

**71 FLRA No. 179**

INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS  
LOCAL 1002  
(Union)

and

UNITED STATES  
DEPARTMENT OF ENERGY  
SOUTHWESTERN POWER ADMINISTRATION  
TULSA, OKLAHOMA  
(Agency)

0-NG-3442-REC  
(71 FLRA 779 (2020))

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ORDER DENYING  
MOTION FOR RECONSIDERATION  
AND MOTION FOR STAY

August 21, 2020

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Before the Authority: Colleen Duffy Kiko, Chairman,  
and Ernest DuBester and James T. Abbott, Members

**I. Statement of the Case**

The Union requests that we reconsider our decision in *IBEW, Local 1002 (IBEW)*<sup>1</sup> and stay implementation of that decision. In *IBEW*, the Union filed a petition for review (petition) concerning the negotiability of two proposals. The Authority determined that, because the Union's proposals contained only minor modifications from those previously declared nonnegotiable, the Union failed to file a timely petition. Accordingly, the Authority dismissed the petition.

In a motion for reconsideration (motion), the Union argues that the Authority erred in its legal conclusions. The Union also requests that the Authority stay *IBEW* while the Authority considers its motion. Because the Union's arguments are an attempt to relitigate the Authority's conclusions in *IBEW* and otherwise fail to establish any extraordinary circumstances warranting reconsideration, we deny the motion and request for a stay.

**II. Background and Authority's Decision in *IBEW***

The facts of this case are set forth in greater detail in *IBEW*. The dispute in that case concerned two Union proposals involving the Agency's pay practices. In an earlier-filed petition, docketed as case number 0-NG-3388, the Union requested and the Agency provided, a written allegation that the proposals are nonnegotiable.<sup>2</sup> The Union then filed and subsequently withdrew its petition in 0-NG-3388, and the Authority granted the withdrawal request.<sup>3</sup> Later, after presenting the Agency with the two previously withdrawn proposals, the Union requested a written allegation of nonnegotiability. The Agency responded that it had previously declared the two proposals nonnegotiable in its 0-NG-3388 allegation.<sup>4</sup> In response, the Union filed the petition in *IBEW*.<sup>5</sup>

In *IBEW*, the Authority found that because the Union had not demonstrated that the proposals in the petition in that case were substantively changed from those in the 0-NG-3388 petition, the Union's petition in *IBEW* essentially sought review of the earlier allegation.<sup>6</sup> The Authority concluded that because the Union neither filed that petition within the statutory deadline of receiving that allegation, nor retained the right to refile its earlier petition, the Union's right to file a petition for review concerning the proposals was extinguished when the Authority granted its withdrawal request in 0-NG-3388.<sup>7</sup> On this basis, the Authority dismissed the petition as untimely filed.<sup>8</sup>

The Union filed its motion and request for a stay on June 15, 2020. The Agency filed an opposition to the Union's motion on June 29, 2020.<sup>9</sup>

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<sup>2</sup> *Id.* at 779.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 780.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The Authority's Regulations do not provide for responses to motions for reconsideration. And, while a party may request leave to file additional documents under § 2429.26 of the Authority's Regulations, the Agency did not request leave to do so here. 5 C.F.R. § 2429.26. Accordingly, we have not considered the Agency's response. *SPORT Air Traffic Controllers Org.*, 68 FLRA 107, 107-08 (2014).

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<sup>1</sup> 71 FLRA 779 (2020).

### III. Analysis and Conclusion: We deny the motion for reconsideration and request for a stay.

The Union asks the Authority to reconsider its decision in *IBEW*.<sup>10</sup> The Authority has repeatedly held that a party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.<sup>11</sup> In particular, attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances.<sup>12</sup>

The Union claims that the Authority erred in its interpretation of *Laborers' International Union of North America, AFL-CIO-CLC, Local 1267 (Local 1267)*<sup>13</sup> because, like the union in *Local 1267*, the Union in *IBEW* withdrew its petition before the Authority took "any action,"<sup>14</sup> therefore, permitting the Union to timely refile its petition.<sup>15</sup> The Authority rejected this argument in *IBEW*.<sup>16</sup> Consequently, the Union attempts to relitigate the Authority's conclusion in *IBEW* and fails to establish extraordinary circumstances warranting reconsideration of that decision.<sup>17</sup>

<sup>10</sup> 5 C.F.R. § 2429.17 ("After a final decision or order of the Authority has been issued, a party to the proceeding before the Authority who can establish in its moving papers extraordinary circumstances for so doing, may move for reconsideration of such final decision or order.")

<sup>11</sup> *AFGE, Nat'l VA Council #53*, 71 FLRA 741, 742 (2020) (*Council #53*) (Member DuBester concurring); *AFGE, Local 2338*, 71 FLRA 644, 644 (2020) (*Local 2338*).

<sup>12</sup> *Local 2338*, 71 FLRA at 645; *U.S. Dep't of the Air Force, Minot Air Force Base, N.D.*, 71 FLRA 188, 189 (2019) (*Air Force*) (Member DuBester dissenting).

<sup>13</sup> 14 FLRA 686 (1984).

<sup>14</sup> Mot. at 4.

<sup>15</sup> *Id.* at 2-4.

<sup>16</sup> See *IBEW*, 71 FLRA at 780 & n.12; 0-NG-3442, Union's Resp. to Show Cause Order dated August 6, 2019 at 2-3 (stating that "the petition for review should not be dismissed as untimely in a very similar situation" and then quoting *Local 1267* ("while the Union initially filed an untimely petition for review in response to an unsolicited Agency allegation that the proposals were nonnegotiable, it withdrew this petition before the Authority took any action . . . Therefore, the petition is properly before the Authority") (emphasis omitted).

<sup>17</sup> *Local 2338*, 71 FLRA at 645 (finding that union's attempt to relitigate its argument did not demonstrate extraordinary circumstances warranting reconsideration of Authority's earlier decision); *Air Force*, 71 FLRA at 189 (finding that union's attempt to relitigate Authority's conclusions in its earlier decision by making the same arguments did not establish reconsideration was warranted); *NAIL, Local 15*, 65 FLRA 666, 667 (2011) (denying motion for reconsideration where union presented same arguments it had previously raised to Authority). The Union also argues that the Authority erred by finding that it granted the Union's withdrawal request in 0-NG-3388 on July 2, 2019 "when it was in fact granted on

Next, the Union argues that the Authority erred by relying on the Authority's decisions in *NAGE, RI-100*<sup>18</sup> (*NAGE*) and *NFFE, Local 422*<sup>19</sup> (*NFFE*).<sup>20</sup> According to the Union, *NAGE* and *NFFE* are distinguishable because, unlike the unions in those cases, the Union timely filed an appeal to the Agency's initial allegation of nonnegotiability when it filed its petition in 0-NG-3388.<sup>21</sup> But in both *NAGE* and *NFFE*, as in *IBEW*, the union did not dispute that the proposals were substantively unchanged from those that the agency previously had alleged to be nonnegotiable. Therefore, in each case, a petition filed more than fifteen days after the agency served its initial declaration of nonnegotiability was untimely.<sup>22</sup> Accordingly, the Union's argument provides no basis for finding that the Authority erred by relying on *NAGE* and *NFFE*.

Consequently, we find that the Union does not demonstrate that extraordinary circumstances exist to warrant reconsideration of *IBEW*, and we deny the Union's motion.<sup>23</sup> The Union also requests that the Authority stay its decision in *IBEW* during the pendency of the motion.<sup>24</sup> Because we deny the motion, we also deny the Union's request that we stay our decision in *IBEW* during the motion's pendency as moot.<sup>25</sup>

### IV. Order

The Union's motion and request for a stay is denied.

July 2, 2018." Mot. at 2. Although we amend our earlier finding in *IBEW* and now find that the Authority granted the Union's withdrawal request in that case on July 2, 2018 (0-NG-3388, Authority's Order Granting Withdrawal at 1), that error had no effect on the outcome of the decision in *IBEW*, and therefore provides no basis for granting reconsideration. *AFGE, Local 1945*, 67 FLRA 436, 436 (2014) ("where adopting an argument in a motion for reconsideration would have no effect on the outcome of the underlying Authority decision, that argument fails to establish extraordinary circumstances under § 2429.17"); *U.S. Dep't of the Interior, U.S. Park Police*, 64 FLRA 894, 895 (2010) (rejecting argument in motion for reconsideration because "any error on the part of the Authority . . . would have had no effect on the outcome of the decision").

<sup>18</sup> 41 FLRA 752, 752-54 (1991).

<sup>19</sup> 50 FLRA 541 (1995).

<sup>20</sup> Mot. at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *NFFE*, 50 FLRA at 542-43; *NAGE*, 41 FLRA at 753-54.

<sup>23</sup> *Council #53*, 71 FLRA at 743 (denying a motion for reconsideration); *Local 2338*, 71 FLRA at 645 (same).

<sup>24</sup> Mot. to Stay at 2.

<sup>25</sup> *SPORT Air Traffic Controllers Org.*, 70 FLRA 345, 346 (2017) (denying stay request); see also 5 C.F.R. § 2429.17 ("The filing and pendency of a motion [for reconsideration] under this provision shall not operate to stay the effectiveness of the action of the Authority, unless so ordered by the Authority.")