

70 FLRA No. 35

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2238
(Union)

and

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
JOHN J. PERSHING VA MEDICAL CENTER
(Agency)

0-AR-5215
(70 FLRA 165 (2017))

ORDER DENYING
MOTION FOR RECONSIDERATION

March 13, 2017

Before the Authority: Patrick Pizzella, Acting Chairman,
and Ernest DuBester, Member

I. Statement of the Case

Arbitrator Richard Stanton found that certain Agency employees (the grievants) were exposed to hazardous working conditions. Accordingly, the Arbitrator directed the Agency to pay the grievants an 8% pay differential beginning thirty days before the Union filed the grievance and continuing as long as the grievants performed the hazardous duties. The Union filed exceptions to the award, and, in *AFGE, Local 2338 (AFGE)*,¹ the Authority dismissed the Union's sole argument that the Arbitrator should have awarded each grievant a minimum of six years of backpay. The Union has now filed a motion for reconsideration of *AFGE* under § 2429.17 of the Authority's Regulations.²

The question before us is whether the Union has established extraordinary circumstances that warrant reconsideration of *AFGE*. Because the Union's submission of its post-hearing brief fails to establish extraordinary circumstances warranting reconsideration, we deny the motion.

II. Background

In its grievance, the Union alleged that the grievants were exposed to infectious diseases while performing their duties and, therefore, were entitled to a pay differential. The grievance went to arbitration. The Arbitrator found that the grievants were exposed to hazardous working conditions within the meaning of 5 U.S.C. § 5343 and 5 C.F.R. § 532.511. Consequently, the Arbitrator directed the Agency to pay the grievants an 8% pay differential beginning thirty days before the Union filed the grievance and continuing as long as the grievants performed the hazardous duties.

In *AFGE*, the Authority dismissed the Union's argument that the Arbitrator should have awarded each grievant a minimum of six years of backpay under the Back Pay Act (the Act).³ Specifically, the Authority found that the Union should have known to raise that argument to the Arbitrator but the record did not reflect that the Union did so.⁴

Subsequently, the Union filed this motion for reconsideration of the Authority's decision in *AFGE*.

III. Analysis and Conclusion: The Union has failed to establish extraordinary circumstances warranting reconsideration of *AFGE*.

The Union asks the Authority to reconsider its decision in *AFGE*.⁵ Section 2429.17 of the Authority's Regulations permits a party who can establish extraordinary circumstances to request reconsideration of an Authority decision.⁶ The Authority has repeatedly recognized that a party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.⁷ As relevant here, the Authority has found that errors in its conclusions of law or factual findings may justify granting reconsideration.⁸ However, when evaluating motions for reconsideration, the Authority has declined to consider documents that the moving party could have submitted in the original proceeding, but did not.⁹ In

³ 5 U.S.C. § 5596.

⁴ *AFGE*, 70 FLRA at 165.

⁵ Motion at 2.

⁶ 5 C.F.R. § 2429.17.

⁷ *E.g.*, *U.S. Dep't of Commerce, Nat'l Oceanic & Atmospheric Admin., Nat'l Weather Serv.*, 69 FLRA 256, 259 (2016) (citing *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 935, 936 (2000)).

⁸ *E.g.*, *U.S. DHS, U.S. CBP*, 66 FLRA 634, 636 (2012) (*DHS*) (citing *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Atwater, Cal.*, 65 FLRA 256, 257 (2010)).

⁹ *See id.* (citing *Sport Air Traffic Controllers Org.*, 64 FLRA 1142, 1143 (2010) (*SATCO*); *Pension Benefit Guar. Corp.*, 60 FLRA 747, 748 (2005) (*Pension*)).

¹ 70 FLRA 165 (2017).

² 5 C.F.R. § 2429.17.

addition, the Authority has held that attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances.¹⁰

Relying on its post-hearing brief to the Arbitrator, the Union contends that the Authority erred in dismissing the Union's exceptions. Specifically, the Union contends that its post-hearing brief demonstrates that it *did* argue at arbitration that the grievants were entitled to a minimum of six years of backpay under the Act.¹¹

The Union's contentions are not persuasive. When evaluating motions for reconsideration, the Authority has declined to consider documents that the moving party could have, but did not, submit in the original proceeding.¹² The Union could have submitted its post-hearing brief with its exceptions to demonstrate that it raised this argument at arbitration, but the Union did not do so.¹³ Thus, the Union's submission of its post-hearing brief only with its motion for reconsideration, but not with its original exceptions, fails to establish extraordinary circumstances warranting reconsideration, and we deny the motion.

IV. Order

We deny the Union's motion for reconsideration.

¹⁰ *E.g., id.* (citing *SATCO*, 64 FLRA at 1143; *U.S. DHS, Food & Drug Admin.*, 60 FLRA 789, 791 (2005)).

¹¹ Motion at 2.

¹² *DHS*, 66 FLRA at 636; *id.* at 637 (denying motion for reconsideration where the moving party could have submitted its closing brief with its exceptions to demonstrate that it presented certain arguments to the arbitrator, but the moving party did not do so); *see also SATCO*, 64 FLRA at 1143; *Pension*, 60 FLRA at 748.

¹³ *See DHS*, 66 FLRA at 637 (citing 5 C.F.R. § 2425.4(a)(2)).