United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1122 **September Term, 2015**

FILED ON: JANUARY 29, 2016

NATIONAL TREASURY EMPLOYEES UNION,
PETITIONER

v.

FEDERAL LABOR RELATIONS AUTHORITY,
RESPONDENT

On Petition for Review of an Order of
the Federal Labor Relations Authority

Before: BROWN, KAVANAUGH and PILLARD, *Circuit Judges*.

JUDGMENT

This case was considered on the record and on the briefs and oral arguments of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED and **ADJUDGED** that the petition be dismissed for lack of jurisdiction.

When reviewing decisions of the Federal Labor Relations Authority ("Authority"), courts may not consider an "objection that has not been urged before the Authority . . . unless the failure or neglect to urge the objection is excused because of extraordinary circumstances." 5 U.S.C. § 7123(c); *see Nat'l Treasury Emps. Union v. FLRA*, 754 F.3d 1031, 1040 (D.C. Cir. 2014) ("We have enforced section 7123(c) strictly."). To raise an argument on appeal, a party must have "fairly brought the argument to the Authority's attention." *Nat'l Treasury Emps. Union*, 754 F.3d at 1040; *see also* 5 C.F.R. § 2424.25(c)(1) (requiring parties in Authority proceedings to "[s]tate the arguments and authorities supporting [their] opposition to any agency argument" and "include specific citation to any law, rule, regulation, . . . or other authority on which [they] rely").

In this case, the National Treasury Employees Union ("union") challenges the Authority's determination that 5 C.F.R. § 300.201(c) precludes consideration of a union proposal submitted during collective bargaining. The Authority addressed that regulation based on a brief submitted by the government. The union's response regarding the proposal—spanning sixteen pages—

failed to mention that regulation, much less to advance arguments concerning its scope and context. On appeal, the union claims it raised the issue with the blanket statement that no "law creates an absolute bar" to its proposal. J.A. 87. We disagree. Parties need not use "magic words" to preserve arguments. *U.S. Dep't of Commerce v. FLRA*, 672 F.3d 1095, 1102 (D.C. Cir. 2012). But "fairly" raising an argument requires something more than a universal, conclusory declaration. To hold otherwise would entail considering on appeal arguments the Authority had no opportunity to consider. *See Nat'l Treasury Emps. Union*, 754 F.3d at 1040. Mindful of "the initial adjudicatory role Congress gave to the Authority," *id.*, we dismiss the petition for lack of jurisdiction.

Pursuant to D.C. CIRCUIT RULE 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. *See* FED R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk