71 FLRA No. 182

UNITED STATES
DEPARTMENT OF THE NAVY
MARINE CORPS AIR STATION
CHERRY POINT, NORTH CAROLINA
(Agency)

and

INTERNATIONAL ASSOCIATION
OF MACHINISTS
AND AEROSPACE WORKERS
LOCAL LODGE 2296, AFL-CIO
(Union)

and

MELANIE COPELAND, AN INDIVIDUAL

AT-RP-18-0019
(71 FLRA 630 (2020))

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ORDER DENYING
MOTION FOR RECONSIDERATION

September 1, 2020

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Before the Authority: Collen Duffy Kiko, Chairman, and Ernest DuBester and James T. Abbott, Members
(Member Abbott concurring)

I. Statement of the Case

Melanie Copeland (Petitioner) requests that we reconsider our decision in *U.S. Department of the Navy, Marine Corps Air Station, Cherry Point, North Carolina* (*Cherry Point*).[1] In that case, we found that the record supported Regional Director Richard S. Jones' (the RD's) factual findings and legal conclusions that certain employees come within the express terms of the relevant unit certification and that their inclusion in the unit remains appropriate.

In a motion for reconsideration (motion), the Petitioner again argues that the certification that the RD relied on is incorrect, and she submits that she has found new evidence to support her argument.[2] Because the Petitioner's motion raises the same arguments the Authority considered in *Cherry Point*, and does not otherwise establish extraordinary circumstances warranting reconsideration, we deny it.

II. RD's Decision and Authority's Decision in *Cherry Point*

The facts, summarized here, are set forth in greater detail in *Cherry Point*.[3] The Petitioner filed a petition requesting an election to determine whether employees in the Agency's Visiting Aircraft Line (VAL employees) wanted to continue to be represented by the Union. The RD found that a 1989 certificate of consolidation (certification) was the applicable certification and that the VAL employees fell within its express terms because they are wage-grade employees. He also found that: (1) the certification, not the bargaining-unit status (BUS) code on the VAL employees' personnel forms, controlled which employees were included in the unit; (2) the unit remained appropriate; and (3) the Union had fairly and adequately represented VAL employees. In making these findings, the RD rejected the Petitioner's various arguments as to why the certification did not include VAL employees. The RD concluded that an election to sever VAL employees from the Union's existing-bargaining unit was unwarranted.

In *Cherry Point*, the Authority denied the Petitioner's application for review (application).[4] The Authority found that the Petitioner failed to demonstrate that the RD's interpretation of the certification was erroneous, as the VAL employees clearly fell with the certification's unit description.[5] The Authority also found that the RD correctly determined that express terms of the certification – not the BUS code – controlled whether the employees are in the bargaining unit.[6] And the Authority found that the Petitioner failed to demonstrate that substantial changes had altered the scope or character of the unit since the certification, such that the previously certified unit was no longer appropriate.[7] The Authority concluded that the Petitioner's arguments did not provide a basis for finding that the RD committed a clear error concerning a substantial factual matter or failed to apply established law.[8]

On March 24, 2020, the Petitioner filed her motion.

[1] 71 FLRA 630 (2020) (Member Abbott dissenting).
[2] 5 C.F.R. § 2429.17.
[3] 71 FLRA 630.
[4] *Id.* at 632.
[5] *Id.*
[6] *Id.*
[7] *Id.* (allowing a challenge to the accuracy of the certification would permit a party to evade the sixty-day filing deadline under 5 U.S.C. § 7105 for filing challenges to a RD's decision).
[8] *Id.*

III. Analysis and Conclusion: We deny the Petitioner's motion for reconsideration.

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary circumstances to move for reconsideration of an Authority decision.[9] 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.[10] Errors in the Authority's remedial order, process, conclusions of law, or factual findings may justify granting reconsideration.[11] However, attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances.[12] Additionally, the Authority has refused to grant reconsideration of issues that could have been previously raised, but were not, and are raised for the first time on a motion for reconsideration.[13]

In support of the motion, the Petitioner argues that the language of the certification is incorrect because it "failed to carry forward the exception language" from an earlier certification that excluded employees represented by another union.[14] The Petitioner raised,[15] and the Authority rejected, this argument in *Cherry Point*.[16] The Petitioner's attempt to relitigate this argument fails to demonstrate that the Authority erred.[17]

The Petitioner also argues that, after the case was before the RD and the Authority, she has "since learned,"[18] that wage-grade employees began work at VAL earlier than she realized[19] and she has "new evidence" showing that another union "has been and is currently, the exclusive representative" for VAL employees at other locations.[20] However, evidence submitted for the first time on reconsideration does not establish extraordinary circumstances that warrant reconsideration of *Cherry Point*.[21] And the Petitioner does not demonstrate that this evidence was unavailable or that she was prevented from obtaining it at the time of the hearing before the RD.[22]

Therefore, we find that the Petitioner does not demonstrate that extraordinary circumstances exist to warrant reconsideration of *Cherry Point*, and we deny her motion.

IV. Decision

We deny the Petitioner's motion.

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[9] 5 C.F.R. § 2429.17.
[10] *SPORT Air Traffic Controllers Org.*, 71 FLRA 25, 26 (2019) (*Sport*) (Member DuBester concurring) (citations omitted).
[11] *SPORT Air Traffic Controllers Org.*, 70 FLRA 345, 345 (2017) (citing *Int'l Ass'n of Firefighters, Local F-25*, 64 FLRA 943, 943 (2010)).
[12] *Id.* (citing *Bremerton Metal Trades Council*, 64 FLRA 543, 545 (2010) (Member DuBester concurring)).
[13] *Sport*, 71 FLRA at 26; *see also NTEU*, 66 FLRA 1004, 1006 (2012) (*NTEU*).
[14] Motion at 5.
[15] *See* Application at 4-5.
[16] 71 FLRA at 632.
[17] *AFGE Local 2338*, 71 FLRA 644, 645 (2020) (*Local 2338*); *Sport*, 71 FLRA at 26.
[18] Motion at 2-3.
[19] *Id.* at 2-3, 6-7.
[20] *Id.* at 2.
[21] *See Local 2338*, 71 FLRA at 645 (new evidence that was not available at the time of the arbitration hearing, does not establish extraordinary circumstances that warrant reconsideration (citing *NFFE, Local 2030*, 54 FLRA 615, 618 (1998) (arbitration awards are not subject to review on basis of evidence that comes into existence after arbitration; therefore, such evidence may not be considered to refute record made before arbitrator)).
[22] The RD's decision also is not subject to review on the basis of evidence not raised before the RD. *See* 5 C.F.R. § 2433.31(b) (application for review "may not raise any issue or rely on any facts not timely presented to the [the RD]"); *id.* § 2429.5 (a party may not raise any "evidence, factual assertions, [or] arguments" that were not raised in the proceedings below); *see, e.g.*, *Local 2338*, 71 FLRA at 645 (citing *NTEU*, 66 FLRA at 1006 (rejecting argument on reconsideration not raised before arbitrator); *U.S. Dep't of the Navy, Naval Undersea Warfare Ctr., Div. Keyport*, 68 FLRA 1, 3 (2014) (rejecting arguments not raised before the RD).

Member Abbott, concurring:

I agree with the decision to deny the Petitioner's request for reconsideration because she does not establish extraordinary circumstances warranting review. This does not change the fact that the majority's decision in 71 FLRA 360 (2020) (Member Abbott dissenting), in my view, was wrongly decided.