OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER BIRMINGHAM, ALABAMA
Respondent

and

Case No. AT-CA-40509

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2207, AFL-CIO
Charging Party

Michael W. Sanderson, Esq.Mickie West For the Respondent
Richard S. Jones, Esq. For the General Counsel
Jimmie L. Tyus For the Charging Party
Before: GARVIN LEE OLIVER Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Pursuant to an unfair labor practice charge filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority, by the Acting Regional Director for the Atlanta Regional Office, issued a Complaint and Notice of Hearing alleging that the Respondent violated section 7116(a)(1) and (5) of the Statute by implementing certain proposals which altered the amount of official time available for Union representatives without negotiations with or consent of the Union. Respondent filed an answer denying that it had violated the Statute as alleged, and asserting two affirmative defenses.

A hearing in this matter was conducted before the undersigned in Birmingham, Alabama. Respondent and the General Counsel of the FLRA were represented and afforded a full opportunity to be heard, to examine and cross examine witnesses, to introduce evidence and to argue orally.(1) Additionally, the parties were afforded an opportunity to file briefs. A brief was filed by the General Counsel which has been carefully considered.(2)

Based upon the entire record in this matter, my observation of the witnesses and their demeanor, and my evaluation of the evidence which is undisputed, I make the following:

Findings of Fact

A. The Parties' Contractual Relationship

The Union is the exclusive representative for a unit of employees appropriate for collective bargaining at the Respondent's medical facility in Birmingham, Alabama. Jimmie L. Tyus is--and for the past 12 years has been--the Union's President. Danny Weekley is the Union's Chief Steward, Safety Officer, and Compressed Work Schedule Officer. William Mountcastle at all times material herein has been the Respondent's Director.

The parties are governed by a nationwide Master Labor Agreement (MLA), negotiated in 1982, and a local Supplemental Agreement (SA) dated March 18, 1977. The MLA contains, among others, the following provisions:

ARTICLE 8

OFFICIAL TIME

. . .

Section 5 - Official time for local union officers and/or stewards will be a proper subject for local supplemental bargaining.

ARTICLE 4

MID-TERM BARGAINING

. . .

Section 5 - Local Level Changes

Proposed changes affecting personnel policies, practices or conditions of employment which are initiated by local management at a single facility will be forwarded to the designated local union official. Upon request, the parties will negotiate as appropriate. The union representatives shall receive official time for all time spent in negotiations as provided under 5 USC § 7131(a).

ARTICLE 5

LOCAL SUPPLEMENTAL AGREEMENTS

. . .

Section 1 - Continuation of Provisions in Local Agreements

Contract provisions contained in local contracts in existence prior to the Master Agreement will continue in effect insofar as they do not conflict with the Master Agreement. Whenever any subject is addressed in the Master Agreement, the terms of the Master Agreement shall prevail over the provisions of the local agreement concerning the same subject. For example, provisions that are on the same subjects as those covered in the Master which (a) are different from the Master Agreement (whether superior or inferior) or; (b) would alter the terms of the Master Agreement or; (c) would interfere with or impair its implementation, are considered to be in conflict and are superseded.

Among the provisions in the parties' local SA which were continued by Article 5, Section 1 of the MLA are the following:

ARTICLE XI

LOCAL REPRESENTATION

. . .

Section 3. Stewards shall be allowed to meet and confer with Unit employees and hospital officials for no more than ten (10) hours per pay period, per steward, during working hours, without charge to leave, for the purpose of executing the terms of this Agreement. The President, Vice President of each Unit and the Chief Steward will be allowed a reasonable period for this purpose. A sign in and sign out log will be maintained by each supervisor in order that no dispute will arise over use of time in excess of that agreed upon.

ARTICLE V

APPROVAL, DURATION, AMENDMENT, AND TERMINATION

Section 1. This Agreement or any amendment thereto shall become effective on the date of approval by the Chief Medical Director, Department of Medicine and Surgery, of the Veterans Administration. It shall remain in full force and effect for two (2) years from that date, and shall be automatically renewed on a three (3) year basis thereafter unless terminated as provided herein. Each such three (3) year period will be a new duration period with a new effective date.

Section 2. Either party may serve upon the other party a written notice of intent to amend, modify or terminate this Agreement, which notice must be served at least sixty (60) days, but not more than ninety (90) days before the termination date of the Agreement and must state the nature of the action requested. The parties shall meet to negotiate with respect to the requested amendments within thirty (30) days of receipt of said notice.

The parties are further governed by a binding arbitrator's award, dated February 13, 1987, interpreting their local SA with respect to official time.[3] The Award requires Union officials to give management varying degrees of advance notice depending upon the amount of official time requested; precludes the Respondent from relying upon "work load and/or staffing as the bases for determining whether official time, as requested, will be granted;" and directs the Respondent to "provide the manning and staffing sufficient to allow such official time to be taken in the same manner in which it provides for every other expected and unexpected absence in the work place."[4]

B. Respondent's 1994 Change in the Use of Official Time

1. Events Leading to the Change

During 1992 and 1993, the years immediately preceding the events giving rise to this case, Union President Tyus and Chief Steward Weekley estimated that during normal duty hours they used approximately 75% and 90% official time, respectively. On December 8, 1993, the Union sent a memorandum to the Respondent requesting 100% official time for Weekley indefinitely, and purporting to provide "continual advance notice" to management under the terms of the 1987 arbitration award. By memorandum dated December 10, 1993, Weekley's immediate supervisor, Joe K. Webb, denied the Union's request with the reminder that, as previously, a reasonable amount of official time must be requested and approved in advance. The Respondent's Director, William Mountcastle, also denied the Union's request for blanket use of 100% official time by memorandum dated January 6, 1994, in which he insisted that "Mr. Weekley must continue to request and receive official time each and every time he needs to use official time as our past practice has

established."

Thereafter, supervisor Webb wrote a memorandum to the Chief of Engineering dated January 19, 1994, listing the amounts of official time used by Weekley thus far during that month, and requesting assistance in stopping or moderating Weekley's use of official time for Union business instead of Respondent's work.

2. The Official Time Policy is Changed

By memorandum dated January 31, 1994, Director Mountcastle notified Union President Tyus that, pursuant to Article 8 of the MLA,(5) Respondent wished to negotiate concerning the official time proposals attached to the memo "[i]n light of documented excessive use of official time by officers and stewards of [the Union] . . . ." The memorandum asked the Union to submit counter-proposals by February 11 or the attached proposals would go into effect the following day. On February 11, 1994, Tyus responded to Mountcastle on behalf of the Union. Among other things, Tyus addressed the Respondent's request to negotiate official time by calling Mountcastle's attention to Article V of the local SA which automatically renews the local agreement for a 3-year period if no request to renegotiate has been submitted by either party within a 30-day period from 60 to 90 days prior to March 18, 1994, the expiration date of the local SA then in effect.(6) Tyus informed Mountcastle that the Respondent had not submitted a timely request to negotiate under the terms of Article V of the local SA, and therefore it would be inappropriate and a violation of the parties' agreement to negotiate at that time.

On February 14, 1994, Mountcastle replied by taking the position that Tyus had submitted a final offer counter-proposal "desiring status quo, and adherence to the requirements of requesting and receiving approval/disapproval of official time contained in the . . . arbitration decision of February 13, 1987." Mountcastle also informed Tyus that the Respondent intended to implement the proposals submitted to the Union on January 31, 1994, effective February 22, 1994. By memorandum dated February 28, 1994, the Union was informed by Mountcastle that the Respondent had implemented the attached policy regarding "Official Time for Nonprofessional Officers/Stewards."(7) On March 3, 1994, Tyus informed Mountcastle of the Union's intent to take all necessary steps to redress the Respondent's unlawful actions, and subsequently filed an unfair labor practice charge on April 18, 1994 which led to the instant proceeding.

C. Effects of Respondent's Change in Official Time Policy

According to the undisputed testimony and documentary evidence in the record, the Respondent's change in official time policy had the effect of reducing the amount of official time available to Tyus and Weekley from what had been approved prior to January 31, 1994, to a maximum of 1 hour per day. When Tyus tried to use more official time than the 1 hour per day authorized, the Respondent treated the excess as AWOL and Tyus lost 16 hours of pay. As a consequence, on March 8, 1994, Tyus notified Mountcastle that because of the drastic reduction in official time, the Union was unable to meet all of its time limits for processing grievances and bargaining issues.(8) Thereafter, Tyus did the Union's representational work for about 2 hours each day after his shift ended at 2:30 p.m., until his retirement on July 1, 1994. Similarly, because Weekley was restricted to using only 8 hours of official time per 2-week pay period as of March 7, 1994, he was forced to perform the Union's representational activities on his lunch hour, after work, or by taking annual leave.

Conclusions of Law

The complaint herein alleges that the Respondent violated section 7116(a)(1) and (5) of the Statute by implementing certain proposals which altered the amount of official time available for Union representatives without negotiating with or obtaining the consent of the Union. The Respondent claims that it had the contractual right to propose changes to the existing official time policies and to implement those proposed changes when the Union refused to bargain concerning them. The General Counsel counters by asserting that the Respondent had no contractual right to propose changes when it did, and that the Union had no obligation to bargain when requested to do so. Accordingly, the General Counsel contends, the Respondent violated the Statute by changing conditions of employment through the implementation of its new official time policy. In light of the above-stated positions, the ultimate disposition of this case turns upon an analysis of the contractual provisions governing the parties' relationship. For the reasons stated below, I conclude that the Respondent was not justified in proposing to change provisions of the parties' agreement when it did, and therefore violated section 7116(a)(1) and (5) of the Statute, as alleged, by implementing the changes during the term of that agreement.

It is undisputed, and I find, that the amount of official time available for employees to perform union representational functions is a substantively negotiable matter. 5 U.S.C. § 7131(d); U.S. Department of the Air Force, HQ Air Force Materiel Command and American Federation of Government Employees Council 214, 49 FLRA 1111, 1119 (1994); American Federation of Government Employees, AFL-CIO, Council of Locals No. 214 v. FLRA, 798 F.2d 1525, 1530-31 n.8 (D.C. Cir. 1986). Accordingly, an agency's implementation of its decision to change the amount of official time available to union representatives without bargaining constitutes an unfair labor practice. Military Entrance Processing Station, Los Angeles, California, 25 FLRA 685, 689 (1987). In this case, however, the Respondent notified the Union of its proposal to change established official time policy; submitted specific proposals for the Union's consideration and response; and advised the Union that the proposals would be implemented on a certain date if the Union failed to respond. The Union refused to negotiate.(9) Accordingly, the Respondent's implementation of the precise changes in official time policy previously proposed to the Union would not have violated the Statute if the Union had a duty to bargain at the time that the Respondent proposed such changes but failed to do so. SeeBureau of Engraving and Printing, Washington, D.C., 44 FLRA 575, 582-83 (1992); U.S. Immigration and Naturalization Service, 24 FLRA 786, 790-91 (1986).

It is well settled that neither party is required to bargain concerning modifications to conditions of employment embodied in an agreement for a fixed period. See Department of Navy, Marine Corps Logistics Base, Albany, Georgia v. FLRA, 962 F.2d 48, 53 (D.C. Cir. 1992) ("[W]here a matter that would otherwise be a mandatory subject of bargaining is 'covered by' or 'contained in' a collective bargaining agreement, the parties are absolved of any further duty to bargain about that matter during the term of the agreement."); see alsoU.S. Department of the Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Cincinnati, Ohio District Office, 37 FLRA 1423, 1431 (1990) (once agreement is reached on mandatory subjects of bargaining, the agreement is binding on the parties for the term of their contract).

There is no dispute in this case that the local SA between the Respondent and the Union specifically covered the amount of official time that the parties agreed would be available to Union representatives at the Medical Center in Birmingham, Alabama.(10) Indeed, the Respondent's January 31 proposals were submitted to the Union in order to change the existing agreement on official time because of certain perceived abuses under that system.

It is also undisputed that the local SA is a contract of fixed duration. Thus, it is agreed that the local SA originally became effective on March 18, 1977 for a 2-year period and that, under Article V, Sections 1 and 2 thereof (quoted at p.4 above), the local SA is automatically renewed for 3-year periods unless notice is provided by either party to the other--between 60 and 90 days prior to the expiration of the current agreement--of an intention to reopen negotiations on some or all of its provisions or to terminate the agreement altogether. Accordingly, the parties agree that, on January 31, 1994, when the Respondent proposed to renegotiate concerning official time, the local SA then in effect was due to expire on March 17, 1994.

Under the express terms of the local SA, then, the Respondent was required to notify the Union by no later than January 17, 1994, of its intention to renegotiate concerning official time. Its failure to do so until January 31, 1994, meant that the request was untimely and the local SA would be automatically renewed on March 18, 1994 for another 3-year period.(11) This is precisely what the Union advised the Respondent in February and March 1994, and exactly why the Union refused to negotiate with the Respondent over the January 31 proposals.

The Respondent contends, however, for a number of reasons, that it had the right to reopen the local SA when it did, and that the Union's admitted refusal to negotiate as requested thereby absolved the Respondent of any violation of the Statute. In this connection, the Respondent's principal argument is that a conflict exists between the MLA and the local SA, both of which govern the parties' relationship at the Medical Center in Birmingham, Alabama, and that where such a conflict exists, the MLA controls. It appears that the Respondent is interpreting Article 5, Section 2A of the MLA(12) as the basis for its right to reopen and renegotiate the local SA at any time. That is, the Respondent reads the language in Article 5, Section 2A which states that "anytime after this [MLA] has been in effect for 30 days, the parties, at the request of either local party, may negotiate one local [SA] to this [MLA]" as authorizing either local party to reopen the local SA at any time after the MLA has been in effect for 30 days. On this basis, the Respondent asserts that a conflict exists with the local SA which provides in Article V, Section 2 that the local SA may be amended, modified or terminated only if either party notifies the other of such an intent at least 60 but not more than 90 days prior to the expiration date of the local SA--a clear limitation on when the local parties may seek to renegotiate the terms of the local SA.

In Internal Revenue Service, Washington, D.C., 47 FLRA 1091 (1993), the Authority held that "when a respondent claims as a defense to an alleged unfair labor practice that a specific provision of the parties' collective bargaining agreement permitted its actions alleged to constitute an unfair labor practice, the Authority, including its adminis-trative law judges, will determine the meaning of the parties' collective bargaining agreement and will resolve the unfair labor practice complaint accordingly." Id. at 1103. Since the Respondent's defense in this case rests upon Article 5, Section 2A of the MLA, I am required to interpret that provision to the extent necessary to resolve the instant unfair labor practice allegation. Id. at 1104.

In my judgment, the Respondent has misinterpreted the meaning and intent of that provision. Thus, Article 5, Section 2A of the MLA states that "anytime after this [MLA] has been in effect for 30 days," the local parties "may negotiate one local supplement to this [MLA]." The foregoing language clearly manifests two purposes: (1) to require a 30-day waiting period from the effective date of the MLA before local parties could request supplemental negotiations, and (2) to limit the local parties to the negotiation of only one local supplement rather than a series of separate agreements. At the same time, the negotiators of the national MLA

made it clear by adding a "note" to Article 5, Section 2A that the local parties could include any matter in their one supplemental agreement not covered by the MLA. Article 5, Section 2A of the MLA addresses the procedures to govern the local parties in negotiating a local supplemental agreement; it does not purport to govern subsequent renegotiations.

A contrary interpretation would be inconsistent with the purposes and policies of the Statute. Thus, if the Respondent's interpretation were upheld, it would require either party to the existing local SA to negotiate at the request of the other party any time during the life of the local SA with respect to matters contained in or covered by that agreement. Indeed, there would be no limit on the number of times the contract could be reopened for negotiation of matters already dealt with in the agreement. Such an interpretation, which would require endless bargaining, is contrary to the principle that both parties to an agreement for a fixed period are entitled to the stability and repose that such an agreement affords. SeeU.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 47 FLRA 1004, 1017-18 (1993); Department of Navy, Marine Corps Logistics Base, Albany, Georgia v. FLRA, 962 F.2d 48, 59 (D.C. Cir. 1992). Accordingly, since there is no conflict between the MLA and the local SA, and the latter permits the parties to reopen negotiations on matters (such as official time) covered by the local SA only during the "window period" specified in Article V, Section 2 thereof, the Union was entitled to reject the Respondent's untimely request to bargain over new official time proposals.

The Respondent further contends that the instant unfair labor practice proceeding is an inappropriate forum to resolve what is essentially a disagreement between the parties concerning the meaning of provisions in their negotiated agreements, because the parties have agreed in Article 13, Section 2 of the MLA(13) that such contractual disputes are "grievances" and should be resolved in that forum. However, the Authority has rejected such an argument in the past, noting that the Statute's requirement that every collective bargaining agreement contain a negotiated grievance procedure culminating in binding arbitration does not remove the choice which section 7116(d) of the Statute accords--that is, the discretion of an aggrieved party to pursue issues which can be raised under a grievance procedure either under that procedure or as an unfair labor practice. See, e.g., Internal Revenue Service, Washington, D.C., 47 FLRA 1091, 1106 (1993).

Having found that the Respondent violated section 7116(a)(1) and (5) of the Statute as alleged, the final question is what should constitute an appropriate remedy. The General Counsel requests, in addition to the usual cease and desist order and Notice posting, an order directing a return to the pre-existing practice of allowing "reasonable" official time for the Union President and Chief Steward on a case-by-case basis. Inasmuch as a status quo ante remedy is always appropriate as a remedy where, as here, the underlying issue (official time) is substantively negotiable,(14) I shall recommend an order requiring the Respondent to rescind its new official time policy and reinstate the practice embodied in the parties' local SA currently in effect. Additionally, as requested by the General Counsel and consistent with the Authority's remedies for wrongful denials of official time under section 7131(d) of the Statute which result in covered activities being performed by union representatives on non-duty time, I shall recommend an order requiring the Respondent to pay the affected employees at the appropriate straight-time rate for the amount of time that should have been official time. See U.S. Patent and Trademark Office, 39 FLRA 1477, 1483 (1993), and cases cited. Similarly, employees who used leave to perform duties that otherwise would have been performed on official time are entitled to have such leave restored. Id.(15)

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that Department of Veterans Affairs, Veterans Affairs Medical Center, Birmingham, Alabama, shall:

1. Cease and desist from:

(a) Changing conditions of employment of bargaining unit employees by altering the amount of official time available for Union representatives under an existing collective bargaining agreement between the parties without the Union's consent.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Make whole any bargaining unit employees who were adversely affected by its change in the practice of granting official time to Union representatives engaged in representational activities on and after February 22, 1994, which varied the terms of an existing collective bargaining agreement with the American Federation of Government Employees, Local 2207, AFL-CIO, the exclusive representative of its employees, without the Union's consent, including the restoration of any leave used to perform representational activities if those activities otherwise would have been performed on official time but for its change in practices regarding the granting of official time for Union representatives engaged in representational activities.

(b) Compensate at the appropriate straight-time rates any bargaining unit employees who performed representational activities on nonduty time on and after February 22, 1994, if those activities otherwise would have been performed on official time but for its change in practices embodied in an existing collective bargaining agreement regarding the granting of official time for Union representatives engaged in representational activities.

(c) Post at its facilities in Birmingham, Alabama, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Director of the Veterans Affairs Medical Center, Birmingham, Alabama, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, March 30, 1995

GARVIN LEE OLIVER

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT change conditions of employment of bargaining unit employees by altering the amount of official time available for Union representatives under an existing collective bargaining agreement between the parties without the Union's consent.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL make whole any bargaining unit employees who were adversely affected by our change in the practice of granting official time to Union representatives engaged in representational activities on and after February 22, 1994, which varied the terms of our existing collective bargaining agreement with the American Federation of Government Employees, Local 2207, AFL-CIO, the exclusive representative of our employees, with-out the Union's consent, including the restoration of any leave used to perform representational activities if those activities otherwise would have been performed on official time but for our change in practices regarding the granting of official time for Union representatives engaged in representational activities.

WE WILL compensate at the appropriate straight-time rates any bargaining unit employees who performed representational activities on nonduty time on and after February 22, 1994, if those activities otherwise would have been performed on official time but for its change in practices embodied in an existing collective bargaining agreement regarding the granting of official time for Union representatives engaged in representational activities.

_____

(Activity)

Date: _____ By: _____

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, and whose telephone number is: (404) 347-2324.

1. At the conclusion of the hearing, the Respondent moved to dismiss the complaint on the basis that the controlling Master Agreement conflicted with the terms of the parties' local supplemental agreement and therefore the Respondent was within its rights to revise the official time provisions in the local agreement. The motion to dismiss was taken under advisement until the documentary evidence submitted at the hearing could be reviewed thoroughly. For the reasons set forth in this decision, the Respondent's motion is denied.

2. Although the Respondent indicated at the hearing that it planned to submit a brief simultaneously with the General Counsel by the established deadline, October 21, 1994, only the latter met the deadline. On October 28, 1994, the Respondent filed a motion for an extension of time to file its brief on the ground that it had not received a copy of the official hearing transcript in a timely manner. That motion was vigorously opposed by the General Counsel on the bases that the Respondent's motion for an extension should have been filed at least 5 days before the brief's due date under section 2423.25 of the Authority's Rules and Regulations and thus was itself untimely; that the Respondent could have prepared and submitted its brief on time without the hearing transcript because the dispositive issue in the case involved an interpretation of contractual provisions already in the Respondent's possession rather than an analysis of transcript testimony; and that granting the requested extension would be unfair and prejudicial to the General Counsel whose brief was filed on time, because the Respondent would have the advantage of replying to the General Counsel's arguments without a reciprocal opportunity for the General Counsel. By order dated November 2, 1994, the Respondent's motion for an extension of time was denied, it appearing that good cause for such an extension had not been shown.

3. The parties stipulated that the Award is a binding inter-

pretation of their local SA with regard to official time.

4. In August 1989, as part of an agreement settling a pending unfair labor practice charge in Case No. 4-CA-90077, the parties reaffirmed the provisions of the 1987 arbitration award mentioned above, and the Respondent further agreed to take disciplinary action against any supervisor who violated the Award.

5. Article 8 of the MLA essentially addresses the amount of official time available to specified Union officials at the national level, and (in Section 5, quoted above at p. 3) leaves the matter of official time available to local Union officials for negotiation at the local level.

6. Under that provision, a timely request to renegotiate the local SA would have had to be submitted between December 18, 1993 and January 17, 1994.

7. The implemented official time policy was the same as Mountcastle earlier proposed on January 31, 1994.

8. As Tyus testified, the official time restrictions meant that the Union was unable to file grievances at the first step or even to consult with employees about their complaints before they became grievances.

9. While the Respondent interpreted the Union's February 11 response to its January 31 proposals as a final offer counter-proposal to maintain the status quo, I conclude that the Union clearly stated that it refused to bargain on the basis that the Respondent's request to renegotiate concerning official time had been untimely submitted, and that the terms of the parties' local SA therefore had automatically renewed themselves.

10. Article XI, Section 3 of the local SA (see p. 4) limited stewards to 10 hours per pay period, whereas President Tyus and Chief Steward Weekley (among others) were allowed "a reasonable period" for representational activities. It appears that the parties reached agreement on the use of official time in 1977, and that such agreement was carried over by the terms of the MLA negotiated at the national level in 1982--specifically Article 5, Section 1 which continued all provisions of pre-existing local agreements not in conflict with the MLA, and Article 8, Section 5 which preserved the matter of official time for local union officers and stewards for local supplemental bargaining.

11. The Authority has recognized that such automatically renewed agreements contribute to the stability of employer-employee relations and are consistent with the purposes of the Statute. Kansas Army National Guard, Topeka, Kansas and Association of Civilian Technicians, Kansas Army Chapter, 47 FLRA 937, 941 (1993). And it has sustained arbitral awards where an agency failed to timely notify the union under the

applicable contractual procedures of its intent to terminate a "permissive" contract provision even where the result was that the contract became automatically renewed and the permissive subject remained part of the parties' agreement. See, e.g., U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado River Storage Project, Power Operation Office, et al. and International Brotherhood of Electrical Workers, Locals 2159 and 1759, 46 FLRA 247, 264-65 (1992), appeal dismissed, 26 F.3d 179 (D.C. Cir. 1994).

12. Article 5, Section 2 provides in pertinent part:

Section 2 - Procedures for Local Supplementary Agreement Bargaining

A. The parties agree that anytime after this Agreement has been in effect for 30 days, the parties, upon the request of either local party, may negotiate one local supplement to this Master Agreement. The Local Supplemental Agreement may cover all negotiable matters regarding conditions of employment insofar as they do not conflict with the Master Agreement as defined in Section 1.

NOTE: This is not intended to preclude local bargaining of items that are not covered by the Master Agreement.

13. Article 13, Section 2 of the MLA defines a "grievance" as it is defined in section 7103(a)(9) of the Statute, and specifically excludes those matters which section 7121(c) of the Statute removes from coverage of a negotiated grievance procedure.

14. See, e.g., Federal Deposit Insurance Corporation, 41 FLRA 272, 279 (1991); Veterans Administration, West Los Angeles Medical Center, Los Angeles, California, 23 FLRA 278, 281 (1986).

15. However, the General Counsel's requested make whole remedy for those bargaining unit employees who have been denied effective representation as a result of the Respondent's unlawful conduct--specifically an extension of time limits for any grievances the Union has been unable to process and for any proposed changes in conditions of employment to which the Union has been unable to respond--is denied. The General Counsel has not established or even alleged that such circumstances occurred as a result of the Respondent's change in official time policy. Rather, the record indicates that Union President Tyus and Chief Steward Weekley--who performed practically all of the section 7131(d) representational work--used lunch hours and stayed after their shifts ended in order to represent the unit employees. Moreover, the Respondent's change of official time policy in this case did not extend to instances where management proposed changes in conditions of employment. In those circumstances, the Union would have been entitled to official time for negotiations under section 7131(a) of the Statute rather than a reasonable amount of official time under section 7131(d).