

65 FLRA No. 46

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS MEDICAL CENTER
FAYETTEVILLE, NORTH CAROLINA
(Agency)

and

FAYETTEVILLE VETERANS
ADMINISTRATION MEDICAL CENTER
BARGAINING UNIT EMPLOYEES
FAYETTEVILLE, NORTH CAROLINA
(Petitioner)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1738, AFL-CIO
(Labor Organization)

WA-RP-10-0050

—
ORDER DENYING
APPLICATION FOR REVIEW

October 29, 2010

—

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

I. Statement of the Case

This case is before the Authority on an application for review of the Regional Director's (RD's) Decision and Order (RD's Decision) filed by a group of bargaining unit employees at the United States Department of Veterans Affairs (VA), VA Medical Center, Fayetteville, North Carolina (Petitioner or employees) under § 2422.31 of the Authority's Regulations. The American Federation of Government Employees, Local 1738 (AFGE, Local 1738) filed an opposition to the application for review. The Petitioner filed a request for leave to file a supplemental submission responding to the opposition.

The RD dismissed the election petition as not properly before the Authority because it was not filed for any purpose set forth in the Authority's

Regulations. To the contrary, the RD found that the petition concerned internal union matters over which the Authority does not have jurisdiction.

For the following reasons, we deny the application for review.

II. Background and RD's Decision

The group of employees who filed the petition work at the VA Medical Center, Fayetteville, North Carolina (Fayetteville VAMC). RD's Decision at 1. The employees are in a consolidated bargaining unit of nonprofessional employees at the VA. *Id.* The American Federation of Government Employees, AFL-CIO (AFGE) is the exclusive representative of the consolidated bargaining unit. *Id.* AFGE has designated AFGE, Local 1738, located in Salisbury, North Carolina, to represent bargaining unit employees located at the Fayetteville VAMC. *Id.*

The employees did not file their petition to change the bargaining unit's exclusive representative. Rather, the employees petitioned for an election to replace the local that the exclusive representative had designated to represent them with another local that the employees would like to establish. *Id.* at 2.

The RD dismissed the employees' petition, concluding that it was not properly before the Authority because it was not filed for any purpose set forth in §§ 2422.1 and 2422.2 of the Authority's Regulations.¹ *Id.* at 2-3. In addition, the RD concluded that the petition involves an internal union matter over which the Authority does not have jurisdiction. *Id.* at 3. According to the RD, the employees claim that they want to establish a new local because they are dissatisfied with the representation provided by AFGE, Local 1738. *Id.*

III. Positions of the Parties**A. Petitioner**

The Petitioner does not challenge any of the RD's determinations. The Petitioner states that it "understand[s] the process and jurisdiction the Authority has in this case and [respects] the decision thus far." Application at 3. The Petitioner requests that the Authority "protect [employee] rights according to the Labor-Management Reporting and Disclosure Act (LMRDA) . . . and the [c]onstitution and [b]y-laws of [AFGE]." *Id.* Specifically, the

1. The text of §§ 2422.1 and 2422.2 is set forth in the attached appendix.

Petitioner claims that the exclusive representative, AFGE, established AFGE, Local 1738 to represent the employees at the Fayetteville VAMC without sufficiently considering the views of the affected employees. *Id.* at 2-3. Clarifying that they are not seeking to separate from AFGE, and noting their dissatisfaction with the services provided by AFGE, Local 1738, the employees state that they seek an election to establish a new local to represent them. *Id.* at 2.

B. AFGE, Local 1738

AFGE, Local 1738 opposes the application for review. AFGE, Local 1738 contends that the Petitioner has not asserted that review is warranted on any of the grounds set forth in § 2422.31(c) of the Authority's Regulations. Opp'n at 2. In addition, AFGE, Local 1738 argues that the RD correctly determined that the petition is not properly before the Authority under the Authority's Regulations. *Id.* Finally, AFGE, Local 1738 argues that the RD correctly determined that the petition concerns internal union matters over which the Authority does not have jurisdiction. *Id.* at 3-4.

IV. Preliminary Matters

This case involves two issues concerning supplemental submissions by the Petitioner. Section 2429.26 of the Authority's Regulations provides that the Authority may, in its discretion, grant leave to file supplemental submissions as deemed appropriate based on a showing of need. *See, e.g., AFGE, Local 2004*, 55 FLRA 6, 9 (1998).

First, along with its reply to an Authority order to cure certain deficiencies in its application, the Petitioner included additional information that was not originally included with its application. As the Petitioner failed to request permission to file this additional material as a supplemental submission under 5 C.F.R. § 2429.26, we do not consider the additional information. *See, e.g., U.S. Dep't of HHS, FDA*, 60 FLRA 250, 250 n.1 (2004).

Second, the Petitioner requests permission to respond to AFGE's opposition. The Petitioner's submission makes arguments that it raised or could have raised before the RD and in its application for review. As the Petitioner does not sufficiently explain why the Authority should consider arguments already raised in the application for review, or that could have been raised in the application, we do not consider this submission. *See, e.g., U.S. Dep't of the Air Force, Minot Air Force Base, N.D.*, 61 FLRA

366, 367 (2005) (citing *NTEU, Chapter 137*, 60 FLRA 483, 483 n.2 (2004)) (moving party needs to demonstrate why its supplemental submission should receive Authority review).

V. Analysis and Conclusions

Under § 2422.31(c) of the Authority's Regulations, the Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds: (1) the decision raises an issue for which there is an absence of precedent; (2) established law or policy warrants reconsideration; or (3) there is a genuine issue over whether the RD has: (i) failed to apply established law; (ii) committed a prejudicial procedural error; or (iii) committed a clear and prejudicial error concerning a substantial factual matter.

The Petitioner does not assert that review is warranted on any of the grounds set forth in § 2422.31(c) of the Authority's Regulations. Moreover, it is not otherwise apparent that the Petitioner intends to make any such claim. In its application, the Petitioner challenges neither the RD's decision to dismiss the petition as improperly before the Authority for failing to meet requirements under 5 C.F.R. § 2422.1 and § 2422.2, nor her decision that the petition involves an internal union matter over which the Authority has no jurisdiction. *Id.* at 3. To the contrary, the Petitioner states that it "understand[s] the process and jurisdiction the Authority has in this case and [respects] the decision thus far." *Id.* As the Petitioner fails to assert any grounds for review set forth in § 2422.31(c), including any challenge to the RD's determinations, we conclude that review of the RD's decision is not warranted under the Authority's Regulations.²

VI. Order

The application for review is denied.

2. As noted above, the Petitioner requests that the Authority "protect [employee] rights according to the [LMRDA] . . . and the [c]onstitution and [b]y-laws of [AFGE]." Application at 3. A claim that a union's constitution was violated with respect to the LMRDA falls under the jurisdiction of the Assistant Secretary of Labor, Employment Standards Administration, Office of Labor-Management Standards (OLMS). *N.M. Army & Air Nat'l Guard*, 56 FLRA 145, 149 n.11 (2000).

APPENDIX

5 C.F.R. § 2422.1 provides:

§ 2422.1 Purposes of a petition.

A petition may be filed for the following purposes:

(a) *Elections or Eligibility for dues allotment.* To request:

(1)(i) An election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, and/or

(ii) A determination of eligibility for dues allotment in an appropriate unit without an exclusive representative; or

(2) an election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative.

(3) Petitions under this subsection must be accompanied by an appropriate showing of interest.

(b) *Clarification or Amendment.* To clarify, and/or amend:

(1) A recognition or certification then in effect; and/or

(2) Any other matter relating to representation.

(c) *Consolidation.* To consolidate two or more units, with or without an election, in an agency and for which a labor organization is the exclusive representative

5 C.F.R. § 2422.2 provides:

§ 2422.2 Standing to file a petition.

A representation petition may be filed by: an individual; a labor organization; two or more labor organizations acting as a joint-petitioner; an individual acting on behalf of any employee(s); an agency or activity; or a combination of the above: *Provided, however, that*

(a) Only a labor organization has standing to file a petition [seeking an election to determine if employees in an appropriate unit wish to be represented by an exclusive representative] pursuant to section 2422.1(a)(1);

(b) Only an individual has standing to file a petition [seeking an election to determine if employees in a unit no longer

wish to be represented by an exclusive representative] pursuant to section 2422.1(a)(2); and

(c) Only an agency or a labor organization may file a petition [seeking to clarify and/or amend recognition of certification in effect and/or any other matter relating to representation] pursuant to section 2422.1(b) or (c).