69 FLRA No. 6

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 12
(Union)

and

UNITED STATES
DEPARTMENT OF LABOR
(Agency)

0-AR-5093
(68 FLRA 754 (2015))

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ORDER DENYING
MOTION FOR RECONSIDERATION

October 21, 2015

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

I. Statement of the Case

Arbitrator Andrée Y. McKissick dismissed as non-arbitrable the Union's grievance, finding that the substance of the Union's grievance involved a classification determination, which is a matter that is excluded from the parties' negotiated grievance procedure by § 7121(c)(5) of the Federal Service Labor-Management Relations Statute (the Statute)[1] and a provision of the parties' collective-bargaining agreement (parties' agreement) that mirrors § 7121(c)(5). The Union filed exceptions to the award, and in *AFGE, Local 12* (*Local 12*),[2] the Authority dismissed the exceptions, in part, and remanded the award, in part.

The question before us is whether the Union has established extraordinary circumstances that warrant reconsideration of *Local 12*. Because the parties' agreement, or a relevant excerpt of the parties' agreement, was never clearly presented to the Authority when the Union filed its exceptions, the Union's argument does not provide a basis for granting reconsideration, and therefore, the answer is no.

II. Background and Arbitrator's Award

The facts are fully set forth in *Local 12* and are only briefly summarized here. This dispute arose out of a grievance filed by the Union, asserting a violation of Article 20, Sections 4 and 5, of the parties' agreement. However, pursuant to the parties' agreement, the Arbitrator was first asked to render a decision regarding arbitrability before hearing the merits of the grievance.

At arbitration, the Union argued that the grievance did not involve a classification issue, because it was not seeking a reclassification of the grievant's position. Instead, the Union requested that the Arbitrator compare the tasks performed by the grievant with the tasks performed by employees in higher-graded positions to ensure that the grievant had an accurate position description. The Agency maintained that the grievance involved a classification matter, and thus, asked the Arbitrator to dismiss the grievance as non-arbitrable.

The Arbitrator found that the grievance was not arbitrable, in part because the Union's reliance on equal-pay principles did not redeem a grievance that concerned classification, and dismissed the grievance.

The Union filed exceptions to the Arbitrator's award arguing, as relevant here, that the Arbitrator erred because the award does not draw its essence from the parties' agreement. Specifically, the Union challenged the Arbitrator's finding that Article 20, Section 5, of the parties' agreement does not apply. In *Local 12*, we wrote:

> The Arbitrator did not set forth the wording of Article 20, Section 5, in the award. And the Union does not provide a copy of the parties' agreement, nor does it provide an excerpt of Article 20, Section 5. As the Union failed to "set forth in full" its argument in support of its essence exception, we find that § 2425.4(a)(2)-(3) [of the Authority's Regulations][3] bars consideration of the essence exception.[4]

The Union then filed this motion for reconsideration of the Authority's decision, and the Agency filed a response to the Union's motion.

[1] 5 U.S.C. § 7121(c)(5).
[2] 68 FLRA 754 (2015) (Member DuBester dissenting).
[3] 5 C.F.R. § 2425.4(a)(2) & (3).
[4] *Local 12*, 68 FLRA at 755 (citations omitted).

III. Preliminary Matters

A. We grant the Agency's request for permission to file an opposition to the Union's motion for reconsideration.

The Agency requested permission to file – and did file – an opposition to the Union's motion for reconsideration. As it is the Authority's practice to grant such requests,[5] we will consider the Agency's opposition to the Union's motion for reconsideration.

B. We will not consider the Union's supplemental submissions.

The Authority's Office of Case Intake and Publication issued an order to the Union to cure a procedural deficiency in the Union's statement of service in its motion for reconsideration, as required by § 2429.27(c) of the Authority's Regulations. The order directed the Union to submit "five copies . . . of a statement of service that complies with the Authority's Regulations."[6] The Union, then, without requesting leave, filed a supplemental submission, which included: (1) a re-filing of the Union's motion for reconsideration; (2) a re-filing of the statement of service that complied with the Authority's Regulations; and (3) an entire copy of the parties' agreement, which was not previously attached as an exhibit when filing the motion for reconsideration.

As the Union has now submitted a statement of service that complies with the Authority's Regulations, we consider the Union's first motion for reconsideration. As for the new documents, the Authority's Regulations do not provide for the filing of supplemental submissions.[7] Although § 2429.26 of the Authority's Regulations provides that the Authority may grant leave to file documents as the Authority deems appropriate,[8] the Authority requires parties to request leave to file supplemental submissions.[9] Here, the Union submitted a new motion for reconsideration and attached a copy of the parties' agreement without requesting leave to file these new documents. Therefore, we will not consider the Union's supplemental submissions.

IV. Analysis and Conclusion: The Union does not establish extraordinary circumstances that warrant reconsidering *Local 12*.

The Authority's Regulations permit a party who can establish extraordinary circumstances to move for reconsideration of an Authority decision.[10] 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.[11] In that regard, the Authority has held that errors in its remedial order, process, conclusions of law, or factual findings may justify granting reconsideration.[12] But, attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances warranting reconsideration.[13]

The Union's request for reconsideration is based on the argument that "the Authority is unaware that Article 20, Section 5 of the [parties' agreement] is one sentence, and that it has been quoted and referenced in the [Union's] exceptions as well as in the [A]rbitrator's award."[14] The Union only now explains that "Article 20, Section 5[,] of the [parties' agreement] states, *in its totality*, as follows: The parties agree to the principle of equal pay for substantially equal work."[15]

The Authority notes that the Union has, indeed, used the phrase "equal pay for substantially equal work" in various parts of the Union's exceptions.[16] The Union has not, however, prior to its motion for reconsideration, explained that the phrase, "equal pay for substantially equal work," was a direct quote capturing the entirety of Article 20, Section 5, of the parties' agreement or otherwise clarified its quote.

Section 2425.4 of the Authority's Regulations requires parties to provide copies of pertinent documents when filing exceptions with the Authority.[17] The Union has not demonstrated that the Authority had erred by being "unaware" of the entirety of Article 20, Section 5, of the parties' agreement.[18] As such, the Union fails to

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[5] *U.S. Dep't of the Treasury, IRS*, 67 FLRA 58, 59 (2012) (citing *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 61 FLRA 352, 353 (2005)).
[6] Order at 1.
[7] *E.g., AFGE, Local 3571*, 67 FLRA 178, 179 (2014) (*Local 3571*).
[8] 5 C.F.R. § 2429.26.
[9] *Local 3571*, 67 FLRA at 179.
[10] 5 C.F.R. § 2429.17.
[11] *E.g., U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 935, 936 (2000).
[12] *E.g., Int'l Ass'n of Firefighters, Local F-25*, 64 FLRA 943, 943 (2010).
[13] *Bremerton Metal Trades Council*, 64 FLRA 543, 545 (2010) (Member DuBester concurring).
[14] Mot. at 1.
[15] *Id.*
[16] *E.g.*, Exceptions at 1 ("The Arbitrator . . . denied the grievance and determined that the 'equal pay for substantially equal work' provision of the [parties' agreement] is not arbitrable.").
[17] 5 C.F.R. § 2425.4(a)(3).
[18] *See* Mot. at 1.

establish the extraordinary circumstances necessary for granting reconsideration.

V. Order

We deny the Union's motion for reconsideration.