

**71 FLRA No. 7**

UNITED STATES  
DEPARTMENT OF DEFENSE  
MISSILE DEFENSE AGENCY  
REDSTONE ARSENAL, ALABAMA  
(Respondent/Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
AFL-CIO  
LOCAL 1858  
(Charging Party/Union)

AT-CA-15-0381  
(70 FLRA 611)

ORDER DENYING  
MOTION FOR RECONSIDERATION

February 8, 2019

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

**I. Statement of the Case**

This matter comes before the Authority on the Agency's motion for reconsideration (motion) of the Authority's decision in *U.S. Department of Defense, Missile Defense Agency, Redstone Arsenal, Alabama (Redstone Arsenal)*.<sup>1</sup> In its motion, the Agency merely attempts to relitigate a matter already decided in *Redstone Arsenal*. As such, we deny the motion.

**II. Background and Redstone Arsenal**

As *Redstone Arsenal* sets out the history of this case, we will only mention details pertinent to the Agency's motion.

The Union filed an unfair labor practice (ULP) charge after the Agency denied the Union's request to host lunch and learns.

Before the Judge, both the General Counsel (GC) and the Agency agreed that there were no genuine disputes as to any material facts, and both parties filed

motions for summary judgment. The Judge recommended granting the GC's motion for summary judgment and denying the Agency's.

On exceptions from the Agency, the Authority found that there were two genuine disputes as to material facts. First, "the record d[id] not contain a sufficient basis for [the Authority] to determine the nature of the Union activities at issue" and whether they constituted solicitation.<sup>2</sup> Second, "the record d[id] not contain sufficient details regarding . . . how the Agency screens the vendors, whether the Agency has turned away any vendor, and the criteria under which the Agency accepts a vendor."<sup>3</sup>

Because these material facts were absent from the record, the Authority remanded the complaint to the Judge for a hearing.

The Agency filed its motion on June 8, 2018; and the GC filed an opposition to that motion on June 18, 2018.<sup>4</sup>

**III. Analysis and Conclusion**

The Authority's Regulations permit a party to request reconsideration of an Authority decision,<sup>5</sup> but "a party seeking reconsideration 'bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.'"<sup>6</sup> The Authority has held that attempts to relitigate conclusions reached by the Authority are insufficient to establish extraordinary circumstances.<sup>7</sup>

The Agency alleges that the Authority "committed a factual error when it determined that an asserted, unproven fact constituted an actual fact in dispute."<sup>8</sup> Specifically, the Agency contends that

<sup>2</sup> *Id.* at 613.

<sup>3</sup> *Id.*

<sup>4</sup> While the Authority's Regulations do not specifically provide for oppositions to motions for reconsideration, the Authority generally allows them. See *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)).

<sup>5</sup> 5 C.F.R. § 2429.17.

<sup>6</sup> *AFGE, Council 215*, 67 FLRA 164, 165 (2014) (quoting *NAIL, Local 15*, 65 FLRA 666, 667 (2011)). The Authority has found that extraordinary circumstances exist, and as a result has granted reconsideration, in a limited number of situations. As relevant here, these have included where a moving party has established that the Authority had erred in its conclusion of law, or factual finding. *NTEU*, 66 FLRA 1030, 1031 (2012) (*NTEU*) (citation omitted).

<sup>7</sup> *NTEU*, 66 FLRA at 1031.

<sup>8</sup> Mot. at 1.

<sup>1</sup> 70 FLRA 611 (2018) (Member DuBester dissenting).

“the facts in the record demonstrate unequivocally that the Union did not request to solicit anyone.”<sup>9</sup>

However, the Agency made this exact argument in its exceptions.<sup>10</sup> Consequently, this attempt to relitigate a conclusion reached by the Authority does not establish extraordinary circumstances warranting the reconsideration of *Redstone Arsenal*.<sup>11</sup>

The Agency also contends that the Authority erred in not granting the Agency’s motion for summary judgment.<sup>12</sup> The Agency alleges that “the Authority in its decision considered and rejected any conclusion that the Union President requested to solicit anyone.”<sup>13</sup>

However, this argument misinterprets *Redstone Arsenal*. The Authority did not conclude whether there was solicitation. Rather, the Authority found that “the record does not contain a sufficient basis for [the Authority] to determine the nature of the Union activities at issue.”<sup>14</sup> As the Authority explained in *Redstone Arsenal*, “[w]ithout material factual findings on the above issues [of solicitation and vendors] . . . it was not appropriate to grant any party’s summary-judgment motion.”<sup>15</sup> Therefore, this argument misinterprets *Redstone Arsenal* and does not establish extraordinary circumstances warranting the reconsideration of that decision.<sup>16</sup>

For the foregoing reasons, we deny the Agency’s motion for reconsideration.

#### IV. Order

We deny the Agency’s motion for reconsideration.

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> Exceptions at 17 (“[T]he evidence is undisputed, and it proves that the Union only requested to hold a lunch and learn . . . . Thus, the Union did not request to solicit its members.”).

<sup>11</sup> *NTEU*, 66 FLRA at 1031.

<sup>12</sup> Mot. at 3.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Redstone Arsenal*, 70 FLRA at 613.

<sup>15</sup> *Id.* (emphasis added). In this manner, the Authority did address the Agency’s motion for summary judgment. Mot. at 2 (alleging that the Authority had not considered the Agency’s motion for summary judgment).

<sup>16</sup> *U.S. Dep’t of Commerce, Nat’l Oceanic & Atmospheric Admin., Nat’l Weather Serv.*, 69 FLRA 256, 259 (2016) (“[a]n argument based on a misinterpretation of the Authority’s decision does not establish extraordinary circumstances warranting reconsideration of that decision.”); *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Pollock, La.*, 68 FLRA 716, 717 (2015); *NAIL, Local 7*, 68 FLRA 133, 135 (2014).

**Member DuBester, dissenting, in part:**

While I too would deny the Agency's motion for reconsideration, I do not think this matter warrants a remand to the Administrative Law Judge for the reasons expressed in my dissent in *U.S. DOD, Missile Defense Agency, Redstone Arsenal, Alabama*.\*

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\* 70 FLRA 611, 614 (2018).