsideration of the Authority's decision. We therefore deny the Agency's Motion and stay request.

II. Background

In *U.S. Park Police*, the Authority set aside the portion of the Arbitrator's award finding that 5 C.F.R. Part 551 governs the overtime pay of U.S. Park Police (Park Police) officers, but denied the remaining exceptions. Specifically, the Authority denied the Agency's exception to the Arbitrator's finding that § 5-1304 of the District of Columbia Code (D.C. Code) and the Fair Labor Standards Act (FLSA) jointly govern the compensation of Park Police officers for performing overtime work. Instead, the Authority agreed with the Arbitrator's finding that the Park Police must be compensated under whichever of the two authorities provides the greater entitlement.

III. Agency's Position

The Agency argues that extraordinary circumstances exist warranting reconsideration of the Authority's decision. The Agency seeks reconsideration on two bases. First, the Agency argues that the Authority erred by upholding an arbitration award that relies on a part of the Code of Federal Regulations that the Authority found did not apply to the Park Police. Motion at 1. Instead, the Agency contends, the Authority should have set aside the entire award. *Id*. at 3-4.

Second, the Agency contends that the Authority made erroneous statements that the D.C. Code is a state law. *Id*. at 1. The Agency, while acknowledging that the District of Columbia falls within the definition of "state" in § 203(a) of the FLSA, contends that it was improper for the Authority to refer to § 5-1304 of the D.C. Code as state law in its determination that the provision is not preempted by the FLSA. *Id*. at 5. Therefore, the Agency contends, the Authority's discussion relating to whether the FLSA preempts the D.C. Code "is inapplicable" and "should be withdrawn." *Id*. at 6, 7. Further, the Agency contends, the Authority should remove any references to § 5-1304 as being a state law in order to prevent any future challenges to the D.C. Code provisions applicable to the Park Police "as preempted by other more general federal laws, leaving virtually every major law specifically enacted to apply to the U.S. Park Police at risk of being changed." *Id*. at 7.

IV. Analysis and Conclusion

For the reasons set forth below, the Authority denies the Agency's motion.

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary circumstances to request reconsideration of an Authority decision. 5 C.F.R.§ 2429.17. The Authority has repeatedly recognized that a party seeking reconsideration of an Authority decision under § 2429.17 bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action. *See, e.g., U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 935 (2000).

The Authority has identified a limited number of situations in which extraordinary circumstances have been found to exist. These include situations: (1) where an intervening court decision or change in the law affected dispositive issues; (2) where evidence, information, or issues crucial to the decision had not been presented to the Authority; (3) where the Authority erred in its remedial order, process, conclusion of law, or factual finding; and (4) where the moving party has not been given an opportunity to address an issue raised *sua sponte* by the Authority in the decision. *See U.S. Dep't of the Air Force, 375th Combat Support Group, Scott Air Force Base, Ill.*, 50 FLRA 84, 85-87 (1995). Mere disagreement with the Authority's decision and attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances. *Library of Cong.*, 60 FLRA 939, 941 (2005). Here, the Agency argues that the extraordinary circumstance warranting reconsideration is that the Authority erred in its conclusions of law.

A. The Authority's finding that 5 C.F.R. Part 551 does not apply to the Park Police does not require that the entire award be set aside.

As the Agency notes, the Arbitrator relied, in part, on two provisions of Part 551, 5 C.F.R. §§ 551.513 and 551.531(c), for the proposition that the FLSA prevails over § 5-1304 of the D.C. Code when the FLSA provides the greater benefit. Motion at 4. However, in reaching this conclusion, the Arbitrator also relied on the FLSA, whose purpose is "to establish a national floor under which wage protections cannot drop." *U.S. Park Police*, 64 FLRA at 768 (citing *Pacific Merchant Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1425 (9th Cir. 1990), *cert. denied* 504 U.S. 979 (1992)). The Authority has consistently recognized that when an arbitrator has based an award on separate and independent grounds, an appealing party must establish that all of the grounds are deficient in order to have the award found deficient. *U.S. Dep't of the Treasury, IRS, Oxon Hill, Md.*, 56 FLRA 292, 299 (2000). Here, the Agency attempted, but failed, to establish that the FLSA does not apply to the Park Police. Indeed, the Agency had stipulated before the Arbitrator that Park Police officers are non-exempt from the FLSA. 64 FLRA at 764. Any attempt by the Agency to relitigate this issue would not establish extraordinary circumstances warranting reconsideration. *See Library of Cong.*, 60 FLRA at 941. Based on the foregoing, the Authority rejects the Agency's contention that reconsideration is warranted on the ground that the award relied, in part, on provisions of 5 C.F.R. Part 551.

B. The Authority's references to state law in its discussion of the relationship between the FLSA and § 5-1304 of the D.C. Code do not warrant reconsideration.

Contrary to the Agency's contention, the Authority's decision made no finding that § 5-1304 of the D.C. Code is a "state law" when it held that the FLSA and the D.C. Code jointly govern the compensation of Park Police Officers performing overtime work. Instead, the Authority cited decisions of the U.S. Courts of Appeals acknowledging that, as stated in 29 U.S.C. § 218(a), the FLSA does not preempt any conflicting "Federal or State law or municipal ordinance . . . ." 64 FLRA at 767-68.[1] As such, whether § 5-1304 of the D.C. Code is characterized as a Federal law, a state law, or a municipal ordinance, the result is the same; the FLSA and § 5-1304 both govern the compensation of the Park Police for performing overtime work. Therefore, any error on the part of the Authority in this regard would have had no effect on the outcome of the decision. As for the Agency's claims of possible future harm arising from arguments that one federal law or another preempts § 5-1304 of the D.C. Code, they are based on mere speculation, especially in light of the fact that the Authority found no preemption in this instance. Based on the foregoing, the Agency has not identified an extraordinary circumstance warranting reconsideration.

V. Decision

The Agency's motion for reconsideration and request to stay the decision are denied.

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* One of the decisions cited, *Williams v. W.M.A. Transit Co.*, which addresses the relationship between the FLSA and the District of Columbia Minimum Wage Act, refers in several places to the relationship between the FLSA and "state law." 472 F.2d 1258, 1261, 1262, 1263 (D.C. Cir. 1972). This demonstrates that "state law" is an acceptable reference used when District of Columbia law is being discussed.