

65 FLRA No. 134

NATIONAL TREASURY
EMPLOYEES UNION
CHAPTER 238
(Union)

and

UNITED STATES
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
(Agency)

0-AR-4418
(65 FLRA 369 (2010))

ORDER DENYING MOTION
FOR RECONSIDERATION

March 21, 2011

Before the Authority: Carol Waller Pope, Chairman,
and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on the Union's motion for reconsideration of the Authority's decision to grant the Agency's exception in *United States Department of the Treasury, Internal Revenue Service*, 65 FLRA 369 (2010) (*IRS*). The Agency filed an opposition to the Union's motion for reconsideration.

Section 2429.17 of the Authority's Regulations permits a party who can establish extraordinary circumstances to request reconsideration of an Authority decision. For the reasons set forth below, we conclude that the Union has failed to establish extraordinary circumstances warranting reconsideration. Accordingly, we deny the Union's motion for reconsideration.

II. Decision in *IRS*

In the underlying proceeding in *IRS*, the Arbitrator ordered the Agency to grant the grievant grade and pay retention after she accepted a lower-graded position subsequent to a reorganization. *IRS*, 65 FLRA at 369. The Authority granted the Agency's exception that the Arbitrator's award was

inconsistent with government-wide regulations governing grade and pay retention. *Id.* at 371-72. In reaching this conclusion, the Authority deferred to the Arbitrator's factual findings that after the Agency underwent a reorganization that left the grievant without a permanent position, the grievant, who retained her higher-graded position as a "transition employee," applied for a lower-graded position. *Id.* at 372. The Authority also deferred to the Arbitrator's factual findings that the Agency decided to make her original, higher-graded position permanent before she was offered and she accepted the lower-graded position. *Id.* In these circumstances, the Authority concluded that the required regulatory conditions did not exist allowing the Agency to provide the grievant grade and pay retention in the lower-graded position. *Id.* at 371-72.

III. Positions of the Parties**A. Union's Motion for Reconsideration**

The Union claims that extraordinary circumstances exist warranting reconsideration of the Authority's decision in *IRS* because the Authority erred in its factual findings. Motion for Reconsideration (Motion) at 1. The Union claims that the Authority erred by failing to consider and defer to "the Arbitrator's underlying factual finding that the Agency violated the contract when it failed to place the [grievant] into an appropriate position before it withdrew transition employee benefits from the grievant." *Id.* at 2.

B. Agency's Opposition

The Agency argues that the Authority should deny the Union's motion for reconsideration because: (1) the Union mischaracterizes legal conclusions made by the Arbitrator as factual findings to which the Authority must allegedly defer and, therefore, attempts to relitigate legal conclusions reached by the Authority, Opp'n at 3-5; (2) government-wide regulations govern the outcome of this case, rather than the Arbitrator's legal conclusions regarding the CBA, *id.* at 6; and (3) the Authority did not fail to consider the Arbitrator's factual findings, *id.* at 6-8.

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 under § 2429.17 bears the heavy burden of establishing that

extraordinary circumstances exist to justify this unusual action. *See Int'l Ass'n of Firefighters, Local F-25*, 64 FLRA 943, 943 (2010). The Authority has identified a limited number of situations in which extraordinary circumstances have been found to exist. These include situations where: (1) an intervening court decision or change in the law affected dispositive issues; (2) evidence, information, or issues crucial to the decision had not been presented to the Authority; (3) the Authority erred in its remedial order, process, conclusion of law, or factual finding; and (4) the moving party has not been given an opportunity to address an issue raised sua sponte by the Authority in its decision. *See id.*

Although the Union claims that the Authority erred in its factual findings, the Union does not allege that any of the Authority's factual findings are erroneous. The only Authority factual finding that the Union discusses is that after the grievant applied for the lower-graded position, the Agency decided to make the grievant's original, higher-graded position permanent. Motion at 2. However, the Union does not allege that, or explain why this or any other factual finding made by the Authority is erroneous. Therefore, in this respect, the Union's motion for reconsideration does not establish that the Authority erred in its factual findings.

The Union only claims that the Authority erred by failing to consider and defer to "the Arbitrator's underlying factual finding that the Agency violated the contract when it failed to place the [grievant] into an appropriate position before it withdrew transition employee benefits from the grievant." *Id.* (emphasis omitted). However, the Arbitrator made no such finding. He found only that, at the time the grievant applied for the lower-graded position, she "met all pre-conditions" for grade and pay retention. *See IRS*, 65 FLRA at 370. In addition, to the extent that a contract violation is a factual finding, the Authority made no findings at all as to whether the Agency violated the contract. Therefore, in this respect as well, the Union's motion for reconsideration does not identify any erroneous factual finding that the Authority made or explain why such finding is erroneous.

Accordingly, because the Union has failed to establish that extraordinary circumstances exist warranting reconsideration, we deny the Union's motion for reconsideration.

V. Order

The Union's motion for reconsideration is denied.