

63 FLRA No. 113

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 1102
(Union)

and

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL DETENTION CENTER
SEATAC, WASHINGTON
(Agency)

0-AR-4336

ORDER DENYING MOTION FOR RECONSIDERA-
TION

May 20, 2009

Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

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 exception. The Agency did not file an opposition to the Union's motion.

The Authority's Regulations permit a party that can establish extraordinary circumstances to request reconsideration of an Authority decision. 5 C.F.R. § 2429.17. For the reasons below, we conclude that the Union has failed to establish extraordinary circumstances warranting reconsideration. Accordingly, we deny the Union's motion for reconsideration.

II. Authority's Order Dismissing Exception

The Union filed an exception to an award of Arbitrator Anthony D. Vivenzio. Subsequently, the Authority ordered the Union to show cause why its exception should not be dismissed for lack of jurisdiction and for being untimely. The Order stated that "failure to comply" with the Order "may result in dismissal of the exception[]." Order to Show Cause at 4. The Union failed to respond to this Order. Accordingly the Authority dismissed the Union's exception. Order Dismissing Exceptions at 1.

Thereafter, the Union submitted a timely request for reconsideration of the Authority's dismissal.

III. Union's Motion for Reconsideration

The Union argues that it did not respond to the Authority's Order to Show Cause in a timely manner because the Agency's mail room, which the Union uses, had a policy which impeded the Union's receipt of certified letters from the Authority and the Agency. Motion for Reconsideration at 1-2. Specifically, according to the Union, the Agency would not allow the Union's newly elected president to open certified letters that were addressed to the union's past president. *Id.* Also according to the Union, the past president did not open the Authority's Order because he was out of town and, when the past president returned, the mail room was closed for two weeks because of a staff shortage arising from an annual training program at the Agency. *Id.* at 2.

The Union also argues that the Agency's mail room is unreliable. *Id.* In this regard, the Union claims that although it requested confirmation of the Authority's receipt of its exception, it has not received any such confirmation from the mail room. *Id.*

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 of an Authority decision 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) (IRS).* 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 Authority has repeatedly advised that attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances. *See IRS, 56 FLRA at 936.*

It is well-settled that untimely filings caused by delays or problems with internal mail systems, like those claimed by the Union, do not present extraordi-

nary circumstances warranting reconsideration. *AFGE, Local 2113*, 55 FLRA 414, 415 (1999). *See, e.g., Int'l Org. of Masters, Mates and Pilots*, 49 FLRA 1370, 1371 (1994) (delay caused by internal mail system does not constitute extraordinary circumstance warranting consideration of exceptions to award that was not timely filed); *Dep't of the Treasury, United States Customs Serv. and United States Customs Serv. Region IX, Chicago, Ill.*, 34 FLRA 76, 78 (1989) (failure of union's mailing procedures is not extraordinary circumstance warranting reconsideration of Authority order dismissing union's exceptions to judge's decision as untimely filed). This includes situations where a union uses an agency's internal mail system. *See, e.g., NFFE, Local 2015*, 53 FLRA 967 (1997).

Similarly, the fact that the new Union president could not open letters addressed to its past president because he was out of town at a conference does not establish extraordinary circumstances. *See AFGE, Local 3438*, 49 FLRA 1145, 1147 (1994). This is because, as the Authority has stated, "the representative could have made arrangements for the receipt of certified mail." *Id. Compare Internal Revenue Serv., Indianapolis District*, 32 FLRA 1235 (1988) (Authority found no extraordinary circumstances to waive expired time limit for filing request for reconsideration simply because attorney responsible for case was in training out of state) with *United States Dep't of Hous. and Urban Dev.*, 32 FLRA 1261 (1988) (Authority waived expired time limit for filing motion for reconsideration where union representative on whom Authority decision was served was out of town attending to a family medical matter and the motion was filed within a reasonable amount of time after the representative became aware of the Authority's decision).

In sum, we find that the Union's arguments do not provide a basis for reconsideration.

V. Order

The Union's request for reconsideration is denied.