

66 FLRA No. 133

NATIONAL ASSOCIATION
OF INDEPENDENT LABOR
LOCAL 5
(Union)

and

UNITED STATES
DEPARTMENT OF DEFENSE
DEFENSE LOGISTICS AGENCY
DEFENSE DISTRIBUTION
DEPOT RED RIVER
TEXARKANA, TEXAS
(Agency)

0-AR-4811

ORDER DENYING MOTION FOR
RECONSIDERATION

June 13, 2012

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 (motion) of the Authority's order dismissing the Union's exceptions in *National Association of Independent Labor, Local 5* (Authority's order). The Agency filed an opposition to the Union's motion.

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary circumstances to request reconsideration of an Authority order. For the reasons that follow, we find that the Union has not established extraordinary circumstances warranting reconsideration of the Authority's order. Accordingly, we deny the Union's motion.

II. Background and Authority's Order

The parties submitted a grievance to arbitration, which the Arbitrator denied as untimely. Motion at 2-3; Award at 2.

The Arbitrator served the arbitration award on the parties by e-mail on Sunday, January 8, 2012. On February 8, 2012, the Union filed exceptions with the Authority. The Authority directed the Union to show

cause why its exceptions should not be dismissed as untimely. The Authority stated that to be timely under the Authority's Regulations, the exceptions had to be postmarked by the U.S. Postal Service, filed in person, or deposited with a commercial delivery service, no later than February 7, 2012. See Order Dismissing Exceptions (Order) at 2; 5 C.F.R. §§ 2425.2(b) (thirty-day time limit for filing exceptions), 2425.2(c)(3) (date of service of award served by e-mail is date of transmission), 2429.21(b) (date of filing determined by postmark date), & 2429.24(e) (authorized methods for filing documents with the Authority).¹

In its response to the Authority's show cause order, the Union asserted that it timely filed its exceptions. The Union claimed that, because the Arbitrator served the award on a weekend day, the date of service was Monday, January 9 and not Sunday, January 8. Response at 2. Therefore, the Union argued, Tuesday, January 10 should be the first day for purposes of calculating the thirty-day time limit for filing exceptions under the Authority's Regulations. *Id.* Thus, the Union claimed, its exceptions were not due until February 8, 2012. Calculating the time limit for filing exceptions in this way, the Union asserted, is consistent with § 2429.21(a) of the Authority's Regulations. In the Union's view, that provision provides, among other things, that the last day of the thirty-day time limit for filing exceptions is counted unless it falls on a weekend day, in which case the next day that is not a weekend day or federal holiday is the last day of the thirty-day time limit. Therefore, the Union argued, since the *last* day of the thirty-day time limit for filing exceptions is not counted if it lands on a weekend day under the Authority's Regulations, the *first* day should not be counted if it falls on a weekend day. *Id.* Accordingly, the Union claimed, as the Arbitrator served the award on the parties on a Sunday, the award's date of service was Monday, and the first day in calculating the thirty-day time limit for filing exceptions was Tuesday. Based on the foregoing, the Union argued that the exceptions were timely.

In further support of its argument, the Union argued that the Authority's Guide to Arbitration (Guide) does not provide any examples of arbitration awards served on parties by e-mail on a weekend day. *Id.* The Union asserted that it acted "reasonably and in accordance with th[is] guidance" when it presumed that it should advance the date of service that fell on a weekend to the next day that was not. *Id.* at 3.

In its order dismissing the Union's exceptions, the Authority explained that neither the Regulations nor the Guide supports the Union's contention that its

¹ All relevant regulations are set forth, in pertinent part, in the appendix to this decision.

exceptions are timely. Specifically, with regard to the Regulations, the Authority noted that § 2425.2(c)(3) provides that the date of service of an award served by e-mail “is the date of transmission,” and explained that “there is no provision for altering the date of service based on whether it falls on a Saturday, Sunday, or federal holiday.” Order at 2. With regard to the Guide, the Authority stated, “[a]s the examples in the Guide indicate, [in calculating the thirty-day time limit,] no consideration is given to whether the date of service of the award is a Saturday, Sunday, or federal holiday.” *Id.* Further, the Authority noted, the Guide is non-binding and non-precedential. *Id.* Accordingly, the Authority dismissed the Union’s exceptions as untimely.

III. Positions of the Parties

A. Union’s Motion

In its motion, the Union claims that the Authority “erred in its remedial order, process, conclusion of law, or factual finding” in dismissing the Union’s exceptions as untimely. Motion at 5. In support, the Union claims that the first day in calculating the thirty-day time limit for filing exceptions should be Tuesday, January 10, and not Monday, January 9, because the Arbitrator served the award on the parties on Sunday, January 8 – a weekend day. *Id.* The Union argues that this is consistent with § 2429.21(a) of the Authority’s Regulations, which provides that the last day of the thirty-day time limit for filing exceptions is counted unless it falls on a weekend day, in which case the next day that is not a weekend day or federal holiday is the last day of the thirty-day time limit. The Union claims that it thus appropriately presumed that it should advance the date of service that fell on a weekend to the next day that was not a weekend day. *Id.* at 5. Therefore, the Union claims, the exceptions are timely.

In addition, the Union contends, because the Guide does not provide any examples of arbitration awards served on parties by e-mail on a weekend, the Authority’s determination that no consideration is given to whether the date of service of an award is a Saturday, Sunday, or federal holiday, is “clearly erroneous.” *Id.* at 6.

B. Agency’s Opposition

The Agency argues that the Union has not demonstrated that extraordinary circumstances exist warranting reconsideration of the Authority’s order dismissing the Union’s exceptions. Opp’n at 1. The Agency claims that, in its motion, the Union merely restates the arguments that it made in its response to the Authority’s order to show cause. Moreover, the Agency asserts, § 2425.2(c)(3) of the Authority’s Regulations provides that the date of service of an arbitration award

served by e-mail is the date of transmission. *Id.* at 1-2. Therefore, the Agency requests that the Authority deny the Union’s motion. *Id.* at 2.

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. *See, e.g., U.S. Dep’t of Homeland Sec., U.S. Citizenship & Immigration Servs.*, 64 FLRA 335, 335 (2009). Authority precedent consistently holds that a party seeking reconsideration under § 2429.17 bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action. *Id.* The Authority identifies a limited number of situations in which it will find that extraordinary circumstances exist. *Id.* 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 the decision. *See, e.g., U.S. Dep’t of the Air Force, 375th Combat Support Grp., Scott Air Force Base, Ill.*, 50 FLRA 84, 85-87 (1995). Attempts to relitigate conclusions reached by the Authority on issues previously presented are insufficient to establish extraordinary circumstances. *AFGE, Local 1102*, 63 FLRA 343, 343 (2009) (*AFGE*) (citing *U.S. Dep’t of the Treasury, Internal Revenue Serv., Wash., D.C.*, 56 FLRA 935, 936 (2000)).

The Union presents arguments that it raised in its response to the Authority’s show cause order. Motion at 5; Response at 1-3. The Authority considered and rejected each of these arguments for the reasons set forth in its order dismissing the Union’s exceptions. Order at 2. As to these matters, the Union is merely attempting to relitigate issues already presented and resolved. *See AFGE*, 63 FLRA at 343. The Union’s argument that the first day in calculating the thirty-day time limit for filing exceptions should be Tuesday, January 10 is based upon the same reasons that it set forth in its response to the Authority’s show cause order. The Union does not present any reason that makes that argument more persuasive than when the Authority originally rejected it. As the Authority provided in its order dismissing the Union’s exceptions, nothing in the Authority’s Regulations supports that contention. The Union has not, therefore, established that reconsideration is warranted on this basis.

For the same reason, we reject the Union’s claim that, because the Guide does not provide any examples of arbitration awards served on parties by e-mail on a weekend day, the Authority’s determination that no

consideration is given to whether the date of service of an award is a Saturday, Sunday, or federal holiday, is "clearly erroneous." Motion at 6. As the Authority stated in its order dismissing the Union's exceptions, the Guide is non-binding and non-precedential and, as set forth above, the Authority's Regulations govern in this situation.

Consequently, the Union's arguments in this respect as well do not establish that reconsideration is warranted. *Id.*

Accordingly, we deny the Union's motion.

V. Order

The Union's motion for reconsideration is denied.

APPENDIX

5 C.F.R. § 2425.2 provides, in relevant part:

(b) *Timeliness requirements—general.*

The time limit for filing an exception to an arbitration award is thirty (30) days after the date of service of the award. This thirty (30)-day time limit may not be extended or waived. In computing the thirty (30)-day period, the first day counted is the day after, not the day of, service of the arbitration award. . . .

(c) *Methods of service of arbitration award; determining date of service of arbitration award for purposes of calculating time limits for exceptions.* . . . The following rules apply to determine the date of service for purposes of calculating the time limits for filing exceptions . . . :

(1) If the award is served by regular mail, then the date of service is the postmark date or, if there is no legible postmark, then the date of the award; for awards served by regular mail, the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.

. . . .

(3) If the award is served by e-mail or fax, then the date of service is the date of transmission, and the excepting party will not receive an additional five days for filing the exceptions.

5 C.F.R. § 2429.21² provided, in relevant part:

(a) In computing any period of time prescribed by or allowed by this subchapter . . . the day of the act, event, or default from or after which the designated period of time begins to run shall not be included. The last day of

the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. . . .

(b) . . . when this subchapter requires the filing of any paper with the Authority . . . the date of filing shall be determined by the date of mailing indicated by the postmark date. . . .

5 C.F.R. § 2429.24 provided, in relevant part:

(e) All documents filed pursuant to this section shall be filed in person, by commercial delivery, by first-class mail, or by certified mail.

² The Authority's Regulations – including 5 C.F.R. §§ 2429.21 and 2429.24 – were revised effective June 4, 2012, to allow for electronic filing and clarify existing procedural Regulations. See 77 Fed. Reg. 26,430 (2012). As the Union's exceptions were filed before that date, we apply the prior Regulations.