

73 FLRA No. 92

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3197
(Union)

and

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
PUGET SOUND HEALTH CARE SYSTEM
SEATTLE, WASHINGTON
(Agency)

0-AR-5811
(73 FLRA 425 (2023))

ORDER DENYING
MOTION FOR RECONSIDERATION

March 16, 2023

Before the Authority: Susan Tsui Grundmann,
Chairman, and Colleen Duffy Kiko, Member

I. Statement of the Case

The Union requests reconsideration of the Authority's decision in *AFGE, Local 3197 (Local 3197)*,¹ where the Authority dismissed, as untimely, the Union's exceptions to an arbitration award.² We deny the Union's motion for reconsideration (motion) because it merely attempts to relitigate conclusions reached in *Local 3197* and, thus, does not establish extraordinary circumstances warranting reconsideration.

II. Background and Authority's Decision in *Local 3197*

The facts, summarized here, are set forth in greater detail in *Local 3197*.³

On January 14, 2022, Arbitrator Michael Anthony Marr issued an award denying the Union's petition for attorney fees (the fee award). The

Union did not file exceptions to the fee award. Instead, the Union filed a motion for reconsideration with the Arbitrator. The Arbitrator then issued an order denying the reconsideration motion (reconsideration order). In the reconsideration order, the Arbitrator merely reiterated his findings from the fee award. The Union then filed its exceptions with the Authority on May 1, 2022.

In *Local 3197*, the Authority found that the exceptions were not filed within the required period after the fee award,⁴ and that the reconsideration order did not modify the fee award in a manner that gave rise to the exceptions.⁵ The Authority noted the Union's argument that federal courts treat motions for reconsideration differently than motions for clarification.⁶ However, the Authority denied the Union's request to reverse Authority precedent that holds motions for reconsideration do not affect an arbitration award's finality for exception-filing purposes.⁷ In that regard, the Authority noted that the pivotal determination for assessing an exception's timeliness is what the arbitrator does in response to a post-award motion – not what that motion is labeled.⁸ The Authority concluded that the Union's exceptions were untimely, and dismissed them.⁹

On February 9, 2023, the Union filed this motion.

III. Preliminary Matter: We deny the Union's request that a full complement of Authority Members resolve the motion.

The Union "requests the Authority to have the entire panel of the Authority, the Chairperson and two [M]embers[,] . . . decide th[e] motion . . . , and if a full panel is not yet appointed," that the Authority wait to resolve the motion "until such time that a full panel has been appointed."¹⁰ Although there currently is one vacancy in the Authority's membership, the Authority has a quorum to resolve the Union's motion.¹¹ The Union cites no authority, and provides no basis, for the Authority to wait to resolve the motion until the Authority has a full complement of Members. Accordingly, we deny the Union's request to delay resolving the motion.

¹ 73 FLRA 425 (2023).

² *Id.* at 427.

³ *Id.* at 425-26.

⁴ *Id.* at 427.

⁵ *Id.*

⁶ *Id.* at 426-27.

⁷ *Id.* at 427.

⁸ *Id.*

⁹ *Id.*

¹⁰ Mot. for Hearing by Entire Panel at 1.

¹¹ 5 U.S.C. § 7104(d) ("A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.")

IV. Analysis and Conclusions: We deny the motion.

The Union alleges that, in *Local 3197*, the Authority erred in its conclusions of law and its remedial orders.¹²

Section 2429.17 of the Authority's Regulations permits a party to move for reconsideration of an Authority decision.¹³ A party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.¹⁴ Although the Authority has recognized that errors in its legal conclusions or remedial orders may justify granting reconsideration in certain circumstances,¹⁵ mere disagreement with or attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances.¹⁶

First, the Union argues federal courts treat motions for reconsideration differently than other post-trial motions.¹⁷ The Authority considered and rejected this argument in *Local 3197*.¹⁸ Thus, this argument is a mere attempt to relitigate the conclusions the Authority reached in *Local 3197*.¹⁹

Second, the Union argues the Authority should treat a motion for reconsideration differently than other post-award motions filed with an arbitrator because a motion for reconsideration affords arbitrators an opportunity to correct mistakes.²⁰ This argument also merely attempts to relitigate the Authority's conclusions in *Local 3197*.²¹

Therefore, the Union's arguments do not establish extraordinary circumstances warranting reconsideration of the Authority's decision in *Local 3197*. Accordingly, we deny the motion.

V. Order

We deny the Union's motion for reconsideration.

¹² Mot. at 1, 3.

¹³ 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.")

¹⁴ *Indep. Union of Pension Emps. for Democracy & Just.*, 73 FLRA 280, 280 (2022).

¹⁵ *U.S. DOD, Domestic Dependent Elementary & Secondary Schs.*, 73 FLRA 149, 150 (2022) (Chairman DuBester concurring).

¹⁶ *See Int'l Bhd. of Elec. Workers, Loc. 1002*, 71 FLRA 930, 931 (2020) (*IBEW*).

¹⁷ Mot. at 2.

¹⁸ 73 FLRA at 426-27.

¹⁹ *See U.S. Agency for Glob. Media*, 73 FLRA 162, 163 (2022) (Chairman DuBester dissenting) (*Global Media*) (finding a mere attempt to relitigate the Authority's conclusions insufficient to demonstrate extraordinary circumstances); *IBEW*, 71 FLRA at 931 (same).

²⁰ Mot. at 2-3.

²¹ *Global Media*, 73 FLRA at 163; *IBEW*, 71 FLRA at 931.