

64 FLRA No. 200

SPORT AIR TRAFFIC CONTROLLERS
ORGANIZATION
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
EDWARDS AIR FORCE BASE, CALIFORNIA
(Agency)

0-AR-4340
(64 FLRA 606 (2010))

ORDER DENYING
MOTION FOR RECONSIDERATION

July 30, 2010

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 Union's motion for reconsideration of an Authority order dismissing the Union's exceptions in *SPORT Air Traffic Controllers Org. and United States Dep't of the Air Force, Edwards Air Force Base, Cal.*, 64 FLRA 606 (2010) (*SATCO*). The Agency filed an opposition to the Union's motion.

Section 2429.17 of the Authority's Regulations permits a party who can establish extraordinary circumstances to request reconsideration of an Authority final decision or order. For the reasons that follow, we deny the Union's motion for reconsideration.

II. Decision in *SATCO*

As relevant here, the Union filed a grievance alleging that a supervisory position had been filled in violation of 5 U.S.C. § 3326(c)(4), which provides for appointment of retired members of the armed forces to positions in the Department of Defense. *SATCO*, 64 FLRA at 606. The Arbitrator found that the grievance was not substantively arbitrable because it concerned a supervisory position that was excluded from the coverage of the parties' agreement. *Id.*

The Union filed exceptions to the award. Among other things, the Union claimed that the award failed to draw its essence from Article 1, § 4 of the parties' agreement. *Id.* at 607. The Union asserted "that Article 1, § 4 'simply restates the composition of the [b]argaining [u]nit' and does not place any restrictions on the negotiated grievance procedure." *Id.* (quoting Exceptions at 5). The Union argued that the Arbitrator should have determined the scope of the parties' negotiated grievance procedure by relying solely on the text of Article 29, § 4 of the agreement, which sets forth the categories of grievances that are excluded from coverage of the parties' grievance procedure. *SATCO*, 64 FLRA at 606. The Agency, in its response, argued that "the Union's argument constituted 'nothing more than a disagreement with [the] Arbitrator['s] legal conclusion that the grievance [is] not substantively arbitrable.'" *Id.* (quoting Opp'n at 4-5).

The Authority denied the Union's exception, noting that the Arbitrator's construction of Article 1, § 4 does not conflict with the text of that provision, the text of Article 29, § 4, or any other provision of the agreement, nor is there any provision of law requiring the Arbitrator to reach a different result. *SATCO*, 64 FLRA at 609. Accordingly, the Authority held that the Union had not demonstrated that the Arbitrator's interpretation is irrational, unfounded, implausible, or in manifest disregard of the parties' agreement, and denied the exception. * *Id.*

III. Motion for Reconsideration

The Union contends that extraordinary circumstances are established for reconsideration because (1) evidence, information or issues crucial to the decision were not presented to the Authority and (2) the Authority erred in its remedial order, process, conclusion of law, or factual finding. Motion for recons. (Motion) at 2. Specifically, the Union contends that the Authority did not have a copy of the Certificate of Representative (Certificate). *Id.* at 3.

* Member Beck dissented. *SATCO*, 64 FLRA at 610. He stated that he believed that Article 1, § 4 "merely defines the composition of the bargaining unit; it cannot plausibly be read to limit the scope or subject matter of the grievances that may be brought pursuant to the parties' agreement." *Id.* Member Beck noted that this latter issue is, in fact, addressed in an entirely separate and distinct provision of the parties' agreement. *Id.* (citing Article 29, § 4). Accordingly, he stated that he would find that the arbitrator's substantive arbitrability determination failed to draw its essence from the parties' agreement. *Id.* at 610-611.

According to the Union, it mistakenly believed that the Authority had a copy of the Certificate and, therefore, only cited to the document in its exceptions. *Id.* The Union asserts that it “later learned that the [Certificate] is filed with the Region and possibly [with] the General Counsel’s office[,]” but not with the Authority. *Id.* The Union contends that, because the language of Article 1, § 4 is taken directly from the Certificate, this document is essential to the construction of both Article 1, § 4 and the entire bargaining agreement. *Id.* at 3-5.

The Union also contends that the Authority’s decision conflicts with provisions of the Federal Service Labor-Management Relations Statute (the Statute) because the decision, in upholding the Arbitrator’s award, allows the Authority to place limitations on the scope or subject matter of the grievances that may be brought pursuant to the parties’ agreement. *Id.* at 5-6. The Union contends that, under the Statute, “the right to determine the scope of the grievances rests with the parties[,]” not with the Authority. *Id.*

The Agency opposes the Union’s motion, claiming that the Union merely is attempting to relitigate issues already decided by the Authority. Opp’n at 2-3. According to the Agency, the Union has not shown how the Authority would have been compelled to reach a different conclusion if it had been provided a copy of the Certificate. *Id.* at 3.

IV. Analysis and Conclusion

Section 2429.17 of the Authority’s Regulations permits a party who can establish extraordinary circumstances to request reconsideration of an Authority order. The Authority has repeatedly recognized that a party seeking reconsideration 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, 936 (2000) (SSA). 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 Grp., Scott Air Force Base, Ill., 50 FLRA 84, 85-86 (1995). In

addition, the Authority has held repeatedly that attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances. See IRS, 56 FLRA at 936.*i*

The Union first contends that extraordinary circumstances exist because the Authority did not have a copy of the Certificate. The Union contends that, because the language of Article 1, § 4 is taken directly from the Certificate, this document is “essential” to the construction of Article 1, § 4 and, thus, crucial to the Authority’s decision. Motion at 3. Although the Union did not provide a copy of the Certificate to the Authority, it did state in its Exceptions that Article 1, § 4 “simply restates the composition of the [b]argaining [u]nit” as stated on the certificate.” SATCO, 64 FLRA at 607 (quoting Exceptions at 5). Moreover, the Union concedes that this document was both in existence and available to it at the time it filed its exceptions. Accordingly, we find that the Union’s argument does not establish that reconsideration is warranted. See IRS, 56 FLRA at 936.

The Union raises for the first time a claim that the Authority’s decision conflicts with the Statute because the decision, in upholding the Arbitrator’s award, permits the Authority to place limitations on the scope or subject matter of the grievances that may be brought pursuant to the parties’ agreement – a right which, according to the Union, rests with the parties. This claim, however, essentially sets forth an additional argument as to why the Arbitrator’s award was improper. See U.S. Dep’t of Homeland Sec., U.S. Customs & Border Patrol, 61 FLRA 393, 395 (2005) (DHS) (rejecting Union’s claims in motion for reconsideration that Authority’s decision violated articles of parties’ agreement because claims “essentially set forth additional arguments as to why the Agency’s actions were improper under the parties’ agreement”). In resolving requests for reconsideration, the Authority has refused to consider arguments that were not raised to the Authority in its review of an award upon a party’s exceptions. See U.S. Dep’t of Health & Human Servs., Food & Drug Admin., 60 FLRA 789, 791 (2005). Accordingly, we find that this argument does not establish that extraordinary circumstances exist to warrant reconsideration. See DHS, 61 FLRA at 395.

V. Order

The Union’s motion for reconsideration is denied.