

**65 FLRA No. 7**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 3937  
(Union)

and

SOCIAL SECURITY ADMINISTRATION  
REGION X  
(Agency)

0-AR-4648  
(64 FLRA 1113 (2010))

ORDER DENYING MOTION  
FOR RECONSIDERATION

August 25, 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 the Authority's decision in *AFGE, Local 3937*, 64 FLRA 1113 (2010) (*Local 3937*). The Agency filed an opposition to the Union's motion.

The Authority's Regulations permit a party to request reconsideration of an Authority decision where it can establish extraordinary circumstances. 5 C.F.R. § 2429.17. For the reasons that follow, we find that the Union has failed to establish that extraordinary circumstances exist warranting reconsideration of the Authority's decision. Therefore, we deny the Union's motion.<sup>1</sup>

**II. Background**

As discussed in greater detail in *Local 3937*, the Arbitrator found that, upon the effective date of the parties' national agreement (the 2005 MLA), twelve

local memoranda of understanding (the 12 MOUs) "ceased to exist[.]" and the Agency was no longer "obligated to honor" the conditions of employment contained therein after that date. 64 FLRA at 1113 (quoting Award at 18). Accordingly, he found that the Agency did not violate the 2005 MLA when it denied the Union's request to bargain over its announcement that the 12 MOUs would no longer be followed. *Id.*

The Union filed exceptions alleging that the award was based on a nonfact (the Arbitrator's finding that the conditions of employment covered by the 12 MOUs were not in effect on the effective date of the 2005 MLA), failed to draw its essence from that MLA, and was contrary to §§ 7117, 7102(2), and 7114 of the Federal Service Labor-Management Relations Statute (the Statute). *Id.* at 1114. The Authority found that the parties disputed before the Arbitrator whether the conditions of employment covered by the 12 MOUs were in effect on the effective date of the 2005 MLA and, accordingly, denied the nonfact exception. *Id.* at 1115 (citing Award at 14 & 16). As the Union's essence exception and exceptions regarding §§ 7102(2) and 7114 were premised on the argument in the Union's nonfact exception, the Authority also denied those exceptions. *Id.* at 1115. In addition, the Authority dismissed the § 7117 exception because the Union had not raised § 7117 before the Arbitrator. *Id.* at 1114.

**III. Positions of the Parties****A. Union's Motion for Reconsideration**

The Union asserts that, in *Local 3937*, the Authority "missed the central and uncontested point" of its exceptions, specifically, that the Arbitrator erred in his "alleged finding 'that the conditions of employment set forth in the 12 MOUs were not in effect as of the effective date of the 2005 MLA[.]'" Union's Motion at 2. The Union asserts that the Authority's statement that the Agency disputed this fact before the Arbitrator "misunderstands" the award. *Id.* at 2 n.3. According to the Union, although the Arbitrator found that the Agency had argued that the "terms" embodied in the 12 MOUs ceased to exist upon the effective date of the 2005 MLA, he then stated that the Agency acknowledged that the "conditions of employment" embodied in the 12 MOUs did not change until the 2005 MLA was signed. *Id.* at 3 n.4. The Union asserts that "once it is understood that these conditions of employment" were being followed on the effective date of the 2005 MLA, it becomes "clear" that the award does not

1. The Union also asserts that "[o]ral [a]rgument is [r]equested." Union's Motion at 1. The Agency opposes that request. Agency's Opp'n at 2. As the record is sufficient to resolve the Union's motion, we deny the request. See 5 C.F.R. § 2429.6.

draw its essence from the parties' agreement. *Id.* at 4.

In addition, the Union asserts that an alleged violation of § 7116(a)(1) and (5) of the Statute was before the Arbitrator, that the Arbitrator addressed only a contractual issue, and that the Authority "failed to recognize" the § 7116(a)(1) and (5) issue. *Id.* at 6-7. In this regard, the Union concedes that it "did not separately list" § 7116(a)(1) and (5) in its exceptions, but claims that other references in its exceptions were "sufficient to put the [Authority] on notice that this case alleged and has always alleged a ULP or a [§] 7116(a)(1) and (5) violation in addition to a contract violation." *Id.* at 8.

#### B. Agency's Opposition

The Agency argues that the Authority should deny the Union's motion because: (1) the motion fails to state with particularity the extraordinary circumstances that warrant reconsideration, and fails to provide supporting citations, *Opp'n* at 2-5; (2) even assuming that the motion is not deficient in this regard, the Union fails to meet its "heavy burden" of proving extraordinary circumstances, *id.* at 5; (3) *Local 3937* does not require reconsideration because the Authority found no violation of the Statute, and the Authority is entitled to deference in this regard, *id.* at 6-7; and (4) the Arbitrator had discretion to frame the issue before him as purely contractual, given the parties' failure to stipulate the issues before him, *id.* at 7-9.

#### IV. Analysis and Conclusions

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary circumstances to request reconsideration of an Authority decision. 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 Int'l Ass'n of Firefighters, Local F-25*, 64 FLRA 943, 943 (2010) (*IAF*). The Authority has identified a limited number of situations in which extraordinary circumstances have been found to exist. These include situations where: (1) an intervening court decision or change in the law affected dispositive issues; (2) evidence, information, or issues crucial to the decision had not been presented to the Authority; (3) the Authority erred in its remedial order, process, conclusion of law, or factual finding; and (4) the moving party has not been given an opportunity to address an issue raised *sua sponte* by the Authority in its decision. *See id.*

The Union's motion for reconsideration does not cite any of these situations. To the extent that the Union's first argument asserts that the Authority erred in a factual finding, the factual question of whether the conditions of employment set forth in the 12 MOUs continued to exist after the effective date of the 2005 MLA was clearly disputed by the parties at arbitration, *see Award* at 14 & 16, and, therefore, the Authority appropriately denied the Union's exception challenging that factual finding. *See IAF*, 64 FLRA at 943-44 (citation omitted). Thus, the Union's first argument does not demonstrate extraordinary circumstances warranting reconsideration of *Local 3937*.

To the extent that the Union's second argument asserts that the Authority misconstrued its exceptions, the Union acknowledges that it did not cite § 7116(a)(1) and (5) in its exceptions, and the Union's motion does not demonstrate that it sufficiently raised those specific statutory sections before the Authority. Thus, in effect, the Union raises new issues that were not raised in its exceptions. In resolving a request for reconsideration, the Authority will not consider issues that were not raised in its review of an award upon a party's exceptions. *See Bremerton Metal Trades Council*, 64 FLRA 543, 545 (2010) (Member DuBester concurring). Accordingly, the Union's second argument does not demonstrate extraordinary circumstances warranting reconsideration of *Local 3937*.

For the foregoing reasons, we deny the Union's motion for reconsideration.

#### V. Decision

The Union's motion for reconsideration is denied.