



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

FEB 06 2009

February 6, 2009

Jacqueline M. Sims
Assistant General Counsel
AFGE National VA Council
80 F. Street, NW
Washington, DC 20001-1583

Dear Ms. Sims:

This is in response to your grievance dated December 30, 2008 regarding official time for union representatives to attend the Leadership training at the Bronx, New York VA Medical Center (hereinafter referred to as the "Bronx Leadership Training") on December 5, 2008. In your grievance you allege violations of Articles 4 and 45 of the VA/AFGE Master Agreement and 5 USC §7116 (a)(1) and (5). We deny any violation of the statute or the Master Agreement.

In your grievance, you claim that official time was granted to participants to attend the Bronx Leadership Training presentations on December 3-4, 2008, but was denied for the presentations on December 5, 2008.

As you acknowledge in your grievance, official time to attend union-sponsored or requested labor-management training is governed by Article 4, Section 1 of the VA/AFGE Master Agreement, which provides as follows:

Section 1 – Union Sponsored or Requested Labor-Management Relations Training

- A. The parties agree that Union sponsored labor-management relations (LMR) training is of mutual benefit when it covers appropriate areas (examples are: contract administration, grievance handling, and information relating to Federal personnel/labor relations laws, regulations, and procedures). Training which relates to internal union business will not be conducted or attended on official time.
- B. Scheduling arrangements for the use of official time for training will be determined locally. Management personnel responsible for work scheduling will be given appropriate and adequate notice, to include specific agendas, of scheduled LMR training for maximum attendance.
- C. The amount and use of official time for labor-management relations training, other than joint labor-management relations training, is an appropriate subject for local negotiation.

As you know, the Office of Labor-Management Relations (OLMR) has no supervisory authority over any VA field facility and therefore lacks authority to grant or deny official time requests submitted by employees of field facilities within the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), or National Cemetery Administration (NCA). Rather, OLMR specialists simply assist the Administrations in analyzing particular training agendas to determine whether the topics covered fall within the official time authorization in Article 4, Section 1 A., so that the Administrations can disseminate guidance to field facilities indicating which portions of a training agenda fall within the scope of the contractual official time provision.

With respect to the Bronx Leadership Training, Bob Fetzer of AFGE/NVAC contacted Doug Katcher of OLMR and Scott Foster of VHA's HRM group in late November, 2008, requesting that field facilities be directed to approve official time for participants to attend all three days of the training. The agenda submitted to Mr. Katcher and Mr. Foster lacked specificity with respect to the topics to be covered during the December 5 session, indicating only that it would last four hours, with the first half devoted to the reporting requirements imposed on local union officials by the Department of Labor (DOL) and the Internal Revenue Service (IRS) and the second half devoted to leadership. Based on the information provided, Mr. Katcher and Mr. Foster determined that the training sessions scheduled for December 3 and 4 met the criteria for official time set forth in Article 4, Section 1, and that the December 5 training on DOL and IRS reporting requirements was appropriate for official time for union treasurers who are required to complete DOL and IRS reports, but that insufficient information had been presented to support official time for participants attending the leadership portion of the December 5 session.

On November 26, 2008, Jim Dunphy, Director of Education and Training for NVAC/AFGE, wrote a memorandum to Ena Thompson Judd, 2nd District Representative, arguing that official time should be granted for the entire December 5 training session. In that memorandum, which Bob Fetzer emailed to Doug Katcher on November 26, 2008, Mr. Dunphy stated that he had attended leadership training offered by the "National Canteen Service" [sic] and had "largely adapted this training for this period." However, Mr. Dunphy did not articulate in the memorandum how the leadership training was related to the LMR training topics listed in Article 4, Section 1.

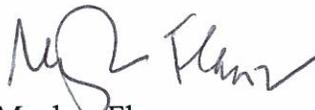
Your grievance elaborates on Mr. Dunphy's argument that the leadership training was adapted from a course taught by Ray Tober of the Veterans Canteen Service. You argue that since Mr. Tober presented leadership training at November 2007 AFGE-NVAC Convention and official time was granted for that training, it is appropriate for official time in this instance. We do not agree with this analysis. As noted above, Article 4, Section 1 authorizes official time for union-sponsored training only when the training covers one of the topics listed in that section. Thus, the question is not whether union training has been "largely adapted" from a management official's training presentation, but whether the subject matter of the union training fits within the parameters of the contractual official time provision. In the absence of information indicating that this specific training fell within the contract's scope, management could not determine that this particular course was appropriate for official time.

You further claim that official time was requested in advance and in a proper and timely manner. While this may be true, if the training is not appropriate for official time because it relates to internal union business or falls outside the parameters of Article 4, Section 1, and/or the information provided is not sufficient to make a determination on whether it is appropriate, the timing of the request is not relevant. You also reference Article 32 § 21 Excused Absence (Administrative Leave) and indicate this type of leave may be granted for activities that are in the government's best interest. However, there is no evidence or contention that any of the participants requested this type of absence. All of the communications regarding this training refer only to official time, so it is unclear why your grievance references Article 32 § 21.

You further contend that the Master Agreement does not equate annual leave to duty time or to official time for training. You state that the participants were denied official time and forced to use annual leave and this amounts to a change in working conditions and a violation of 5 U.S.C. § 7116(a)(1) and (5). However, this is not a change in working conditions. Merely requiring that employees take leave when they are not on duty or authorized official time is not a change in any working condition. In fact, Article 20 § 1C states that the "basic work requirement" means the number of hours, excluding overtime hours, that an employee is required to work or required to account for by leave or otherwise.

As to the specific remedies requested, for the reasons stated above, the request that "VA cease and desist from denying AFGE Union representatives requests for official time for the VA adapted Leadership course currently pending or in the future [sic]" is denied to the extent that any such course does not meet the requirements of Article 4, Section 1. The request to convert the annual leave of unnamed union officials to official time is also denied for the same reason. Finally, you requested that "those affected union officials should receive official time restored for the time needed to travel to the December 5 Leadership training." We do not believe the Master Agreement requires facilities to provide official time for travel to this activity. However, if facilities have negotiated or have an established past practice to provide such official time for travel to the portion of the training for which official time was approved, the facility should follow its negotiated agreement or past practice, in accordance with the July 27, 2003, Master Agreement negotiations Ground Rules MOU.

Sincerely yours,



Meghan Flanz
Deputy Assistant Secretary
for Labor-Management Relations