

65 FLRA No. 213

NATIONAL TREASURY
EMPLOYEES UNION
CHAPTER 145
(Union)

and

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION
LAREDO, TEXAS
(Agency)

0-AR-4492
(65 FLRA 898 (2011))

ORDER DENYING
MOTION FOR RECONSIDERATION

July 14, 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 Agency's motion for reconsideration (motion) of the Authority's decision in *National Treasury Employees Union, Chapter 145*, 65 FLRA 898 (2011) (*NTEU*). The Union did not file an opposition to the Agency'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 Agency has failed to establish extraordinary circumstances warranting reconsideration. Accordingly, we deny the Agency's motion.

II. Decision in *NTEU*

In the arbitration award at issue in *NTEU*, the Arbitrator held that § 7121(d) of the Federal Service Labor-Management Relations Statute (§ 7121(d)) barred a grievance concerning the propriety of the grievant's suspension because the grievant previously had filed a formal Equal Employment Opportunity

(EEO) complaint regarding the suspension.¹ See 65 FLRA 898, 898. On the Union's exceptions to the award, the Authority found that there was no dispute that the grievant's formal EEO complaint had been untimely, and held that the award was contrary to law because § 7121(d) does not bar a grievance where the previously filed, formal EEO complaint is untimely. See *id.* at 899-900. In so holding, the Authority: (1) considered the plain wording of § 7121(d) and Authority and Equal Employment Opportunity Commission (EEOC) precedent interpreting that wording; (2) considered the plain wording of 29 C.F.R. § 1614.301 (§ 1614.301) and EEOC precedent interpreting that wording;² and (3) expressly rejected the Agency's claim that § 7121(d) requires only that a grievant timely initiate an EEO "action[.]" rather than timely initiating a formal EEO complaint, in order for the grievance to be barred. *Id.* The Authority set aside the award and remanded the matter to the parties for submission, absent settlement, to an arbitrator of their choice. *Id.* at 900.

III. Agency's Motion

The Agency asserts that the Authority erred in its conclusion of law in *NTEU* and that, consequently, extraordinary circumstances warrant reconsideration of that decision. Motion at 1. According to the Agency, § 7121(d) and pertinent precedent "only require timely initiation of an action[.]" *id.* at 1, not "a timely formal EEO complaint[.]" *id.* at 4, and the grievant "timely initiated an EEO action" before he filed his untimely, formal EEO complaint, *id.* The

1. Section 7121(d) provides:

An aggrieved employee affected by a prohibited personnel practice under [§] 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first.

2. Section 1614.301(a) provides, in pertinent part, that "[a]n election to proceed under this part is indicated only by the filing of a written complaint; use of the pre-complaint process . . . does not constitute an election for purposes of this section."

Agency asserts that § 1614.301 does not include the word “timely[,]” which indicates that the formal EEO complaint need not be filed timely in order to bar a grievance. *Id.* at 5. The Agency also asserts that allowing *NTEU* to “stand[] . . . would be contrary to the legislative purpose [behind § 7121(d), as] cited in” Authority precedent discussed in *NTEU*. *Id.*

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). The Authority repeatedly has recognized that 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, including, as relevant here, a situation where the Authority erred in its conclusion of law. *Id.* However, where a party’s motion for reconsideration presents the same arguments that were rejected by the Authority in its decision, the Authority has denied the motion. *See id.* In this connection, the Authority repeatedly has 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).

In its motion, the Agency relies on arguments that the Authority rejected in *NTEU* and, thus, attempts to relitigate conclusions that the Authority reached in *NTEU*. Consistent with the foregoing, those arguments do not demonstrate extraordinary circumstances warranting reconsideration of *NTEU*. Accordingly, we deny the motion.

V. Order

The Agency’s motion is denied.