

71 FLRA No. 8

SPORT AIR TRAFFIC CONTROLLERS
ORGANIZATION
(Respondent/Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
EDWARDS AIR FORCE BASE,
CALIFORNIA
(Charging Party/Agency)

SF-CO-16-0481
(70 FLRA 554 (2018))

ORDER DENYING
MOTION FOR RECONSIDERATION

February 8, 2019

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

Decision by Member Abbott for the Authority

I. Statement of the Case

In this decision, we reiterate that a party that repeats previously rejected arguments does not establish extraordinary circumstances warranting reconsideration of an earlier decision.

When we originally addressed the Union's exceptions, we found that the Union violated the Federal Service Labor-Management Relations Statute (the Statute) when it failed to accept the Agency's authority to designate its negotiating team. The Union now files a motion for reconsideration of the Authority's decision in *SPORT Air Traffic Controllers Organization (SPORT)*¹ under § 2429.17 of the Authority's Regulations.²

Because the Union's arguments address the same arguments addressed by the Authority in *SPORT* and do not otherwise establish extraordinary circumstances, we deny the Union's motion.

¹ 70 FLRA 554, 556-58 (2018) (Member DuBester concurring).
² 5 C.F.R. § 2429.17.

II. Background

Previously, Federal Labor Relations Authority (FLRA) Administrative Law Judge Charles R. Center (the Judge) found that the Union violated § 7116(b)(5) of the Statute³ by refusing to recognize the Agency's duly authorized representatives during negotiations over a new collective-bargaining agreement. The Union filed exceptions to the Judge's decision.

In *SPORT*, the Authority upheld the Judge's findings that the Union's refusal to recognize the Agency's bargaining representatives was an unfair labor practice.⁴ As relevant here, the Authority rejected the Union's arguments and explained that the preponderance of the record evidence supported the Judge's conclusion that the Union failed to recognize the Agency's bargaining representatives.⁵ The Authority also found that the Union's arguments involving Air Force Instruction (AFI) 36-701 were unsupported as they failed to explain or defend the Union's actions that "violat[ed]. . . the Statute."⁶

³ 5 U.S.C. § 7116(b)(5).

⁴ 70 FLRA at 556-58.

⁵ *Id.* at 556 (The Union failed to recognize the Agency's representatives by: "(1) refusing to recognize Agency representatives it had previously negotiated and signed agreements with; (2) declining [Federal Mediation and Conciliation Service] assistance; (3) rejecting the Agency's March 2016 designation letters and assurances from the installation commander; and (4) stating that negotiations would be 'an exercise in futility.'" (citing Tr. at 59, 113-14, 142-43 (Union had previously negotiated with Agency representatives without issue); *id.* at 156 (Union vice president declines mediation stating that it was premature); *id.* at 157 (Union rejects March 2016 designation letters and communication from the installation commander); GC's Ex. 15 (Union vice president states negotiations would be "an exercise in futility"))).

⁶ *SPORT*, at 558 (citing 5 C.F.R. § 2423.40(a)(2) (requiring exceptions to include "[s]upporting arguments, which shall set forth . . . all relevant facts with specific citations to the record"); *U.S. Dep't of the Interior, U.S. Geological Survey, Great Lakes Sci. Ctr., Ann Arbor, Mich.*, 68 FLRA 734, 740 (2015)).

On May 21, 2018, the Union filed a motion for reconsideration of *SPORT*.⁷

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

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 Attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances.⁹ In addition, the Authority has refused to grant reconsideration of issues that could have been previously raised, but are raised for the first time on a motion for reconsideration.¹⁰

For the first time, on reconsideration, the Union argues that it cannot comply with the Authority's order because the Agency "refuses to recognize the Union's right to bargain and refuses to bargain with the Union."¹¹ The Union did not previously raise this argument in its exceptions, despite the fact that the Authority's order is virtually identical to that recommended by the Judge.

Consequently, the Union cannot raise this argument for the first time in its motion for reconsideration.¹²

Additionally, the Union argues that it never refused to recognize the Agency's bargaining representatives and that AFI 36-701 requires the installation commander sign a designation letter;¹³ these are the same arguments that the Union raised,¹⁴ and the Authority rejected,¹⁵ in *SPORT*. The Union's attempts to relitigate rejected arguments fail to demonstrate that the Authority erred.¹⁶

Therefore, we find that the Union does not demonstrate that extraordinary circumstances exist to support granting reconsideration of *SPORT*, and we deny the Union's motion.

IV. Order

We deny the Union's motion for reconsideration.

⁷ On May 31, 2018, the Union filed an untimely amendment to its motion. As it is untimely, we do not consider it. See 5 C.F.R. §§ 2429.17, 2429.21, 2429.22; see also *U.S. Dep't of VA, Denver Reg'l Office, Denver, Colo.*, 70 FLRA 851, 851 (2018) (Member DuBester concurring); *U.S. DOD, Def. Contract Mgmt. Agency*, 70 FLRA 370, 371 (2018). Further, it concerns matters (a 2007 email exchange between the Union's representative at hearing and an Agency representative) that could have been, but were not, presented in the proceedings before the Judge. 5 C.F.R. § 2429.5 ("The Authority will not consider any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy that could have been, but were not, presented in the proceedings before the . . . Administrative Law Judge."); *Mich. Army Nat'l Guard*, 69 FLRA 393, 394 (2016), enforced, *FLRA v. Mich. Army Nat'l Guard*, 878 F.3d 171 (6th Cir. 2017).

⁸ *SPORT Air Traffic Controllars Org.*, 70 FLRA 345, 345 (2017) (*SATCO*) (citing *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 935, 936 (2000)); *U.S. DHS, U.S. CBP, Swanton, Vt.*, 66 FLRA 47, 48 (2011) (*Swanton*); *U.S. DHS, Border & Transp. Sec. Directorate, Bureau of CBP, Wash., D.C.*, 63 FLRA 600, 601 (2009) (*CBP*); *U.S. Dep't of the Interior, Wash., D.C. & Geological Survey, Reston, Va.*, 56 FLRA 279, 279 (2000).

⁹ *SATCO*, 70 FLRA at 345 (citing *Bremerton Metal Trades Council*, 64 FLRA 543, 545 (2010) (*Bremerton*) (Member DuBester concurring)).

¹⁰ *Swanton*, 66 FLRA at 48; *CBP*, 63 FLRA at 601 (citing *U.S. EPA*, 61 FLRA 806, 807 (2006); *U.S. Dep't of HHS, Office of the Asst. Sec'y for Mgmt. & Budget, Office of Grant & Contract Fin. Mgmt. Div. of Audit Resolution*, 51 FLRA 982, 984 (1996)).

¹¹ Mot. for Recons. (Mot.) at 2.

¹² *CBP*, 63 FLRA at 601 (Authority denied motion, finding that party raised arguments for the first time on reconsideration, when notice wording was virtually identical to that recommended by the administrative law judge).

¹³ Mot. at 2-3.

¹⁴ See Exceptions at 3 ("The Judge erred in concluding that the Union [f]ailed and [r]efused to [r]ecognize [the Agency's representatives] as [d]uly [a]uthorized [r]epresentatives of the Agency."), 4 ("the [U]nion never refused to deal with, meet with[,] or exchange and negotiate proposals with either [Agency representative]") ("all the [A]gency had to do was to list the [A]gency negotiators in writing and have the [installation commander] sign the letter, just like the previous commanders have done in all previous contract negotiations"), 5 ("During contract negotiations, the installation commander would send [the Union] a letter designating managements' entire negotiating team. Furthermore[,] from 2007 until the last letter designating [the Agency's representative] in 2010, all letters were signed by the installation commander." (citing AFI 36-701)).

¹⁵ *SPORT*, 70 FLRA at 556-58.

¹⁶ *SATCO*, 70 FLRA at 346 (citing *Bremerton*, 64 FLRA at 545).

Member DuBester, concurring:

I concur in the decision to deny the Union's Motion for Reconsideration.