

71 FLRA No. 66

DEPARTMENT OF DEFENSE
DOMESTIC DEPENDENT ELEMENTARY
AND SECONDARY SCHOOLS
FORT BUCHANAN, PUERTO RICO
(Respondent)

and

ANTILLES CONSOLIDATED
EDUCATION ASSOCIATION
(Charging Party)

BN-CA-17-0170
(71 FLRA 127 (2019))

ORDER DENYING
MOTION FOR RECONSIDERATION

September 30, 2019

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

I. Statement of the Case

In *DOD, Domestic Dependent Elementary & Secondary Schools, Fort Buchanan, Puerto Rico (Fort Buchanan)*,¹ an administrative law judge (the Judge) recommended finding that the Agency violated § 7116(a)(1), (5), and (6) of the Federal Service Labor-Management Relations Statute (the Statute) when it refused to implement a collective-bargaining agreement that the Federal Service Impasses Panel (the Panel) imposed on the parties.² On exceptions to the Judge's recommendation, the Authority adopted the Judge's decision in part.³ However, the Authority held that the Agency was not legally obligated to comply with certain portions of the imposed agreement, including provisions on work hours and compensation.⁴ Therefore, consistent with the parties' remedial requests, the Authority remanded those matters to the parties for further bargaining.⁵

¹ 71 FLRA 127 (2019) (Member DuBester dissenting).

² *Id.* at 129-31.

³ *Id.* at 127.

⁴ *Id.* at 133-34 (discussing Article 19, Section 1 (work hours) and Article 26 and Appendix F (compensation)).

⁵ *Id.*

The Agency has now filed a motion for reconsideration of *Fort Buchanan* (motion) under § 2429.17 of the Authority's Regulations.⁶ The motion argues that the Authority erred by not addressing additional arguments from the Agency's exceptions. Because addressing those additional arguments would not have affected the Authority's order to remand the issues of work hours and employee compensation for further bargaining, we deny the motion.

II. Background

The Authority more fully detailed the circumstances of this dispute in *Fort Buchanan*,⁷ so this order discusses only those aspects of the case that are pertinent to the motion.

Although the Panel imposed an entire agreement on the parties, only three portions of that agreement are relevant here: Article 19, Section 1, which concerned work hours; and Article 26 and Appendix F, both of which concerned employee compensation.⁸

The Authority found that the Agency had contested the negotiability of Article 19, Section 1 before the Panel.⁹ And because the Authority had not previously determined the negotiability of a "substantively identical" contract provision, the Authority found that the Panel lacked the authority to impose Article 19, Section 1 on the parties.¹⁰ Further, the Authority addressed the negotiability of that section and found that it interfered with management's right to determine when employees performed certain work, under § 7106(a)(2)(B) of the Statute.¹¹ Because the Union did not contend that an exception to management's rights applied, the Authority found Article 19, Section 1 nonnegotiable.¹² Consequently, the Authority granted the parties' requests to order further bargaining for the purpose of reaching agreement on work-hours provisions that would replace the nonnegotiable, Panel-imposed wording.¹³

As for Article 26 and Appendix F, both parties requested – although for different reasons – that the Authority order them to bargain further over employee

⁶ 5 C.F.R. § 2429.17.

⁷ 71 FLRA at 127-31.

⁸ *Id.* at 132-34.

⁹ *Id.* at 129.

¹⁰ *Id.* at 133 (quoting *Commander, Carswell Air Force Base, Tex.*, 31 FLRA 620, 624 (1988)).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

compensation.¹⁴ The Authority granted the parties' requests.¹⁵

The Authority issued *Fort Buchanan* on May 22, 2019. On May 23, 2019, the Union filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit.¹⁶ And the Agency filed a motion for reconsideration of *Fort Buchanan* on June 6, 2019.

III. Analysis and Conclusion: We deny the 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.¹⁷ The Authority has repeatedly recognized that a party seeking reconsideration of an Authority decision bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.¹⁸ In that regard, the Authority has held that errors in its remedial order, process, conclusions of law, or factual findings may justify granting reconsideration.¹⁹

The Agency does not dispute that the Authority remanded Article 19, Section 1; Article 26; and Appendix F to the parties for further bargaining, consistent with their requests.²⁰ However, the Agency argues that the Authority should have addressed the Agency's additional arguments for finding those provisions unenforceable and remanding them.²¹ In particular, the Agency argues that Article 19, Section 1 not only interfered with management's ability to determine when employees perform work, but also where they work and whether their work qualifies for overtime.²² Further, the Agency contends that the Authority should have addressed the substance of the Agency's arguments that Article 26 and Appendix F were

unlawful.²³ And the Agency asserts that addressing these arguments is particularly important because of the Union's filing of a petition for review.²⁴

Contrary to the Agency's arguments, the Authority need not resolve questions that are inconsequential to the outcome of an unfair-labor-practice dispute.²⁵ Here, even if we were to address the Agency's additional arguments that the Panel-imposed compensation provisions are unlawful, our underlying remedial order would not change. If we were to deny the Agency's additional arguments, then the parties would still have to bargain further because the Union conditioned its acceptance of the Panel-imposed compensation provisions on the enforcement of work-hours provisions that the Authority found unenforceable in *Fort Buchanan*.²⁶ Or, if we were to grant the Agency's additional arguments, then the parties would still have to bargain further because the Panel-imposed compensation provisions would be unlawful. Thus, resolving the Agency's additional arguments would yield the same result as our underlying order: the parties must bargain further over work hours and compensation matters. Therefore, the Agency has failed to establish that extraordinary circumstances exist to warrant reconsideration of *Fort Buchanan*.²⁷

²³ *Id.* at 2.

²⁴ *Id.* at 3.

²⁵ *E.g.*, *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Elkton, Ohio*, 61 FLRA 515, 517-18 (2006) (in reviewing a judge's factual findings, "[e]rrors of fact that do not affect the outcome of the case are disregarded"); *U.S. Dep't of the Navy, Naval Surface Warfare Ctr., Carderock Div., Acoustic Research Detachment, Bayview, Idaho*, 59 FLRA 763, 764 & n.5 (2004) (under two-part legal test, where dispute did not satisfy one part of the test, the Authority did "not address whether" the second part was satisfied); *U.S. DOJ, INS, Wash., D.C.*, 52 FLRA 256, 260 (1996) (declining to address an agreement's potential expiration where a "determin[ation] . . . would not affect the decision in this case"). The Agency cites the Authority's decision in *NTEU*, 64 FLRA 395 (2010), in support of its motion, Mot. at 2, but that decision is distinguishable. The Authority granted a motion for reconsideration in *NTEU* because the Authority had previously found a proposal within the duty to bargain without addressing certain arguments that the proposal was outside the duty to bargain. 64 FLRA at 396. Thus, the unresolved arguments in *NTEU* could have changed the outcome of that case, *id.*, unlike the situation here.

²⁶ 71 FLRA at 133.

²⁷ *See IRS*, 56 FLRA at 937 (contention that Authority failed to address an argument in a party's exceptions did not establish extraordinary circumstances, where resolving that argument did not change the disposition of the exceptions). In the event that a court orders further consideration of any issues, we will address those issues at such time as the court may direct.

¹⁴ In the event that the Authority found that Article 19, Section 1 was unenforceable, the Union had asked for an order to bargain further because the Union had conditioned its acceptance of the compensation provisions of the agreement on the enforcement of Article 19. *Id.* The Agency had asked for an order to bargain further because the Agency asserted that the Panel-imposed compensation provisions were unlawful. *Id.*

¹⁵ *Id.* at 133-34.

¹⁶ *Antilles Consol. Educ. Ass'n v. FLRA*, No. 19-1111 (D.C. Cir. filed May 23, 2019).

¹⁷ 5 C.F.R. § 2429.17.

¹⁸ *E.g.*, *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 935, 936 (2000) (*IRS*).

¹⁹ *E.g.*, *Int'l Ass'n of Firefighters, Local F-25*, 64 FLRA 943, 943 (2010).

²⁰ *Fort Buchanan*, 71 FLRA at 133-34 (discussion), 135-36 (bargaining order).

²¹ Mot. at 1-3.

²² *Id.* at 1.

IV. Order

Member DuBester, concurring:

We deny the Agency's motion for reconsideration.

I agree with the decision to deny the Agency's motion for reconsideration.