

**6 Official time for witnesses and reimbursement for travel:**

**6.1 Policy:** 5 U.S.C. 7131(c) provides:

Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

**6.2 Official time for witnesses:** Pursuant to § 2429.13 of the regulations, if the participation of any employee is deemed necessary by the Regional Office as a witness in representation hearing proceedings, such employee is granted such official time for this participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status. See also *ULP CHM 3E-3*.

**6.3 Travel and Per Diem:** Pursuant to § 2429.14 of the regulations, witnesses (whether appearing voluntarily, or under subpoena) who are deemed necessary at the hearing, shall be paid the same fee and mileage allowances which are paid to subpoenaed witnesses in the Courts of the United States pursuant to 28 U.S.C. 1821, by the party at whose instance the witnesses appear, except that any witness who is employed by the Federal Government shall not be entitled to receive witness fees where such witness is on official time pursuant to § 2429.13 of the regulations. The Authority has said that 5 U.S.C. 7131(c), either by itself, or through 5 C.F.R. § 2429.13, does not authorize the Authority to require an Agency to pay a testifying employee's travel and per diem expenses. *Federal Aviation Administration, Northwest Mountain Region, Renton, Washington*, 51 FLRA 986 (1996) citing *Sacramento Air Logistics Center, McClellan AFB, California v. FLRA*, 877 F.2d 1036 (D.C. Cir. 1989). Thus, the Authority stated that whoever calls a witness pays any necessary travel and per diem.

**6.4 Employee representatives:** The Regional Office may determine that participation by employees as representatives for labor organizations is necessary pursuant to 5 U.S.C. 7131(c). However, the Office of the General Counsel's interpretation of this Statutory provision, as applied to employee representatives, is that such representatives are entitled to official time, but not travel and *per diem*, to participate in representation hearing proceedings.

Accordingly, the Hearing Officer makes arrangements with the agency for the release of the employee representatives on official time in accordance with the guidance in *HOG 6.2*.