

72 FLRA No. 19

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
U.S. PARK POLICE
(Agency)

and

FRATERNAL ORDER OF POLICE
U.S. PARK POLICE LABOR COMMITTEE
(Union)

0-AR-5603
(71 FLRA 1121 (2020))

ORDER DENYING MOTION FOR
RECONSIDERATION

February 25, 2021

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

I. Statement of the Case

The Union requests that we reconsider our decision in *U.S. Department of the Interior, National Park Service, U.S. Park Police (Park Police)*.¹ In that case, Arbitrator Homer C. La Rue issued an award finding that the Agency violated the parties' collective-bargaining agreement by failing to bargain before enforcing certain government-wide regulations. The Authority held that the Agency was not required to bargain before enforcing the regulations, and the Arbitrator's status quo ante remedy would have obligated the Agency to reinstate an unlawful practice.² Accordingly, we set aside the award.

In its motion for reconsideration (motion), the Union merely attempts to relitigate the Authority's conclusions in *Park Police*. Therefore, we deny the Union's motion for failing to establish extraordinary circumstances warranting reconsideration of that decision.

II. Background and Arbitrator's Award

To comply with the General Service Administration's Motor Vehicle Management regulations (the motor-vehicle regulations),³ the Agency implemented a memo notifying its law-enforcement officers that when they "operate[] a [g]overnment vehicle, it is [their] responsibility to pay any fine associated with a [traffic or parking] violation," unless they were "responding to [an] emergency" (the 2011 memo).⁴

In 2018, the Agency directed an officer who received a speeding ticket to either successfully contest the violation or pay the fine. The Union filed a grievance alleging that the Agency's sudden enforcement of the 2011 memo, without first providing notice and an opportunity to bargain that change, violated the parties' agreement. The dispute proceeded to arbitration.

The Arbitrator found that the 2011 memo was enforceable because it was "based on a government-wide mandate."⁵ However, the Arbitrator also found that, from 2011 to 2018, the Agency had not enforced the 2011 memo. Based on that finding, the Arbitrator concluded that the Agency violated the parties' agreement, as alleged by the Union. As remedies, the Arbitrator directed the Agency to "return to the status quo" of not enforcing the 2011 memo and "bargain[] in good faith to impasse" before resuming enforcement.⁶

In *Park Police*, the Authority noted that the Agency's "past practice" of not holding officers personally responsible for their traffic and parking fines conflicted with the motor-vehicle regulations.⁷ Thus, the Arbitrator's award "would result in the reinstatement of an unlawful practice" and require the Agency to retain that unlawful practice until the completion of bargaining.⁸ Relying on precedent holding that "an agency may implement a change to correct an unlawful practice without first bargaining over the change," the Authority set the award aside.⁹

The Union filed its motion for reconsideration on December 4, 2020.

¹ 71 FLRA 1121 (2020) (then-Member DuBester dissenting).

² *Id.* at 1122-23.

³ 41 C.F.R. §§ 102-34.235, 34.245.

⁴ *Park Police*, 71 FLRA at 1121 (quoting Award at 11).

⁵ *Id.* at 1122 (quoting Award at 31).

⁶ *Id.* (quoting Award at 37).

⁷ *Id.* at 1122.

⁸ *Id.* at 1123.

⁹ *Id.* at 1122 (citing *U.S. DHS, U.S. ICE*, 70 FLRA 628, 630 (2018) (then-Member DuBester dissenting); *USDA, Food Safety & Inspection Serv., Boaz, Ala.*, 66 FLRA 720, 723 (2012); *Portsmouth Naval Shipyard, Portsmouth, N.H.*, 49 FLRA 1522, 1527-28 (1994) (*Portsmouth*)).

III. Analysis and Conclusion: The Union has failed to establish extraordinary circumstances warranting reconsideration of the Authority's decision in *Park Police*.

The Union asks the Authority to reconsider its decision in *Park Police*.¹⁰ The Authority has consistently held that a party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.¹¹ Attempts to relitigate issues previously raised and resolved by the Authority are insufficient to establish extraordinary circumstances.¹²

First, the Union claims that the Authority erred by setting aside the entire award instead of limiting its decision to the Arbitrator's status quo ante remedy.¹³ According to the Union, the Agency was obligated to provide an opportunity for impact-and-implementation bargaining "prior to" enforcing the 2011 memo.¹⁴ However, the Union raised,¹⁵ and the Authority addressed,¹⁶ this same argument in *Park Police*. Consequently, the Union's argument attempts to relitigate the Authority's conclusions in *Park Police* and, thus, does not establish extraordinary circumstances justifying reconsideration of that decision.¹⁷

¹⁰ Mot. at 2-3; see 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.")

¹¹ *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 935, 936 (2000).

¹² *U.S. Dep't of the Navy, Marine Corps Air Station, Cherry Point, N.C.*, 71 FLRA 940, 941 (2020) (Member Abbott concurring) (citing *SPORT Air Traffic Controllers Org.*, 70 FLRA 345, 345 (2017)).

¹³ Mot. at 13.

¹⁴ *Id.*; see also *id.* at 14 (claiming that the Authority should "require impact and implementation bargaining before a change to an unlawful past practice occurs" (emphasis added)).

¹⁵ See 0-AR-5603, Opp'n (Opp'n) at 11 (arguing that the Arbitrator properly directed the Agency to "resume the past practice of non-enforcement" because the Agency "did not satisfy its bargaining obligations" under the parties' agreement by failing to give the Union an "opportunity to bargain over the impact and implementation of the proposed changes").

¹⁶ *Park Police*, 71 FLRA at 1123 (affirming that an agency does not have to provide an opportunity to bargain before it implements a change that corrects an unlawful practice (citing *Portsmouth*, 49 FLRA at 1530-31)).

¹⁷ *IBEW, Local 1002*, 71 FLRA 930, 931 (2020) (*Local 1002*) (holding that an attempt to relitigate the Authority's conclusions in its earlier decision by raising the same arguments did not demonstrate extraordinary circumstances warranting reconsideration); *U.S. Dep't of HUD*, 71 FLRA 794, 795 (2020) (*HUD*) (then-Member DuBester concurring) (denying reconsideration where the union presented the same arguments that it had previously made to the Authority).

Next, the Union argues that (1) the motor-vehicle regulations did not apply to the dispute,¹⁸ and (2) the Agency's enforcement of the 2011 memo "will result in the violation of state and local law."¹⁹ Again, the Union raised these same arguments, almost verbatim,²⁰ in *Park Police*, and the Authority rejected them as "incompatible with the plain wording of the motor-vehicle regulations."²¹ As stated above, attempts to relitigate the Authority's conclusions in *Park Police* do not establish extraordinary circumstances. Accordingly, the Union's arguments do not demonstrate that reconsideration is warranted.²²

IV. Decision

We deny the Union's motion for reconsideration.

¹⁸ Mot. at 14-16.

¹⁹ *Id.* at 16-17.

²⁰ Compare Opp'n at 6 ("[T]here are no government-wide regulations that 'squarely' apply in this case. There are regulations that discuss personal liability for government employees[,] . . . [h]owever, these regulations are not directly applicable in this case."), and *id.* ("The Agency has consistently failed to establish personal liability of officers through the established policies put in place by local jurisdictions."), with Mot. at 14-16 ("There are no government-wide regulations that 'squarely' apply in this case. There are regulations that discuss personal liability for government employees[,] . . . [h]owever, these regulations are not directly applicable in this case."), and *id.* at 16 ("The Agency has consistently failed to establish personal liability of officers through the legal requirements put in place by local jurisdictions.").

²¹ *Park Police*, 71 FLRA at 1123. The Authority also held that the Union's argument that the 2011 memo was inconsistent with the motor-vehicle regulations constituted "an untimely exception to the award." *Id.* at 1123 n.24 (citing 5 C.F.R. § 2425.2(b); *U.S. Dep't of the Army, U.S. Army Aviation Ctr. of Excellence, Fort Rucker, Ala.*, 71 FLRA 734, 735 n.14 (2020) (then-Member DuBester dissenting)). The Union's motion does not request that the Authority reconsider its decision as to that holding.

²² *Local 1002*, 71 FLRA at 931; *HUD*, 71 FLRA at 795.

Chairman DuBester, concurring:

For the reasons set forth in my dissenting opinion in the underlying decision,¹ I continue to believe the Arbitrator correctly concluded that the Agency violated its duty to bargain. However, because I agree that the Union has failed to establish extraordinary circumstances warranting reconsideration of this decision, I concur in the decision to deny the Union's motion.

¹ See *U.S. Dep't of the Interior, Nat'l Park Serv., U.S. Park Police*, 71 FLRA 1121, 1123 (2020) (Dissenting Opinion of then-Member DuBester).