68 FLRA No. 72

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1164
(Union)

and

SOCIAL SECURITY ADMINISTRATION
WORCESTER FIELD OFFICE
WORCESTER, MASSACHUSETTS
(Agency)

0-NG-3179
(67 FLRA 316 (2014))

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ORDER DENYING
MOTION FOR RECONSIDERATION

March 30, 2015

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

This matter is before the Authority on the Union's motion for reconsideration of the Authority's decision in *AFGE, Local 1164* (*AFGE*).[1] In *AFGE*, the Union filed a negotiability appeal (the petition) concerning the negotiability of a proposal intended to protect employees from "adverse actions and negative consequences" of the Agency's decision to make changes to employees' interviewing assignments.[2] The employees conduct interviews with individuals seeking Social Security and Supplemental Security Income benefits, and process documents that the individuals submit.

The Authority found that the proposal was not negotiable as an appropriate arrangement under § 7106(b)(3) of the Federal Service Labor-Management Relations Statute (the Statute)[3] because the proposal excessively interfered with management's rights. The Authority dismissed the petition for review. The Union then filed this motion for reconsideration.

The question before us is whether the Authority failed to consider one of the Union's arguments regarding the proposal's burdens on management's rights and, if it did, whether the Authority should grant the Union's motion for reconsideration. Because the Authority in *AFGE* rejected the argument to which the Union refers, and because a party's attempt to relitigate a conclusion reached in an Authority decision does not provide a basis for reconsidering that decision, the answer is no.

II. Background

In *AFGE*, the Authority determined that the proposal – "[n]o employee shall be held responsible for any . . . workload problems caused by [m]anagement[']s interviewing assignment changes"[4] – is not negotiable as an appropriate arrangement under § 7106(b)(3). In reaching its determination, the Authority applied the framework set forth in *NAGE, Local R14-87* (*KANG*).[5]

The Authority assumed that the proposal was an "arrangement" under § 7106(b)(3) but, under the *KANG* test, found that the proposal was not "appropriate" because it excessively interfered with management's rights. The proposal affected management's rights to direct and discipline employees under § 7106(a)(2)(A) and to assign work under § 7106(a)(2)(B) of the Statute.[6]

The Authority found that the proposal's burdens on the Agency's exercise of these rights outweighed the proposal's benefits to employees.[7] The Authority found the proposal's burdens "significant" because: (1) "the proposal would completely preclude management from disciplining and holding employees accountable" for workload problems that are "associated with the Agency's changes"; and (2) the proposal contains no exception that takes into account the seriousness of those workload problems.[8]

Weighing the proposal's benefits and burdens, the Authority rejected the Union's claim that "the proposal's burdens on management are limited because the proposal allows management 'discretion in performance appraisals, discipline, work assignment, etc.' for performance deficiencies that are *not* related to the Agency's changes."[9] The Union argued, in the portion of its response to the Agency's statement of position (response) that the Authority cited, that the proposal applied only to workload problems "caused by" or "attributable" to the Agency's changes.[10] Conversely,

[1] 67 FLRA 316 (2014) (Member Pizzella concurring).
[2] *Id.* at 316 (quoting Pet. at 5) (internal quotation marks omitted).
[3] 5 U.S.C. § 7106(b)(3).
[4] *AFGE*, 67 FLRA at 316 (quoting Pet. at 4)
[5] 21 FLRA 24 (1986).
[6] *AFGE*, 67 FLRA at 319.
[7] *Id*.
[8] *Id.* at 318.
[9] *Id*. (quoting Resp. at 47).
[10] Resp. at 47.

the Union asserted, the proposal "would not provide protection . . . for workload problems caused by employees' own acts, omissions, or errors not attributable to [the Agency's] changes."[11] But the Authority held that the discretion the proposal afforded the Agency regarding "unrelated" workload problems did not outweigh the complete "immunity afforded employees" concerning the workload problems to which the proposal applied.[12] Accordingly, the Authority held that the Union's proposal is not an appropriate arrangement under § 7106(b)(3).[13]

Subsequently, the Union filed a motion for reconsideration of the Authority's decision.

III. Analysis and Conclusions

The Union argues that the Authority erred because it did not consider one of the Union's arguments regarding the proposal's burdens on management's rights and, if the Authority had considered the argument, it would have ruled differently.[14] Specifically, the Union contends that the Authority did not consider the Union's argument that the proposal's burdens on management's rights are limited because the "proposal would provide immunity only for workload problems caused by management's changes . . . and not for those workload problems caused or exacerbated by an employee's own fault."[15]

Section 2429.17 of the Authority's Regulations permits a party to request reconsideration of an Authority decision.[16] But a party seeking reconsideration "bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action."[17]

The Union's reconsideration request is premised on the claim that the Authority failed to consider an argument concerning the proposal's burdens on management's rights. But the Authority considered and rejected the argument to which the Union refers when it concluded that the proposal was not an appropriate arrangement even though it "allows management 'discretion in performance appraisals, discipline, work assignment, etc.' for performance deficiencies that are *not* related to the Agency's changes."[18] The Union's discussion in the portion of its response that the Authority cited in its decision, and in related portions of the response, makes this clear. In its response, the Union addressed the impact on management's rights of whether a workload problem was "caused by" or "attributable to" the Agency's changes, or whether it was "caused by" an employee and not "attributable to" the Agency's changes.[19] Thus, the premise of the Union's reconsideration request is wrong. Rather, the Union is attempting to relitigate conclusions that the Authority reached in *AFGE*. But an attempt to relitigate a conclusion reached in an Authority decision does not provide a basis for granting reconsideration of that decision.[20] Therefore, the Union's arguments do not provide a basis for granting the Union's motion.

IV. Decision

We deny the Union's motion for reconsideration.

[11] *Id.* at 42.
[12] *AFGE*, 67 FLRA at 318.
[13] *Id.*
[14] Mot. for Recons. at 2, 5.
[15] *Id.* at 5 (emphasis omitted).
[16] 5 C.F.R. § 2429.17.
[17] *NAIL, Local 15*, 65 FLRA 666, 667 (2011) (*NAIL*).
[18] *AFGE*, 67 FLRA at 318 (quoting Resp. at 47).
[19] Resp. at 47.
[20] *See U.S. Dep't of the Treasury, IRS*, 67 FLRA 58, 60 (2012); *NAIL*, 65 FLRA at 667; *SPORT Air Traffic Controllers Org.*, 64 FLRA 1142, 1143 (2010).