74 FLRA No. 13

SPORT AIR TRAFFIC
CONTROLLERS ORGANIZATION
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
412 TEST WING
EDWARDS AIR FORCE BASE, CALIFORNIA
(Agency)

0-AR-5929
(73 FLRA 830 (2024))

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ORDER DENYING
MOTION FOR RECONSIDERATION
AND CLARIFICATION

October 17, 2024

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Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko and Anne Wagner, Members

I. Statement of the Case

The Union requests reconsideration of the Authority's decision, and clarification of the concurring opinion, in *SPORT Air Traffic Controllers Organization* (*SPORT*).[1] For the reasons discussed below, we deny the Union's motion for reconsideration and clarification (motion).

II. Background and Authority's Decision in *SPORT*

The facts, summarized here, are set forth in greater detail in *SPORT*.[2]

After the parties began bargaining over ground rules for negotiating a successor agreement to their 1994 collective-bargaining agreement (the 1994 CBA), the Agency filed an unfair-labor-practice (ULP) charge, alleging the Union unlawfully refused to recognize the Agency's designated bargaining representatives, and notified the Union that it planned to unilaterally implement its last, best proposal as the parties' new CBA. The Union filed a ULP charge, alleging the Agency's notification was a failure to bargain in good faith. An Administrative Law Judge found the Union acted unlawfully as the Agency had alleged, and the Agency implemented its last, best proposal – a document that the Authority referred to in *SPORT*, and which we mostly refer to here, as "the 2017 CBA."[3] The Union amended its ULP charge to allege the unilateral implementation of the 2017 CBA was unlawful, but later withdrew that charge.

The Union continued to challenge the 2017 CBA's validity by filing numerous ULP charges, grievances, and appeals, which were all denied or withdrawn. In 2020, the Agency notified the Union that it planned to impose a new agreement to replace the 2017 CBA. The Union filed a new ULP charge in Case No. SF-CA-21-0002, alleging the 1994 CBA was still in effect and the Agency was refusing to comply with it. To resolve that charge, a Federal Labor Relations Authority (FLRA) Regional Director (the RD) and the Agency reached a settlement agreement, to which the Union was not a party. Among other things, the Agency agreed to restore the conditions of employment established by the 2017 CBA and arbitration awards interpreting that CBA. The Union appealed the settlement agreement to the FLRA's Office of the General Counsel, arguing the 1994 CBA was still in effect. The FLRA's Acting General Counsel (Acting GC) denied that appeal.

The Agency implemented the settlement agreement, and the Union filed a grievance that went to arbitration. The Arbitrator determined that, in SF-CA-21-0002, the RD found "the 2017 [CBA] ended the 1994 CBA"; the Acting GC "reaffirmed the 2017 [CBA]"; and, "[h]ence, the 2017 CBA is the valid agreement" and "the 1994 CBA is not valid."[4] The Arbitrator found the grievance was not arbitrable.

The Union filed exceptions to the award. The Union claimed the Agency's 2023 reimplementation of the 2017 CBA "ha[d] not been heard in any forum."[5] The Authority rejected that claim, finding "[i]t was the subject of the ULP charge, the settlement agreement, and the subsequent appeal to the Acting GC in SF-CA-21-0002."[6] The Authority determined that, "[a]s a result of that legal process, the conditions of employment established by the 2017 CBA (and arbitration awards applying that CBA) [were] in effect."[7]

In addition, the Union – citing *NTEU v. FLRA* (*NTEU*)[8] – claimed the 1994 CBA, not the 2017 CBA, was in effect due to a continuance clause in the 1994 CBA. The Authority found *NTEU* "stands for the proposition that, as

[1] 73 FLRA 830 (2024) (Chairman Grundmann concurring).
[2] *Id.* at 830-33.
[3] *Id.* at 830.
[4] *Id.* at 831 (internal quotation marks omitted).
[5] *Id.* at 832 (internal quotation marks omitted).
[6] *Id.*
[7] *Id.*
[8] 45 F.4th 121 (D.C. Cir. 2022).

a *general* matter, a party's invocation of a CBA's continuance clause results in the CBA remaining in effect until the parties negotiate a successor CBA."[9] "However," the Authority continued, "*NTEU* did not hold that a continuance clause extends an existing CBA indefinitely, regardless of subsequent events."[10] The Authority found that "subsequent events – including litigation – [had] demonstrated the 1994 CBA [was] no longer in effect."[11] Therefore, the Authority found the Union's reliance on *NTEU* misplaced.

The Authority, with Chairman Grundmann concurring, denied the Union's exceptions. On March 28, 2024, the Union filed the motion.

III. Analysis and Conclusion: We deny the motion.

The Union argues the Authority should reconsider *SPORT* for two reasons.[12] Section 2429.17 of the Authority's Regulations permits a party to move for reconsideration of an Authority decision.[13] A party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.[14] Errors in the Authority's remedial order, process, conclusions of law, or factual findings may justify granting reconsideration.[15] However, mere disagreement with, or attempts to relitigate, the Authority's conclusions are insufficient to establish extraordinary circumstances.[16] Further, arguments or alleged Authority errors that have no effect on the outcome of the underlying Authority decision do not provide a basis for granting reconsideration.[17]

First, the Union argues the Authority misapplied *NTEU*.[18] The Union argues that, under *NTEU*, a CBA with a continuance clause extends indefinitely until the parties negotiate and implement a successor agreement.[19] The Union contends the decision in *NTEU* requires the Authority to find the 1994 CBA is still in effect because the parties never negotiated a successor agreement.[20]

The Union's arguments merely attempt to relitigate the conclusions the Authority reached in *SPORT* regarding *NTEU* and ignore the Union's litigation history over the same issue.[21] As such, they do not establish extraordinary circumstances warranting reconsideration of *SPORT*.[22]

Second, the Union challenges the Authority's characterization of the Agency's 2017 last, best proposal as a "CBA."[23] According to the Union, the 2017 CBA is not actually a CBA within the meaning of § 7103(a)(8) of the Federal Service Labor-Management Relations Statute (the Statute)[24] because: the Agency unilaterally wrote and implemented it; it is unsigned; and even its own terms require execution – an event that never occurred – before it can take effect.[25]

The only question before the Authority in *SPORT* was whether the Union demonstrated the Arbitrator erred in finding the Union's grievance non-arbitrable. Although the Authority referred to the last, best offer implemented by the Agency in 2017 as the "2017 CBA,"[26] it neither ruled on whether this document constitutes a CBA within the meaning of § 7103(a)(8) of the Statute nor based its decision upon such a determination. Rather, the Authority found "the Agency's 2023 reimposition of" that document had been resolved through prior litigation and that, "[a]s a result of that legal process, the conditions of employment established by the 2017 CBA (and arbitration awards applying that CBA) [were] in effect."[27] The Union has not

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[9] *SPORT*, 73 FLRA at 832.
[10] *Id.*
[11] *Id.*
[12] Mot. at 2-3.
[13] 5 C.F.R. § 2429.17 ("After a final decision or order of the Authority has been issued, a party to the proceeding before the Authority who can establish in its moving papers extraordinary circumstances for so doing, may move for reconsideration of such final decision or order.").
[14] *U.S. Dep't of the Army, U.S. Army Garrison, Picatinny Arsenal, N.J.*, 73 FLRA 827, 828 (2024).
[15] *Id.*
[16] *U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 73 FLRA 628, 629 (2023).
[17] *See, e.g.*, *AFGE, Loc. 1945*, 67 FLRA 436, 436 (2014) (*Loc. 1945*) (holding that, "where adopting an argument in a motion for reconsideration would have no effect on the outcome of the underlying Authority decision, that argument fails to establish extraordinary circumstances"); *U.S. Dep't of the Treasury, IRS*, 67 FLRA 58, 59 (2012) (*IRS*) (denying reconsideration where alleged Authority error would have had no effect on the outcome of the decision); *U.S. Dep't of the Interior, U.S. Park Police*, 64 FLRA 894, 895 (2010) (*Park Police*) (same).
[18] Mot. at 2.
[19] *Id.*
[20] *Id.*
[21] *See SPORT*, 73 FLRA at 832 (finding that *NTEU*'s holding concerning continuance clauses did not require the indefinite extension of the 1994 CBA where "subsequent events – including litigation – [had] demonstrated the 1994 CBA was no longer in effect").
[22] *See AFGE, Loc. 3197*, 73 FLRA 477, 478 (2023) (finding previously "considered and rejected" arguments to be "mere attempt to relitigate," not extraordinary circumstance warranting reconsideration).
[23] Mot. at 2.
[24] 5 U.S.C. § 7103(a)(8) (defining a CBA as "an agreement entered into as a result of collective bargaining pursuant to the provisions of" the Statute).
[25] Mot. at 2-3.
[26] *SPORT*, 73 FLRA at 830.
[27] *Id.* at 832.

demonstrated how this reference affected the Authority's decision in *SPORT*. As such, the argument provides no basis for granting reconsideration.[28]

Finally, the Union requests clarification of a statement included in *SPORT's* concurring opinion.[29] Even assuming that the Union may file a motion for clarification of Authority decisions,[30] separate opinions are not part of an Authority majority decision.[31] The Union provides no argument that the *Authority's decision* in *SPORT* is unclear. Therefore, we deny the Union's request for clarification.

IV. Order

We deny the Union's motion for reconsideration and clarification.

[28] *See, e.g.*, *Loc. 1945*, 67 FLRA at 437; *IRS*, 67 FLRA at 59; *Park Police*, 64 FLRA at 895.

[29] Mot. at 3 ("In her concurring opinion, Chairman Grundmann stated that she would be open to revisiting the decisions in two identified cases with this language: 'in a future appropriate case.' Please define what would constitute a future appropriate case!").

[30] *See, e.g.*, *U.S. DHS, U.S. CBP*, 68 FLRA 109, 110 (2014) (finding § 2425.9 of the Authority's Regulations, which filing party cited, "does not permit a party to request that the Authority clarify its decisions"); *AFGE, Nat'l Council of SSA Field Operations Locs., AFL-CIO*, 28 FLRA 736, 737 (1987) (Authority found clarification was unwarranted "[w]ithout passing upon whether the Authority's Rules and Regulations provide for the filing of" requests for clarification). *But see U.S. Dep't of the Army, Army Transp. Ctr., Fort Eustis, Va.*, 40 FLRA 84, 86 (1991) (considering request for clarification but denying it on the merits because the underlying decision "require[d] no clarification").

[31] *Cf. U.S. Dep't of the Air Force, Warner Robins Air Logistics Ctr.*, 72 FLRA 319, 321 n.22 (2021) (Chairman DuBester dissenting on other grounds) (stating that "personal footnotes are like separate opinions and not part of the majority decision").