68 FLRA No. 15

SPORT AIR TRAFFIC CONTROLLERS ORGANIZATION
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
EDWARDS AIR FORCE BASE, CALIFORNIA
(Agency)

0-AR-5011
(68 FLRA 9 (2014))

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ORDER DENYING
MOTION FOR RECONSIDERATION

December 2, 2014

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

I. Statement of the Case

Arbitrator Philip Tamoush found that the Agency did not violate the parties' collective-bargaining agreement or the Federal Service Labor-Management Relations Statute (the Statute)[1] when it began furloughing employees in the Space Positioning Optical Radar Tracking Military Radar Unit (SPORT) before completing impact-and-implementation bargaining over the furlough plan. The Union filed exceptions to the award, and in *SPORT Air Traffic Controllers Organization* (*SPORT I*),[2] the Authority denied the Union's exceptions.

The question before us is whether the Union has established extraordinary circumstances that warrant reconsideration of *SPORT I*. In its motion for reconsideration, the Union argues that the Authority's decision in *SPORT I* is inconsistent with the Authority's decisions in *U.S. DHS, U.S. CBP* (*CBP*)[3] and *U.S. DOJ, INS* (*INS*).[4] Because the Authority considered and rejected the Union's argument that the award was contrary to those decisions in *SPORT I*, the Union's argument provides no basis for granting reconsideration. We therefore deny the motion.

II. Background and Arbitrator's Award

The facts are set forth in detail in *SPORT I* and are only briefly summarized here. In order to comply with the Budget Control Act of 2011,[5] the Agency was required to furlough its employees. The parties bargained over the impact and implementation of the Agency's furlough plan; however, they were unable to reach agreement. The Union requested the assistance of the Federal Service Impasses Panel (Panel), but the Panel was not able to resolve the impasse by July 8, 2013, the date on which the Agency wanted to begin the furloughs. The Agency began furloughing the SPORT employees the week of July 8, contending that doing so was necessary for the functioning of the Agency.

The Union filed a grievance, which was unresolved, and the parties submitted the matter to arbitration. The Arbitrator, crediting the testimony of the Agency's commander and other management officials, determined that the Agency had established that implementing the furlough was necessary for the functioning of the Agency, and that it therefore did not violate the parties' agreement or federal law by implementing the furlough plan before completing the bargaining process.

The Union filed exceptions to the Arbitrator's award. In its exceptions, it contended, as relevant here, that the award was contrary to law because "the Arbitrator did not factually distinguish this case from the Authority's decisions in [*CBP*] and [*INS*]."[6] The Authority rejected this argument, explaining that "in both of those cases, the factfinder found the agency's necessary-functioning defense to be unsupported,"[7] whereas in *SPORT I*, "the Agency provided evidence to support its necessary-functioning claim, the Arbitrator credited the Agency's evidence, and the Union [did] not provide[] a basis for finding that the Arbitrator erred in doing so."[8]

The Union then filed this motion for reconsideration of the Authority's decision, and the Agency filed a response to the Union's motion.

III. Preliminary Matter

The Authority's Regulations do not provide for responses to motions for reconsideration. And, while a party may request leave to file additional documents under § 2429.26 of the Authority's Regulations,[9] the Agency did

[1] 5 U.S.C. §§ 7101-7135.
[2] 68 FLRA 9 (2014).
[3] 62 FLRA 263 (2007).
[4] 55 FLRA 892 (1999).
[5] Pub. L. 112-25 (Aug. 2, 2011).
[6] *SPORT I*, 68 FLRA at 11; *see also* Exceptions at 6.
[7] *SPORT I*, 68 FLRA at 11 (citing *CBP*, 62 FLRA at 266; *INS*, 55 FLRA at 904).
[8] *Id.*
[9] 5 C.F.R. § 2429.26.

not request leave to do so here. Accordingly, we have not considered the Agency's response.[10]

IV. Analysis and Conclusion: The Union has not established extraordinary circumstances warranting reconsideration of *SPORT I.*

Section 2429.17 of the Authority's Regulations permits a party to request reconsideration of an Authority decision if it can establish extraordinary circumstances.[11] A party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.[12] The Authority has found that errors in its conclusions of law or factual findings constitute extraordinary circumstances that may justify reconsideration.[13] But attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances.[14]

The Union argues that extraordinary circumstances warrant reconsideration because the Authority's decision in *SPORT I* is contrary to Authority precedent, namely *CBP* and *INS*. As explained above, the Authority expressly considered and rejected the argument that the award in *SPORT I* was contrary to *CBP* and *INS*.[15] The Union's argument that this holding is itself contrary to *CBP* and *INS* is little more than a bare attempt to relitigate the Authority's denial of its contrary-to-law exception, which is insufficient to establish extraordinary circumstances. Accordingly, the Union has not established that extraordinary circumstances warrant reconsideration of *SPORT I*.

V. Order

We deny the Union's motion for reconsideration.

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[10] *Cf. U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 61 FLRA 352, 353 (2005) (granting permission to file response to motion for reconsideration).
[11] *E.g., U.S. DHS, U.S. CBP*, 66 FLRA 1042, 1043 (2012).
[12] *Id.*; *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*).
[13] *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.
[14] *E.g., Ass'n of Civilian Technicians, P.R. Army Chapter*, 62 FLRA 144, 145 (2007) (citing *Library of Cong.*, 60 FLRA 939, 941 (2005)) ("The Authority has uniformly held that attempts to relitigate conclusions reached by the Authority are insufficient to satisfy the extraordinary circumstances requirement.").
[15] *SPORT I*, 68 FLRA at 11.