

63 FLRA No. 153

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES
LOCAL 491
(Union)

and

UNITED STATES DEPARTMENT
OF VETERANS AFFAIRS
MEDICAL CENTER
BATH, NEW YORK
(Agency)

0-AR-4375

(63 FLRA 307 (2009))

ORDER DENYING MOTION
FOR RECONSIDERATION

July 10, 2009

Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

I. Statement of the Case

This matter is before the Authority on the Union's motion for reconsideration of the Authority's decision in *American Federation of Government Employees, Local 491*, 63 FLRA 307 (2009) (*AFGE, Local 491*). The Agency filed an opposition to the Union's motion.

The Authority's Regulations permit a party that can establish extraordinary circumstances to request reconsideration of an Authority decision. 5 C.F.R. § 2429.17. For the reasons below, we conclude that the Union has failed to establish extraordinary circumstances warranting reconsideration. Accordingly, we deny the Union's motion for reconsideration.

II. Decision in *AFGE, Local 491*

The Union filed exceptions to an award of Arbitrator Thomas M. Phelan, which found that the Agency properly treated an earlier grievance over the termination of the grievant as abandoned. Award at 27-28. In its exceptions, the Union argued that award was deficient because it failed to draw its essence from the parties' collective bargaining agreement, the Arbitrator exceeded his authority, and the award was contrary to law. Exceptions at 18-24, 26.

The Authority subsequently ordered the Union to show cause why its exceptions should not be dismissed for lack of jurisdiction because the award related to the removal of an Agency employee. Order to Show Cause at 2. In its response, the Union contended that it was only contesting the Agency's "refusal . . . to proceed with the procedural processing of a grievance[.]" Response at 2.

The Authority found that it was without jurisdiction to review the exceptions because the exceptions "pertain to issues relating to the grievant's removal[.]" *AFGE, Local 491*, 63 FLRA at 308.

III. Union's Motion for Reconsideration

The Union argues that the Authority abused its discretion in determining that it lacked jurisdiction to review the exceptions. In this regard, the Union argues that the Authority improperly adopted the facts set forth in the Arbitrator's award and did not apply appropriate legal analysis. Motion for Reconsideration at 5, 6.

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. The Authority has repeatedly recognized that a party seeking reconsideration under § 2429.17 bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action. *See, e.g., United States Dep't of the Treasury, Internal Revenue Serv., Wash., D.C.*, 56 FLRA 935 (2000). The Authority has identified a limited number of situations in which extraordinary circumstances have been found to exist. These include situations: (1) where an intervening court decision or change in the law affected dispositive issues; (2) where evidence, information, or issues crucial to the decision had not been presented to the Authority; (3) where the Authority erred in its remedial order, process, conclusion of law, or factual finding; and (4) where the moving party has not been given an opportunity to address an issue raised *sua sponte* by the Authority in the decision. *See United States Dep't of the Air Force, 375th Combat Support Group, Scott Air Force Base, Ill.*, 50 FLRA 84, 85-87 (1995).

The Union's arguments do not establish extraordinary circumstances under this standard. In particular, the Union fails to establish that any of the situations, set forth above, which the Authority has identified as constituting extraordinary circumstances are present. Accordingly, the Union's arguments do not provide a basis for reconsideration.

V. Order

The Union's request for reconsideration is denied.