

64 FLRA No. 53

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND
IMMIGRATION SERVICES
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3923
(Union)

0-AR-4209

ORDER DENYING MOTION FOR
RECONSIDERATION

December 30, 2009

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 of an Authority order granting the Agency's request to withdraw its exceptions. The Union filed an opposition to the Agency's motion.

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

II. Procedural Dismissal of Agency's Exceptions

The Authority issued to the parties a status inquiry questioning whether they still required a formal decision in this case. In particular, the Authority stated that, if the circumstances of the case no longer warranted formal adjudication, the party bringing the action should submit a withdrawal. *See* Status Inquiry at 1. In response, the Agency — the excepting party — stated that the case no longer warranted a formal decision and submitted a withdrawal of its exceptions. The Authority issued an order granting the Agency's withdrawal.*

III. Motion for Reconsideration

The Agency requests that the Authority rescind its order granting the Agency's withdrawal of its exceptions, asserting only that the Agency representative "had mistaken case numbers, and provided incorrect information[.]" Motion for Reconsideration at 1. The Agency alleges, without elaboration, that it never intended to withdraw its exceptions. *See id.*

The Union opposes the Agency's motion, claiming that the Agency is attempting to rescind the withdrawal of its exceptions to avoid compliance with a remedy that the Arbitrator awarded to the Union in a subsequent, related award. *See* Opposition at 1-2.

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. 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., United States Dep't of the Treasury, Internal Revenue Serv., 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 United States Dep't of the Air Force, 375th Combat Support Group, Scott Air Force Base, Ill., 50 FLRA 84, 85-87 (1995).*

The Agency's argument that it mistakenly withdrew its exceptions does not establish the extraordinary circumstances necessary to warrant reconsideration of the Authority's order granting the Agency's request to withdraw its exceptions. Moreover, the Agency fails to establish — let alone argue — that any of the situations set forth above, which the Authority previously has

*. The day after the Authority issued that order, the Authority received the Union's response to the status inquiry, asserting that a formal decision was warranted.

identified as constituting extraordinary circumstances, are present. Accordingly, the Agency's argument does not provide a basis for reconsideration. *See, e.g., AFGE, Local 491*, 63 FLRA 542 (2009).

V. Order

The Agency's motion for reconsideration is denied.