65 FLRA No. 218

UNITED STATES
DEPARTMENT OF THE AIR FORCE
AIR FORCE MATERIEL COMMAND
EGLIN AIR FORCE BASE, FLORIDA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1897
(Union)

0-AR-4716
(65 FLRA 908 (2011))

_____

ORDER DENYING
MOTION FOR RECONSIDERATION

July 29, 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 (motion) of the Authority's decision in *United States Department of the Air Force, Air Force Materiel Command, Eglin Air Force Base, Florida*, 65 FLRA 908 (2011) (*Eglin AFB*). The Agency did not file an opposition to the Union's motion.

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary circumstances to request reconsideration of an Authority final decision or order. For the reasons that follow, we conclude that the Union has failed to establish extraordinary circumstances warranting reconsideration. Accordingly, we deny the Union's motion.

II. Decision in *Eglin AFB*

In the underlying proceedings in *Eglin AFB*, the Union filed a grievance alleging that the Agency violated Article 36.03 of the parties' agreement Article 36.03),[1] and 5 C.F.R. § 551.431 (§ 551.431),[2] by failing to pay security personnel for time spent on standby. *See Eglin AFB*, 65 FLRA at 908. Citing Article 36.03, the Arbitrator sustained the grievance and awarded backpay, liquidated damages, and attorney fees, pursuant to the Fair Labor Standards Act and § 551.431. *See id.* at 909. The Agency filed exceptions to the award. *Id.* at 908.

The Authority determined that the Arbitrator's award was contrary to § 551.431 because she found that security personnel were on standby without finding that they were restricted to a designated post of duty. *See id.* at 910. The Authority found that because Article 36.03, as interpreted by the Arbitrator, was inconsistent with § 551.431, Article 36.03 could not provide a basis for the Arbitrator's award of standby pay. *See id.*

III. Union's Motion

The Union asserts that, in *Eglin AFB*, the Authority erred in its factual findings because it did not "defer[] to the Arbitrator's findings of fact[.]" Motion at 5. In addition, the Union argues that the Authority erred in its conclusions of law, asserting that the Arbitrator "met the requirements to prove a standby claim under [§] 551.431[,]" *id.* at 6, because she found that security personnel were "'restricted by official order[,]'" *id.* at 5 n.1 (quoting § 551.431). In this regard, the Union asserts that "to the extent the Arbitrator applied the incorrect standard[,] the Authority should have remanded this case for the Arbitrator to apply the correct standard." *Id.* at 6

1. Article 36.03, entitled "STANDBY TIME[,]" states:

> Designated employees may be restricted to the official duty station or their living quarters, required to remain in a state of readiness to perform work, and have their activities substantially limited such that they cannot use the time effectively for their own purposes. In these situations, all time spent on standby is considered hours of work.

Eglin AFB, 65 FLRA at 908 n.1 (quoting Award at 65).

2. Section 551.431 states, in pertinent part:

> (a)(1) An employee is on duty, and time spent on standby duty is hours of work if, for work-related reasons, the employee is restricted by official order to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee's activities so substantial that the employee cannot use the time effectively for his or her own purposes.

(citing *NTEU*, 64 FLRA 395 (2010); *U.S. Dep't of Health & Human Servs., SSA, Kan. City, Mo. Dist.*, 39 FLRA 22 (1991) (*SSA*)). Finally, the Union contends that the Authority "raised [an issue] sua sponte" because the Authority determined that the Arbitrator "relied on . . . Article 36.03 to support her finding of standby." *Id.* In this connection, the Union argues that the Agency "never mentioned in its exception that the reliance on Article 36.03 was improper[,]" and did not "state in its exception that Article 36.03 was in contradiction with the regulation." *Id.* As such, the Union asserts that the Authority "should have remanded the case to the Arbitrator to clarify her award based on the Authority's determination that Article 36.03 was inconsistent with [§] 551.431[.]" *Id.* (citing *IRS, Indianapolis Dist.*, 30 FLRA 850 (1987) (*IRS*)).

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. *E.g., Nat'l Ass'n of Indep. Labor, Local 15*, 65 FLRA 666, 667 (2011) (*NAIL*). A party seeking reconsideration under § 2429.17 bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action. *Id.* The Authority has identified a limited number of situations in which extraordinary circumstances have been found to exist. *See, e.g., U.S. Dep't of Justice, Fed. Bureau of Prisons, U.S. Penitentiary, Atwater, Cal.*, 65 FLRA 256, 257 (2010) (*BOP*). 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. *Id.* A party does not establish such extraordinary circumstances by repeating the arguments that the Authority rejected in the underlying dispute. *See NAIL*, 65 FLRA at 667. In this connection, the Authority has repeatedly held that attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances. *E.g., Sport Air Traffic Controllers Org.*, 64 FLRA 1142, 1143 (2010).

The Union asserts that the Authority erred in its factual findings without citing a factual finding, erroneous or otherwise, that the Authority made. *See* Motion at 5-6. In addition, although the Union claims that the Authority failed to "defer[] to the Arbitrator's findings of fact," *id.* at 5, the Union does not cite a finding of fact to which the Authority did not defer, *see id.* at 5-6. Accordingly, this argument does not establish a basis for reconsideration.

Next, the Union asserts that the Authority erred in its conclusions of law because the Arbitrator's award was consistent with § 551.431. *See id.* at 6. This is the same argument that the Authority rejected in *Eglin AFB*. *See* 65 FLRA at 909-10. Thus, this argument does not establish a basis for reconsideration. *See NAIL*, 65 FLRA at 667. Additionally, neither *NTEU*, 64 FLRA at 397, nor *SSA*, 39 FLRA at 25-26, holds that the Authority must remand a matter to an arbitrator if he or she applied an incorrect standard of law. Therefore, the Union does not demonstrate that the Authority erred in *Eglin AFB* by not remanding the matter to the Arbitrator in this regard.

Finally, the Union asserts that the Authority "raised [an issue] sua sponte" when it found that the Arbitrator "relied on . . . Article 36.03 to support her finding of standby." Motion at 6. However, as stated in *Eglin AFB*, the Union's grievance alleged that the Agency violated Article 36.03, and the Arbitrator relied on Article 36.03 in rendering her award. *See* 65 FLRA at 908-09. Thus, the Authority did not raise Article 36.03 sua sponte. In addition, we note that the Union could have addressed the enforceability of Article 36.03 in its opposition to the Agency's exceptions. *See id.* at 909. Accordingly, the Union was not deprived of an opportunity to address this issue. *See BOP*, 65 FLRA at 257. Therefore, the Union does not establish a basis for reconsideration. As to the Union's argument in this connection regarding remand, the Union's premise, that the Authority considered Article 36.03 sua sponte, *see* Motion at 6, is incorrect. Further, nothing in *IRS*, 30 FLRA 850, indicates that the Authority should have remanded this matter to the Arbitrator. Accordingly, the Union provides no basis for finding that the Authority erred in *Eglin AFB* by not remanding the matter to the Arbitrator in this regard.

For the foregoing reasons, the Union has not demonstrated extraordinary circumstances warranting reconsideration of *Eglin AFB*. Accordingly, we deny the Union's motion.

V. Order

The Union's motion is denied.