CORRECTED COPY

UNITED STATES OF AMERICA
BEFORE THE
FOREIGN SERVICE LABOR RELATIONS BOARD
WASHINGTON, D.C.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1812

Union

and

Case No. FS-AR-2

UNITED STATES INFORMATION AGENCY

Agency

ORDER DISMISSING EXCEPTION

I. Statement of the Case

This matter is before the Foreign Service Labor Relations Board (FSLRB) on an exception filed by the Agency under 22 U.S.C. § 4114(b) and 22 C.F.R. Part 1425. The Agency excepts to a Foreign Service Grievance Board (Grievance Board) decision of August 4, 1987 and its supplemental decision of October 6, 1987 not to reopen and reconsider the August 4 decision. The Grievance Board's action resolved an implementation dispute between the Union and the Agency. An implementation dispute is a dispute "which directly concerns the rights and obligations of an agency and an exclusive representative toward each other or the rights or obligations between an agency and one or more employees as set forth in a collective bargaining agreement." 22 C.F.R. § 911.1.

For the reasons discussed below, we dismiss the Agency's exception insofar as it seeks review of the Board's August 4, 1987 decision because it is untimely filed. To the extent that the Agency's exception seeks review of the Board's October 6, 1987 decision, we find that the exception is timely filed, but is without merit and must be denied.

II. Background

In March 1987 the Union submitted an implementation dispute to the Grievance Board. The Union alleged that the

Agency had violated the parties' collective bargaining agreement and the Foreign Service Act of 1980 (the Act) when it changed the Agency's surface travel regulations pertaining to employees' home travel without providing the Union the opportunity to negotiate.

In its August 4, 1987 decision the Grievance Board found that the Agency had violated the parties' collective bargaining agreement and section 1004 of the Act by refusing to negotiate with the Union on the changed regulations. The Grievance Board ordered the Agency to bargain, on request of the Union, on the substance of the revision of those regulations and to suspend its implementation of the revision pending completion of negotiations.

On September 9, 1987 the Agency requested that the Grievance Board reopen and reconsider its August 4 decision pursuant to 22 C.F.R. § 910.2. That section states that the Grievance Board "may reconsider any decision upon the presentation of newly discovered or previously unavailable material evidence." Id. In its request, the Agency asserted that an August 7, 1987 decision of the U.S. Court of Appeals for the District of Columbia Circuit in United States v. Paddack, 825 F.2d 504 (D.C. Cir. 1987), constituted "previously unavailable material evidence" within the meaning of section 910.2. The Agency contended that while the underlying dispute was being argued before the Grievance Board, the Agency had relied on the District Court's decision in Paddack. The Agency stated that if the August 7, 1987 decision of the Circuit Court reversing the District Court had been available when it presented its case to the Grievance Board, it would have made different arguments as to why its changes in the regulations were not subject to negotiation.

The Grievance Board issued a supplemental decision on October 6, 1987 denying the Agency's request for reconsideration. The Grievance Board found that the decision of the Circuit Court in Paddack did not constitute previously unavailable evidence within the meaning of section 910.2.

On November 6, 1987 the Agency filed an exception with the FSLRB to the Grievance Board's "initial decision of August 4, 1987, and final decision not to reopen and reconsider of October 6, 1987 . . . pursuant to 22 C.F.R. Part 1425."

III. Discussion

This case presents an issue as to the timeliness of the Agency's exception. The time limit for filing an exception with the FSLRB to an action of the Grievance Board in an implementation dispute is 30 days after the action is communicated to the parties. 22 U.S.C. § 4114(b) and 22 C.F.R. § 1425.1(b) (1987). If no exception is filed within that time limit, the Grievance Board action "shall become final and binding and shall be implemented by the parties." 22 U.S.C. § 4114(c).

Under the Foreign Service Act, decisions of the FSLRB must be consistent with decisions of the Federal Labor Relations Authority (the Authority) issued under the Federal Service Labor-Management Relations Statute (the Statute) unless the FSLRB finds that special circumstances require otherwise. 22 U.S.C. § 4107(b). The roles of the Grievance Board and the FSLRB under the Act are similar to those of arbitrators and the Authority under the Statute. (Compare section 4114 of the Act with sections 7121 and 7122 of the Statute.) Further, the Agency's request that the Grievance Board reconsider its decision is similar to a party's request that an arbitrator reconsider his or her award rendered under section 7122 of the Statute.

Accordingly, we find that there are no "special circumstances" in this case within the meaning of 22 U.S.C. § 4107(b) which require a departure from Authority decisional precedent. We now turn to consideration of the decisions of the Authority which have addressed whether a party's request for reconsideration of an arbitrator's award extends the time limits for filing exceptions to the award with the Authority under the Statute.

The Authority has held that a party's request that an arbitrator clarify or reconsider his or her award generally does not operate to extend the time limit for filing exceptions to that award. See, for example, Panama Canal Commission and International Organization of Masters, Mates and Pilots, Marine Division, ILA, AFL-CIO, 22 FLRA 605, 606 (1986) See also U.S. Department of Health and Human Services, Social Security Administration and American Federation of Government Employees, AFL-CIO, 23 FLRA 157 (1986); American Federation of Government Employees, AFL-CIO, Local 1612 and U.S. Department of Justice, Bureau of Prisons, U.S. Medical Center for Federal Prisoners,

Springfield, Missouri, 6 FLRA 5 (1981). Only when an arbitrator, in response to such a request, modifies an award and the modification gives rise to the deficiencies alleged in the exception has the Authority held that the filing period for exceptions began with the arbitrator's response to the request for clarification. Social Security Administration, 23 FLRA at 158; Panama Canal Commission, 22 FLRA at 606. See also Portsmouth Naval Shipyard and Federal Metal Trades Council, 15 FLRA 181 (1984) (arbitrator did not modify his award in any way as to give rise to deficiencies alleged by parties); United States Department of the Interior, Bureau of Land Management, Eugene District Office and National Federation of Federal Employees, Local 1911, 6 FLRA 401, 403 n.2 (1981) (because deficiencies in award asserted by agency did not arise until the clarification, the filing period in such circumstances commenced on date award was clarified).

We believe that the same principles apply under the Act. These principles further Congressional intent to make decisions of the Grievance Board final and binding. Like the provisions governing the final and binding nature of arbitrators' awards under section 7122(b) of the Statute, 22 U.S.C. § 4114(c) provides that a decision of the Grievance Board becomes final and binding if no exceptions are filed within 30 days. Moreover, section 4114(c) explicitly states that in the event that no exceptions are filed within 30 days, the decision shall be implemented by the parties.

Under 22 C.F.R. § 910.2, there is no prescribed time limit within which a party may seek reconsideration of a Grievance Board decision. If a party's request to reconsider a Grievance Board decision automatically served to extend the time available to file exceptions to that decision with the FSLRB, a party could prevent a decision of the Grievance Board from becoming final and binding simply by requesting reconsideration at any time and then filing exceptions to the original decision within 30 days after supplemental action by the Grievance Board, even if the Grievance Board did not modify its original decision. We do not believe that Congress intended such a result.

Consistent with Authority precedent, we find that a party's request that the Grievance Board reconsider its decision generally does not operate to extend the time limit for filing exceptions with the FSLRB to the original decision. If, on reconsideration, the Grievance Board does

not modify its original decision in such a manner as to give rise to the deficiencies alleged in the exceptions, exceptions may seek review only of the basis of the Grievance Board's decision on reconsideration; they may not be used to seek review of the Grievance Board's original decision. However, if on reconsideration the Grievance Board modifies its decision and the modification gives rise to the deficiencies alleged in the exceptions, the time period for filing exceptions to the original decision as modified will begin with the decision on reconsideration. Therefore, in order to ensure that the FSLRB will have jurisdiction to review an original decision of the Grievance Board, a party should timely file exceptions with the FSLRB to that decision irrespective of whether the party intends to seek reconsideration from the Grievance Board.

In this case, the Agency did not timely file exceptions to the Grievance Board's original decision. Instead, it filed a request for reconsideration which was denied by the Grievance Board, which did not modify its original decision. Therefore, the Agency's exception of November 6, 1987 was untimely as to the Grievance Board's original decision of August 4, 1987. However, because the Agency's exception was timely insofar as it seeks review of the Grievance Board's October 6, 1987 decision on reconsideration, we will consider the Agency's arguments on those limited grounds.

The Agency argues that the Grievance Board's decision of October 6, 1987 is erroneous because the Board should have considered the decision of the U.S. Court of Appeals for the District of Columbia Circuit in Paddack as new evidence within the meaning of the Board's regulations. The Agency contends, therefore, that the Board should have reopened and reconsidered its original decision.

We reject the Agency's argument. Section 910.2 of the Grievance Board's regulations states that the Board "may reconsider any decision upon the presentation of newly discovered or previously unavailable material evidence." For the reasons stated in its decision on reconsideration, the Grievance Board determined that the D.C. Circuit's decision in Paddack did not constitute previously unavailable evidence that was material to the institutional grievance. See Grievance Board's Decision on Reconsideration at 3, 4 (Attachment 13 to Union's Opposition). The Agency's exceptions fail to establish that the Grievance Board's decision on reconsideration is deficient on any of the grounds set forth in section 4114(a) of the Act, and the exceptions therefore must be denied.

Accordingly, we conclude that to the extent that the Agency's exception seeks review of the Grievance Board's decision of August 4, 1987, the exception is untimely and must be dismissed. We further conclude that to the extent that the Agency's exception seeks review of the Grievance Board's decision of October 6, 1987, the exception is timely but must be denied as being without merit.

Issued, Washington, D.C., July 19, 1988

Jerry L. Calhoun, Chairman

Tia Schneider Denenberg, Member

Marcia L. Greenbaum, Member

FOREIGN SERVICE LABOR RELATIONS BOARD

Corrected Copy

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1812

and Case No. FS-AR-2

U.S. INFORMATION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that copies of the Decision of the Federal Labor Relations Authority in the subject proceeding have this day been mailed to the following:

Eric G. Travers
FLRA DOCKET CLERK

CAROL B. EPSTEIN
ATTORNEY-ADVISOR
U.S. INFORMATION AGENCY
301 4th STREET, S.W.
WASHINGTON, D.C. 20547

MIRIAM SZAPIRO
ATTORNEY
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1812
USIA BLDG., ROOM 348
301 4th STREET,S.W.
WASHINGTON, D.C. 20547

MR. EDWARD J. FINDLAY
EXECUTIVE SECRETARY
FOREIGN SERVICE GRIEVANCE BOARD
SA-6, ROOM 430
DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

TIA SCHNEIDER DENENBERG
MEMBER, FOREIGN SERVICE LABOR
RELATIONS BOARD
BOX 357, R.D. 1
RED HOOK, N.Y. 12571

MARCIA GREENBAUM
MEMBER, FOREIGN SERVICE LABOR
RELATIONS BOARD
APPLE STREET
ESSEX, MA 01929

DATED: JUL 22 1988
WASHINGTON, D.C.