

71 FLRA No. 121

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2338
(Union)

and

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
JOHN J. PERSHING VAMC
(Agency)

0-AR-5410
(71 FLRA 371 (2019))

March 26, 2020

**ORDER DENYING
MOTION FOR RECONSIDERATION**

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members

I. Statement of the Case

The Union requests that we reconsider our decision in *AFGE, Local 2338 (Local 2338)*.¹ In that case, we found that the Union did not establish that Arbitrator Michael S. Jordan's award failed to draw its essence from the parties' master collective-bargaining agreement (master agreement) and the mid-term local ground rules (ground rules). We also found that the award was neither ambiguous nor impossible to implement.

In a motion for reconsideration (motion), the Union now argues that the Arbitrator erred in reaching his decision and the Authority erred in its factual findings.² Because the Union challenges a factual finding that the Authority did not make and does not otherwise establish extraordinary circumstances warranting reconsideration of *Local 2338*, we deny the motion.

II. Arbitrator's Award and Authority's Decision in Local 2338

The facts, summarized here, are set forth in greater detail in *Local 2338*.³ In his award, the Arbitrator denied the Union's grievance that alleged the Agency refused to bargain, in violation of the master agreement and ground rules, over the amount of official time for preparation and research for bargaining team members. The Arbitrator found that an order issued by the Federal Service Impasses Panel (the Panel) resolved most of the parties' official time issues and, in conjunction with the master agreement and ground rules, he determined that the parties were required to engage in "honest negotiations."⁴ Finding that the Union did not demonstrate that it had fulfilled various obligations imposed by the Panel's order before the Agency was obligated to negotiate, the Arbitrator denied the grievance. The Union filed exceptions to the award on grounds that the award failed to draw its essence from the parties' agreements and was ambiguous.

In *Local 2338*, the Authority denied the Union's essence exception because the Union did not specify which parts of the parties' agreements the Arbitrator interpreted in a way that is irrational, unfounded, implausible, or in manifest disregard of the agreements.⁵ And the Authority found that the award was neither ambiguous nor impossible to implement because the Arbitrator unequivocally denied the grievance and directed the parties to comply with their obligations under the Panel's order.⁶

On October 25, 2019, the Union filed a motion for reconsideration of *Local 2338*.

III. Analysis and Conclusion: We deny the Union's motion for reconsideration.

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary circumstances to move for reconsideration of an Authority decision.⁷ The Authority has repeatedly held that a party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.⁸ Errors in the Authority's remedial order, process, conclusions of law,

³ 71 FLRA at 371-72.

⁴ *Id.* at 371 (quoting Award at 40).

⁵ *Id.* at 372.

⁶ *Id.*

⁷ 5 C.F.R. § 2429.17.

⁸ *SPORT Air Traffic Controllers Org.*, 71 FLRA 25, 26 (2019) (citations omitted) (*Sport*).

¹ 71 FLRA 371 (2019).

² 5 C.F.R. § 2429.17.

or factual findings may justify granting reconsideration.⁹ However, attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances.¹⁰ Additionally, the Authority has refused to grant reconsideration of issues that could have been previously raised, but were not, and are raised for the first time on a motion for reconsideration.¹¹

Here, the Union challenges what it characterizes as a “false” statement by the Authority in *Local 2338*.¹² The Union asserts that the parties did not bargain, were not at impasse, and “*did not* reopen bargaining on any part of our [g]round [r]ules.”¹³ Therefore, it contends the Authority’s factual recitation in *Local 2338* is inaccurate.¹⁴ But neither the Arbitrator nor the Authority found that the parties were at impasse over the ground rules. Rather, the Arbitrator found that the ground rules required bargaining over preparation and research time, and the parties reached impasse after bargaining over those issues.¹⁵ The Union did not challenge that finding as a nonfact, and therefore the Authority did not review it in *Local 2338*.¹⁶ Because the Union’s argument challenges an alleged finding that the Authority did not actually make, it does not establish that the Authority erred in its factual findings.¹⁷

For the first time on reconsideration, the Union asserts that the award is contrary to law. The Union argues that the Arbitrator was barred from finding that the Union was required to track its use of official time.¹⁸ In support, the Union asserts that the Agency violated §§ 7114 and 7116 of the Federal Service Labor-Management Relations Statute¹⁹ by not providing the Union with previously signed memorandums of understanding (MOUs) concerning the tracking of official

time and failing to bargain in good faith.²⁰ Further, the Union argues that the Panel “did not have the authority” to issue the order on which the Arbitrator relied.²¹ The Union did not previously raise these arguments in its exceptions even though it had the opportunity to do so.²² Consequently, the Union cannot raise these arguments now.²³

The remainder of the Union’s motion reiterates arguments already considered and rejected by the Authority. Primarily, the Union argues that the award does not draw its essence from the master agreement because the Arbitrator ignored the agreement.²⁴ Specifically, the Union argues that the Arbitrator “ignored[]” Article 17, Sections 1 and 4 of the master agreement.²⁵ The Union did not raise these provisions in its exceptions even though it had the opportunity to do so. As the Authority noted in *Local 2338*, the Union did not specify the provisions in the master agreement or ground rules with which the award allegedly conflicted.²⁶ Consequently, the Union’s attempt to relitigate its essence argument does not demonstrate extraordinary circumstances warranting reconsideration of *Local 2338*.

For the foregoing reasons, we find that the Union does not demonstrate that extraordinary circumstances exist to warrant granting reconsideration of *Local 2338*. Accordingly, we deny the Union’s motion.

IV. Decision

We deny the Union’s motion.

⁹ *SPORT Air Traffic Controllers Org.*, 70 FLRA 345, 345 (2017) (citing *Int’l Ass’n of Firefighters, Local F-25*, 64 FLRA 943, 943 (2010)).

¹⁰ *Id.*

¹¹ *NTEU*, 66 FLRA 1004, 1006 (2012) (*NTEU*).

¹² Motion at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Local 2338*, 71 FLRA at 372 & n.6 (quoting Award at 37 (Arbitrator found that “the [U]nion initiated the matter involving official time when they filed a request for assistance” with the Panel)); *see also* Award at 6 (finding that the ground rules “were in full effect prior to the impasse between the parties related to ‘allocated’ official time”).

¹⁶ *Local 2338*, 71 FLRA at 371.

¹⁷ *See, e.g., U.S. DOJ, Fed. BOP, Med. Facility for Fed. Prisons*, 52 FLRA 694, 698 (1996) (arguments that Authority made a finding that it did not make do not establish extraordinary circumstances warranting reconsideration); *Norfolk Naval Shipyard*, 10 FLRA 685, 686 (1982) (same).

¹⁸ Motion at 3.

¹⁹ 5 U.S.C. §§ 7114, 7116.

²⁰ Motion at 1-3. To the extent the Union argues that the previous MOUs are new evidence that was not available at the time of the arbitration hearing, this argument does not establish extraordinary circumstances that warrant reconsideration of *Local 2338*. *See NFFE, Local 2030*, 54 FLRA 615, 618 (1998) (citing *NAGE, Local R4-45*, 53 FLRA 517, 519-20 (1997); *Veterans Admin., Reg’l Office*, 5 FLRA 463, 470-71 (1981)) (arbitration awards are not subject to review on the basis of evidence that comes into existence after the arbitration; therefore, such evidence may not be considered to refute the record made before the arbitrator).

²¹ Motion at 1.

²² *NTEU*, 66 FLRA at 1006.

²³ *Sport*, 71 FLRA at 26; *NTEU*, 66 FLRA at 1006.

²⁴ Motion at 1. The Union also reiterates that the award is “ambiguous,” but it does not identify any error in the Authority’s decision that warrants reconsideration. *Id.* at 1-2.

²⁵ *Id.* at 1.

²⁶ 71 FLRA at 372.