



DEPARTMENT OF VETERANS AFFAIRS
OFFICE LABOR-MANAGEMENT RELATIONS
WASHINGTON DC 20420

August 5, 2011

Ms. Ami Pendergrass,
Attorney, National Veterans Affairs Council
American Federation of Government Employees, AFL-CIO
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Dear Ms. Pendergrass:

This is the Department of Veterans Affairs' (Agency) response to the national grievance filed on April 28, 2011,¹ by the National Veterans Affairs Council, American Federation of Government Employees, AFL-CIO (AFGE or Union). In the grievance, AFGE argues that the Veterans Benefits Administration (VBA) has followed an unlawful practice of charging "Union Time" in ASPEN² to bargaining unit employees who are not Union officials or stewards.

Three categories of VBA employees -- veterans service representatives (VSRs), rating veterans service representatives (RVSRs), and decision review officers (DROs) -- report their time using ASPEN, a specialized reporting program developed by VBA for this purpose. The above-referenced employees are all subject to production requirements, which are adjusted when certain activities during the workday are excluded from their production calculation. The employees input their "excluded time" (also termed "deductible time") in ASPEN, which then automatically adjusts their performance expectations to give a weighted average production number. For example, if a VSR is expected to complete five claims per week and spends two days in training during the week, the employee enters sixteen hours of excluded time for "Training" in ASPEN and the excluded time results in an adjustment to the employee's production expectations. In this example, the VSR would be expected to complete three-fifths of the employee's normal requirement for the week, after factoring in excluded time for two full days of training. Reporting excluded time in ASPEN ensures that employees are appropriately credited for supervisor-approved activities that prevent them from working on their claims files.

ASPEN includes several categories of excluded time that employees may select and enter during the course of their workweek.³ The only category related to union activity is

¹ AFGE agreed to extend the deadline to file the Agency's grievance response to August 5, 2011.

² ASPEN is an acronym for Automated Standardized Performance Elements Nationwide

³ Currently, ASPEN provides the following excluded time categories: Leave, Training, Second Signing, Special Projects, Union Time, Other, Credit Hours Taken, Credit Hours Worked, and Overtime Worked.

entitled “Union Time,” and all bargaining unit employees who are involved in union activity that they wish to exclude from their production calculation enter their excluded time under the “Union Time” category. “Union Time” in ASPEN includes activities by both union officials and stewards and bargaining unit employees consulting or conferring with their union representatives. It is a comprehensive category of excluded time designed to capture all time spent away from the workplace on union-related activities.

The Union complains in its grievance that by employing the “Union Time” category, VBA Regional Offices are overcounting local official time and misrepresenting the use of official time in comprehensive year-end reports to VBA’s Central Office. That is not the case. Although the “Union Time” category captures excluded time entered in ASPEN, the Union misunderstands the purpose for which that information is collected and used. In accordance with OPM requests, the Agency annually calculates the amount of official time used Agency-wide during the previous year. Some VBA facilities rely on ASPEN reporting numbers to help track official time use at their facilities by union officials and union stewards. Others do not. “Union Time,” as reported in ASPEN, has never been equated to official time, and historically, no VBA facility has included time spent by bargaining unit employees who are not union officials or union stewards in its year-end official time report.

In the two examples mentioned in the grievance, the VBA Regional Offices in St. Petersburg and Cleveland, only official time used by union officials and union stewards was counted and reported in the 2010 year-end official time report (Attachment A).⁴ The two VBA Regional Offices calculated official time use somewhat differently. St. Petersburg relied on ASPEN reporting for part of its total calculation of the 3,571.5 official time hours included in its year-end report. The report included 440.5 hours of official time drawn from St. Petersburg’s 2010 ASPEN records. The 440.5 hours included reported time for thirteen VSRs and RVSRs who acted as union officials or stewards and reported their “Union Time” in ASPEN during the course of the year. In addition, the St. Petersburg facility had 1.5 full-time equivalent union officials, adding another 3,131 hours of official time for the total reported figure in 2010 of 3,571.50 hours. Although other bargaining unit employees recorded excluded time under the “Union Time” category during 2010, no official time for non-union official, non-steward activities was included in St. Petersburg’s year-end official time report. For those regional offices which choose to, relying on the ASPEN numbers is particularly reliable because it is in the employees’ best interests to accurately report in ASPEN the extent of time they wish excluded from their production requirements.

Although the Cleveland Regional Office also requires all bargaining unit employees engaged in union-related activity to report their excluded time as “Union Time” in ASPEN, Cleveland does not rely on the ASPEN numbers to any extent when calculating official time use for the year. Instead, as many other facilities do, Cleveland relies

⁴In response to the Union’s April 28, 2011, request for information, the Agency supplied the Union with year-end reports detailing the number of official time hours reported by VBA Regional Offices to VBA Central Office.

exclusively on a daily official time log, which it rolls up at the end of the year to arrive at final official time numbers. (See comments in Attachment A)

Regardless of the method used, however, VBA Regional Offices historically include only official time used by union officials and union stewards when calculating and reporting official time. Information gleaned from ASPEN, when used to assist in calculating and reporting official time hours, is limited to official time use by stewards and union officials. As such, the grievance is denied. Requiring categories of employees to accurately report their excluded time is neither violative of 5 USC § 7131 nor any provision in the parties' Master Agreement.

In support of its grievance, the Union misinterprets a decision by the Federal Labor Relations Authority (FLRA). The Union states that official time under 5 USC § 7131 accrues only to bargaining unit employees serving in the capacity of union representative and cites an FLRA decision to support its decision. However, the FLRA decision, *2750th Air Base Wing Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, OH and Wright-Patterson AFB Fire Fighters, Local F-88, International Association of Fire Fighters*, 7 FLRA 738, (1982)(*Fire Fighters*), addresses an altogether different issue.

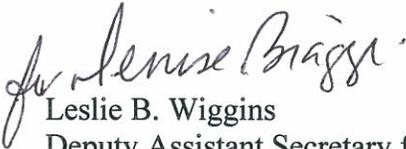
In *Fire Fighters*, the FLRA decided that there is no statutory entitlement to official time to negotiate a contract in a foreign bargaining unit. The decision centered around two union representatives who were employees of the Air Base Wing Headquarters and who intended to represent a different employer, the Defense Electronics Supply Center, in negotiating a collective bargaining agreement. One union represented both the Air Base Wing Headquarters and the Defense Electronics Supply Center. The FLRA, after reviewing 5 USC § 7131(a), determined that it was inappropriate for the bargaining unit employees of one employer to receive official time to negotiate for bargaining unit employees of a different employer, even when both employers were represented by the same local union. The FLRA explained in a footnote that its decision concerned only entitlements to official time under 5 USC § 7131(a), and did "not address official time which may be negotiated under section 7131(d)." *Id.*, FN 8.

5 USC § 7131(d) provides the statutory authorization to negotiate official time for two separate categories of bargaining unit employees. Paragraph (d)(1) applies to employees serving in a representative capacity, such as locally elected union representative and stewards; paragraph (d)(2) applies to any other employee in the bargaining unit who raises an issue that falls within the ambit of Chapter 71. The Agency and the Union may negotiate official time for employees in either or both categories "in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest." 5 USC § 7131(d). Thus, the Union's underlying proposition, that official time under 5 USC § 7131 may accrue only to bargaining unit employees serving in their capacity as union representatives, is flawed. It is unsupported by *Fire Fighters* and is at odds with the relevant statutory provision.

For the foregoing reasons, the Union's grievance is denied.

Please contact Douglas Huth at (303) 324-7754 or at douglas.huth@va.gov if you have any questions.

Sincerely,



Leslie B. Wiggins
Deputy Assistant Secretary for
Labor-Management Relations