

**68 FLRA No. 114**

UNITED STATES  
DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL COMPLEX  
POLLOCK, LOUISIANA  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
COUNCIL OF PRISON LOCALS #33  
LOCAL 1034  
(Union)

0-AR-4942  
(68 FLRA 151 (2014))

ORDER DENYING  
MOTION FOR RECONSIDERATION

June 26, 2015

Before the Authority: Carol Waller Pope, Chairman, and  
Ernest DuBester and Patrick Pizzella, Members

**I. Statement of the Case**

Arbitrator Joann T. Donovan sustained the Union's grievance and awarded the grievant backpay. The Agency filed exceptions to the Arbitrator's award. In *U.S. DOJ, Federal BOP, Federal Correctional Complex, Pollock, Louisiana (BOP)*,<sup>1</sup> the Authority granted the Agency's contrary-to-law exception. The Authority set aside the Arbitrator's award of backpay because the award did not satisfy the requirements of the Back Pay Act (BPA).<sup>2</sup> Specifically, the Authority found, the award "does not include a finding that the Agency committed an unjustified or unwarranted personnel action as required by the BPA."<sup>3</sup> The Union then filed this motion for reconsideration of the Authority's decision in *BOP*.

The question before us is whether the Union establishes extraordinary circumstances to warrant reconsidering *BOP*. Because the Union's motion is based

on a misinterpretation of *BOP*, and on Authority precedent that does not apply, the answer is no.

**II. Background**

The facts are set forth in detail in *BOP* and are only briefly summarized here. The grievant is a correctional officer at a federal prison. An inmate accused the grievant of physical abuse. The Agency initiated an investigation of the alleged abuse, reassigned the grievant to a position with minimal inmate contact, and denied the grievant overtime for approximately eighteen months. As the Arbitrator found, it was finally determined that "there was no offense by [the grievant] on the occasion in question."<sup>4</sup>

The Union filed a grievance challenging the Agency's decision to deny the grievant overtime, which was unresolved and submitted to arbitration. The Arbitrator sustained the grievance. As relevant here, the Arbitrator addressed the BPA's requirement that to receive backpay, an aggrieved employee must be affected by an unjustified or unwarranted personnel action. The Arbitrator found in this regard that "where there in fact *was* no offense [by an employee], personnel actions that cause loss of pay and benefits are, in my opinion, unjustified and/or unwarranted."<sup>5</sup> As a remedy, the Arbitrator ordered the Agency to pay the grievant backpay, for the overtime that he would have otherwise received during the approximately eighteen-month period he served in his reassigned position.

The Agency filed exceptions to the Arbitrator's award arguing, as relevant here, that it was contrary to law because the Arbitrator awarded backpay but failed to make the requisite findings under the BPA. The Authority agreed. Referring to the BPA's requirements, the Authority found that "the award does not include a finding that the Agency committed an unjustified or unwarranted personnel action as required by the BPA" because "the Arbitrator did not find that the Agency violated any applicable law, rule, regulation, or provision of the parties' collective-bargaining agreement."<sup>6</sup> Accordingly, the Authority concluded that "the Arbitrator did not have any basis under the BPA to award the grievant backpay,"<sup>7</sup> and set aside the award.

The Union then filed this motion for reconsideration of the Authority's decision.

<sup>1</sup> 68 FLRA 151, 152 (2014) (Member DuBester dissenting).

<sup>2</sup> 5 U.S.C. § 5596.

<sup>3</sup> *BOP*, 68 FLRA at 152.

<sup>4</sup> *Id.* at 151 (quoting Award at 5).

<sup>5</sup> *Id.* (quoting Award at 5).

<sup>6</sup> *Id.* at 152.

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

**III. Analysis and Conclusion: The Union does not establish extraordinary circumstances that warrant reconsidering *BOP*.**

Section 2429.17 of the Authority's Regulations permits a party to request reconsideration of an Authority decision if it can establish extraordinary circumstances for doing so.<sup>8</sup> A party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.<sup>9</sup> The Authority has found that errors in its conclusions of law or factual findings constitute extraordinary circumstances that may justify reconsideration.<sup>10</sup>

The Union's request for reconsideration is based on a misinterpretation of the Authority's decision. The Union claims that the Authority erred when it determined that the Arbitrator "implicit[ly found] that there was no violation of law or the parties' agreement by the Agency."<sup>11</sup> However, the Authority did not make such a determination. Instead, the Authority simply determined that "the Arbitrator *did not find* that the Agency violated" law or the parties' agreement and that, therefore, "the award does not include a finding that the Agency committed an unjustified or unwarranted personnel action as required by the BPA."<sup>12</sup> Accordingly, this claim does not provide a basis for reconsidering the Authority's decision in *BOP*.

The Union's request for reconsideration also relies on inapplicable precedent. The Union argues that we should reconsider *BOP* because it is inconsistent with the Authority's *U.S. Department of the Army, U.S. Army Aviation & Missile Research Division, Redstone Arsenal, Alabama (Redstone Arsenal)* decision.<sup>13</sup> However, *Redstone Arsenal* is not applicable. In *Redstone Arsenal*, the Authority remanded an arbitrator's award "for further findings regarding the basis of the backpay award."<sup>14</sup> The Authority took this action because, in the circumstances of that case, it was "unable to determine" whether the award satisfied one of the BPA's requirements for an award of backpay.<sup>15</sup> The requirement at issue in *Redstone Arsenal* was that an

unjustified or unwarranted personnel action must result in the withdrawal or reduction of a grievant's pay, allowances, or differentials for backpay to be awarded.<sup>16</sup> The Authority was "unable to determine" whether the arbitrator in *Redstone Arsenal* made such a finding.<sup>17</sup> Accordingly, the Authority remanded the award for further findings and clarification.<sup>18</sup>

Unlike *Redstone Arsenal*, the Authority in this case was not "unable to determine" whether the Arbitrator failed to satisfy one of the BPA's requirements for an award of backpay. In contrast to *Redstone Arsenal*, the Authority concluded that "the award did not include a finding that the Agency committed an unjustified or unwarranted personnel action."<sup>19</sup> Because the award was not ambiguous in this regard, the Authority did not remand the award for further findings or clarification. *BOP* is therefore not inconsistent with *Redstone Arsenal*.

The Union's related argument, that the award should be remanded to clarify whether the Arbitrator did, or did not, find that the Agency violated the parties' agreement, also does not provide a reason for reconsidering *BOP*.<sup>20</sup> As discussed above, because the Authority found the award unambiguous, there was no need for a remand for clarification.

Accordingly, the Union has not established extraordinary circumstances that merit reconsidering *BOP*.<sup>21</sup>

**IV. Decision**

We deny the Union's motion for reconsideration.

<sup>8</sup> 5 C.F.R. § 2429.17; see also, e.g., *U.S. DHS, U.S. CBP*, 66 FLRA 1042, 1043 (2012) (*CBP*).

<sup>9</sup> *CBP*, 66 FLRA at 1043; *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 935, 936 (2000); *U.S. Dep't of the Air Force, 375th Combat Support Grp., Scott Air Force Base, Ill.*, 50 FLRA 84, 85 (1995) (*Scott Air Force Base*).

<sup>10</sup> E.g., *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Atwater, Cal.*, 65 FLRA 256, 257 (2010); *Scott Air Force Base*, 50 FLRA at 86-87.

<sup>11</sup> Motion at 2.

<sup>12</sup> *BOP*, 68 FLRA at 152 (emphasis added).

<sup>13</sup> Motion at 3 (citing *Redstone Arsenal*, 68 FLRA 123 (2014)).

<sup>14</sup> *Redstone Arsenal*, 68 FLRA at 124.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *BOP*, 68 FLRA at 152.

<sup>20</sup> Motion at 2.

<sup>21</sup> While Member DuBester reaffirms his dissent in *BOP*, he agrees that the Union has not established extraordinary circumstances that merit granting reconsideration, and therefore joins in the decision denying the Union's motion.