

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of  UNITED STATES DEPARTMENT OF THE AIR FORCE, GRISSOM AIR FORCE BASE, 434 <sup>TH</sup> AIR RESERVE WING GRISSOM AIR FORCE BASE, INDIANA	
And  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3254	Case No. 19 FSIP 049

**DECISION AND ORDER**

This case, filed by the American Federation of Government Employees, Local 3254 (Union) on June 5, 2019, concerns a dispute over the Official Time article in the parties' successor collective-bargaining agreement (CBA) between it and the United States Department of the Air Force, Grissom Air Force Base, 434<sup>th</sup> Air Reserve Wing, Grissom Air Force Base, Indiana (Agency or Management). The Union filed this dispute under §7119 of the Federal Service Labor Management-Relations Statute (Statute). The Federal Service Impasses Panel (FSIP or Panel) asserted jurisdiction over this dispute and directed it to be resolved in the manner discussed below.

**BARGAINING AND PROCEDURAL HISTORY**

The Agency houses the 434th Air Refueling Wing, which consists of three major groups and a variety of squadrons and flights. The Agency develops and maintains the operational capability of its units and trains reservists for worldwide duty. The Union represents approximately 328 bargaining-unit employees in a variety of positions, including Mechanics, Technicians, Air Traffic Controllers, Accountants, Firefighters, and Administrative Assistants. The parties are covered by a CBA that expired on October 16, 2018, but continues to roll over on an annual basis until it is replaced by a new contract.

The parties met to bargain at least eight times between September 2018 and January 2019. They also received 2 days of mediation assistance from the Federal Mediation and Conciliation Services (FMCS) in February 2019. The Mediator released the parties from mediation on February 2, 2019, in FMCS Case No. 20191200902. The Union subsequently filed this request for Panel assistance 4 months later because Management provided notice that it intended to implement its final offer absent further action. Because of the Union's filing, the Agency is maintaining the status quo.

On August 8, 2019, the Panel considered the Union's request for assistance and voted to assert jurisdiction over it and to resolve all remaining issues through a Written Submissions procedure with an opportunity for rebuttal statements. The parties provided their respective written arguments in a timely fashion.

### ISSUES

Although there are several proposals involved, this dispute boils down to two portions of the parties' official-time article. Those sections are Article 7.3, "General Limits on Official Time," and Article 7.5, "Other Provisions on Official Time." Each section will be addressed in turn.

- Article 7.3 - "General Limits on Official Time."
  - Agency Position

Most issues remaining for resolution revolve around the amount of official time the Union shall receive on an annual basis. Management proposes the following language (disputed language is in bold):

- **General Limits on Official Time. The use of duty time by union officers and stewards for representational activities must not interfere with the accomplishment of the mission of the requester's organization. No union officer or steward may exceed 20% of their scheduled duty time on union duties in any calendar year. During the calendar year, the total amount of duty time used by union officers and stewards for all union activity shall not exceed 500 hours combined. Any time beyond these limits will be charged to the**

**employee's personal leave.**

- In accordance with 5 USC 7131(a), official time for any designated representative for the Union in the negotiation of a collective bargaining agreement is excluded from the time limits above. Any official time directed by the FLRA under 5 USC 7131(c) during an ongoing proceeding is also excluded.
- Up to 40 hours of official time may be used for mutually beneficial training for each new union official and steward. This training does not include internal union business. Once they have obtained this initial 40 hours, 24 hours of official time may be used in each subsequent calendar year for mutually beneficial training to remain current on changes. **This is included in the total limit on official time listed above. There is no provision for excused time for travel on duty to/from the training.**
- There is no payment of travel and/or per diem for either the performance of representational duties or attendance at union training.
- Official time granted to grievants under Article 3 of this agreement does not count against the limits in 7.3 above; the limits are for representational purposes.

As can be assessed from the language in bold, the primary issue in dispute is the "bank" of official time hours that the Union should receive on an annual basis. Under the parties' existing Article 7, the Union may use up to 1,800 hours of official time per year. *In addition*, the Union President is entitled to 20 hours of official time per week, or 40 hours per pay period. Thus, based on the foregoing, the Union has a current annual contractual entitlement of 2,840 hours of official time per year.

Management seeks to scale back the foregoing figures significantly. It acknowledges that collective bargaining is in the public interest. But, collective bargaining must be conducted in an effective and efficient manner, and official time must be reasonable, necessary, and in the public interest. The Union's use of official time for the past several years is problematic under this framework.

When the current contract language was enacted in 1998, the bargaining unit had approximately 600 employees. And, during the years 1998-2014, the Union utilized roughly 300-600 hours of official time per year. Since 2014, however, official-time usage has "exploded" following a change in Union leadership. That usage is as follows:

- In 2015, there was 763 hours used and 23 grievances filed;
- In 2016, there were 1,181 hours utilized with regard to 15 grievances;
- In 2017, the Union used 1,474 hours of official time and filed 12 grievances; and
- In 2018, there were 1,502 hours and 10 grievances filed.

As can be viewed from the foregoing figures, although the number of filed grievances has steadily decreased, the amount of official time has only increased with little to no explanation offered by the Union. More troubling, the number of bargaining-unit employees has continued to decrease, down to a current number of 328. The Agency's proposed 500 hours per year of official time is "reasonable, necessary, and in the public interest" and based upon the "documented decrease in representational activity" seen in the above figures. This figure is within the range of the 300-600 hours-per-year figure that existed prior to 2015. Additionally, "Air Force culture" calls for employees to spend no more than 20% of their time in "additional duties beyond an individual's job requirements" per pay period. Further, data collected by the Office of Personnel Management (OPM) for Fiscal Year 2016 shows that DoD unions utilized approximately 0.94 hours of official time per bargaining unit employee for that year. Applying this figure to the number of currently represented employees, 328, would result in 308 hours of official time per year, or less than what the Agency offers.

The Agency is also concerned with granting a weekly block of time to a Union representative because of current circumstances involving the Union President, who is the individual who currently uses the existing block. He works from 7 p.m. to 7 a.m., when roughly only 50-60 bargaining-unit employees are on the Agency's facilities. Despite

this, he has utilized 2,276 official-time hours between 2015-18, which translates to 569 hours per year. Further, his blocks of time are coded as "Labor/Management Relationships" notwithstanding the fact that no meetings or other Management interactions occur during his shift. And, needless to say, no other negotiations arise during his tour of duty. Based on the foregoing, it would not be reasonable, necessary, or in the public interest to continue granting a weekly block of official-time hours.

Management believes all training time should be counted in official-time figures. Currently, time spent in training is "excused time." The parties agree it should now be treated as "official time," but the Union does not want it to count against any overall figures. Management cannot agree to this approach because it could result in overuse of official time by different Union representatives who may seek out training on duty time.

Finally, the Agency opposes Union language that calls for "balancing" the needs of the Agency with a Union request for official time when considering whether to grant such requests. The Union's language is too broad and unnecessary.

- Union Position

The Union offers the following language, as relevant. The disputed language is in bold:

**7.3. General Limits on Official Time. The use of duty time by union officers and stewards for representational activities must be balanced with the accomplishment of the mission of the requester's organization.**

7.3.1. General Limits on Official Time. The total amount of duty time used by union officers and stewards for union activity will normally not exceed the following limits:

**7.3.1.1. Designated Official - 10 hours/week**

**7.3.1.2. Time Allocations:**

**7.3.1.2.1. A designated union representative is authorized up to 16 hours of official time to meet with the grievant and or pursue the grievance and**

complaint procedure. If this time is used up and the representative is attending the arbitration, they will be granted additional hours for the arbitration hearing.

7.3.1.2.2. Meetings under 5 USC 7114 designated representative will be authorized an amount of official time to cover the length of the meeting plus 30 minutes.

7.3.1.2.3. Meetings with Commanders, Supervisors, Human Resources official, or Legal office to address concerns, potential labor relations issue, safety issues, etc.

7.3.1.2.4. Official time beyond the stated levels in this section shall be requested and granted on a reasonable and necessary basis.

7.3.2. In accordance with 5 USC 7131(a), official time for any designated representative for the Union in the negotiation of a collective bargaining agreement is excluded from the time limits above.

7.3.3. In accordance with 5 USC 7131(c), official time for any designated representative for the Union 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 and this time shall be excluded from the time limits above.

7.3.4. Up to 40 hours of official time may be used for mutually beneficial training for each new union official and steward. This training does not include internal union business. Once they have obtained this initial 40 hours, 24 hours of official time may be used in each subsequent calendar year for mutually beneficial training to remain current on changes. This is not included in the total limit on official time listed above.

7.3.5. There is no payment of travel and/or per diem for either the performance of representational duties

or attendance at union training.

7.3.6. Official time granted to grievants under Article 3 of this agreement does not count against the limits in 7.3 above; the limits are for representational purposes.

The Union is opposed to Management's proposed reductions because they effectively reduce the Union's yearly amount of official time by 2,340 hours. Such a reduction severely restricts the Union's representational capabilities. The Agency offered figures for official-time "abuse" between 2015-2018 while ignoring that, under the existing contract, the Union is entitled to 2,840 hours per year (1,800 for all other representatives, and 1,040 for the President). When broken down, the actual percentage of official time used per year is not controversial. Specifically, it breaks down as follows:

- In 2015, the Union used 27% of its time;
- In 2016, the Union used 42% of its allotted time;
- In 2017, 52% of the Union's time was allocated to representational duties; and
- In 2018, the Union utilized 53% of its contractual guarantee of official time.

The above figures demonstrate that the Agency's concerns about official-time "misuse" are overblown. The Union's proposed figures are consistent with the above numerical data.

The Union also requests 16 hours per grievance, plus additional time if a related arbitration goes longer, as the parties average one grievance-arbitration per year. The parties already agreed to grant individual employees 16 hours of administrative time to pursue their own grievances in Article 3. The Union should receive a similar amount as a matter of parity.

In addition to the foregoing amounts, the Union requests official time sufficient to cover any meetings arising under 5 U.S.C. §7114 and 30 minutes of official time on top of that. This time will ensure that the Union can adequately carry out its statutory functions. For similar

reasons, the Union requests an undefined amount of official time for meetings with "Commanders, Supervisors, Human Resources official, or Legal Office" personnel. The Union also proposes that it will be permitted to request other reasonable amounts of official time that "shall" be granted. Because the Union has to represent *all* employees in the bargaining unit, it needs a sufficient amount of official time (although it does not believe official time will be an issue if it receives its requested 16 hours per grievance).

The Union also proposes 40 hours of annual official time for training for each Union representative and officer. Then, in subsequent years, these individuals may receive 24 hours per year to remain current. But, none of this time will count in any overall grants of official time. The Union has never been required to consider training time as part of the overall bank of official-time hours, and this time is important because Union representatives need to be familiar with various law, rules, and regulations they must follow. The Union's 24-hour figure represents a reduction from the current amount of 124 hours granted per year to Union stewards for training purposes.

In addition to the above times for the unit as a whole, the Union needs at least 10 hours a week for a Union representative so it can advertise its services and availability to the bargaining unit effectively. The current CBA language grants him 20 hours of official time per week, which amounts to 1,040 hours a year. But, Management concedes that he spends roughly only 569 hours a year, or 54% of his time. This figure demonstrates that the Union is capable of monitoring its own time without abuse and capably balances the needs of the mission with the needs of the bargaining unit.

Finally, the Union has language stating that use of official time "must be balanced" with the Agency's mission. This language contrasts Management's proposed language stating that official time "must not interfere" with the Agency's mission. The Union believes its proposed language is necessary because the Agency's language, which is the status quo, often prevents designated representatives from participating in representational matters. This forces another Union official to step in. When questioned, Management often fails to explain how a representative's participation "interfere[d]" with the Agency's mission. The Union's language will provide greater flexibility for all parties involved.



• Conclusion

The Panel will impose a modified version of Management's proposal to resolve this dispute. In this regard, the Panel believes it is appropriate to adopt the Agency's language in full save for modifying the Agency's offer of "500" hours of official time per year to "300" hours.

Much of the dispute between the parties revolves around how much official time the Union uses on an annual basis. There is no dispute, however, that since 2015 the Union's use of official time has *increased* while the size of the bargaining unit has *decreased*. The Union offered little in the way of justification to explain this disparity. It attempts to downplay Management's proffered figures by noting that the Union used only certain percentages of the total amount of official time contractually allotted to it. Yet, those percentages continue to *increase*. That is, the Union is still relying upon a significant amount of official time without elaboration. The Panel, therefore, should not discount Management's figures.

Further, much of the Union's language is based upon either estimates prepared by Union representatives or essentially suggests a "blank check" approach. As to the former, it is not clear how the Union arrived at these estimates, such as the 16 hours requested for grievances (including an unspecified amount of time for ensuing arbitration after those hours run out). Nor does the Union estimate how much annual time will be devoted to these meetings. As to the latter, several proposals call for undefined amounts of time. For example, the Union's proposed 7.3.1.2.3 requests official time for meetings with various Agency and Air Force officials, but there is no limitation on amounts stated within this language. Much more troublingly, the Union proposes in 7.3.1.2.4. that the Agency "*shall . . . grant [ ]*" reasonable requests for official time above what the Union requests. (emphasis added). Thus, while the Union attempts to frame its various proposals as a concession towards the concept of official-time reduction, that concession is lessened by the open-ended nature of several portions of the Union's proposal.

The Union also requests imposition of language that would focus on "balancing" the Union's requests for official time with the needs of the Agency. It argues that the Union has had to substitute several Union representatives in the

past because the Agency has relied upon an overly cramped interpretation of existing contract language that emphasizes the mission of the Agency. What the Union does not argue, however, is that the current contractual framework has prohibited the Union from offering representation. Thus, it appears the current language already accomplishes the Union's desired goal of "balance."

All of the above demonstrates that the Union's proposed figures should not be adopted. But, it does not necessarily follow that the Agency's figures should be adopted. As the Panel has explained, *all parties* to a dispute involving official time bear the burden of demonstrating that a proposed amount of official time is reasonable, necessary, and in the public interest. The Agency proposes a bank of 500 yearly hours with an individual cap of no more than 20% of duty time devoted to official time. This amount of time is unsupported by the record.

The Agency offers a figure of 500 annual hours that appears to be based upon the average of annual hours used between 1998-2014. In this regard, Management, through a witness declaration, claims that the Union used roughly 300-600 hours per year during this time period. But, Management does not provide a concrete breakdown as to what data it relied upon to arrive at this figure. Indeed, the Union claims that Management has not provided proof to the Panel to support these figures. However, the Union does not dispute the figures themselves. Nor does it provide sufficient rebuttal data. The Agency's offered 300-600-hour timeframe should, therefore, serve as the starting point.

The next point to examine is the Agency's proffered OPM data on official-time usage for FY2016. As noted above, this data shows a use of 0.94 hours per bargaining-unit employee for the year throughout the DoD. OPM's data for several years leading up to FY2016 demonstrates a trend within DoD of averaging around 1.00 hour per employee:

Fiscal Year 2002	2.72 hours
Fiscal Year 2003	2.95 hours
Fiscal Year 2004	1.60 hours
Fiscal Year 2005	1.30 hours
Fiscal Year 2006	0.63 hours
Fiscal Year 2007	0.79 hours
Fiscal Year 2008	0.80 hours
Fiscal Year 2009	0.88 hours

Fiscal Years 2010/2011/2012	0.79 hours
Fiscal Year 2014	0.84

For the past 13 years, OPM's collected data demonstrates that DoD official-time usage has leveled at under 1.00 hours per bargaining-unit employee. Applying the foregoing trend to *this* bargaining unit would result in an annual bank of around 328 hours per year. This amount is similar to the base level of 300 hours in the 1998-2014 figure cited by Management above before Union leadership changed and official-time figures began to skyrocket. Based on the foregoing, then, the Panel believes it is appropriate to rely upon a figure of 300 annual hours of official time.

This figure is reasonable because it is consistent with over a decade of what collected data shows to be the average "norm" in the DoD. It is necessary because even the Agency's own presented data demonstrates that the Union is involved in several grievances and other actions each fiscal year. Finally, Management concedes that the Union's use of official time is in the public interest.

Consistent with all of the foregoing, the Panel believes it is also appropriate to accept Management's 20%-limitation on individual official-time use. As shown from the Agency's post-2015 figures, the Union has continued to pursue increases of official time. Management's proposed limitation will help ensure that the Union remains within the allotted amount of official time.

Based on all of the above, the Panel will adopt Management's language in full but with the following modification (modified language in bold):

- General Limits on Official Time. The use of duty time by union officers and stewards for representational activities must not interfere with the accomplishment of the mission of the requester's organization. No union officer or steward may exceed 20% of their scheduled duty time on union duties in any calendar year. During the calendar year, the total amount of duty time used by union officers and stewards for all union activity shall not exceed **300 hours combined**. Any time beyond these limits will be charged to

the employee's personal leave.

- Article 7.5.3, "Other Provisions on Official Time."

- Agency Position

This article involves only one disputed proposal: **"If the employees or union representatives choose to meet in an off base facility, official time ends when they leave [Agency] property."** The purpose of this proposal is to prohibit the Union from using official time anywhere but while on the Agency's facilities.

As part of the parties' CBA renegotiations, the Agency informed the Union that it was obligated to comply with Air Force Instruction 32-9003, "Granting Temporary Use of Air Force Real Property." (2018) (AFI or Instruction). Under, the Instruction, the Air Force and its components may grant the use of its facilities to non-Air Force entities through various categories of grants. One such category is a "license," which Section 1.3.2 of the Instruction defines as the "non-exclusive use of real property for a short term [that] may be terminated at the will of the Air Force." Management claims that the Union's grant of office space is classified as a license, and Section 3.9 of the AFI states that a licensee "must carry third-party insurance for accidental death, personal injury, and property damage in an amount sufficient to cover Air Force interest as determined by person exercising delegated authority to execute" the license.

During CBA negotiations, the Agency informed the Union of all of the foregoing. It further informed the Union that, if it wished to continue using on-base facilities for a Union office, the Union would have to obtain insurance. As the Union had never had to pay for any aspect of its Union office previously, it balked at the Agency's request. Accordingly, the parties tentatively agreed to Article 28 in their successor CBA that calls for the Union to vacate its offices within 60 days of the execution of the CBA. But, the Union could request the use of Agency space, e.g., conference rooms. Despite the foregoing, the Union chose to relocate off Management's facilities. There is some disagreement between the parties whether the Union's decision was something that was envisioned under the framework of Article 28.

It is against the foregoing backdrop that Management

has proposed prohibiting the Union from using official time when its representatives are not on Management's facilities. The "use" of official time must be reasonable, necessary, and in the public interest. Allowing the Union's requested "use" of off-base official time does not satisfy these criteria for a variety of reasons.

To begin with, Management's facilities host no more than 600 employees during the work week, which means it has "many empty offices" available for Union use. These offices are available as a "no-cost license," but Management concedes that the Instruction "requires" the Union to obtain liability coverage. To date, the Union has provided no data concerning insurance coverage. It is also likely that, should the Union obtain off-base space, the Union would have to obtain some form of insurance. So, the Union's continued resistance to the idea of paying insurance coverage is illogical.

Management also has safety concerns about the Union's proposed approach. The Agency will have no oversight over the Union's housing conditions, which means it cannot ascertain whether appropriate safety measures are satisfied. This, in turn, could lead to potential workers' compensation claims in the event of injury. Additionally, a Management representative reached out to the Indiana State Police to acquire statistics concerning "the local traffic intersection" and discovered that there have been 135 total injuries, including a fatality, between 2015-2018.

Finally, the Agency is concerned that the Union's proposed arrangement could lead to official-time abuse. Given fears that the Union President is abusing his time while on base, that abuse could worsen if out of the eye of Agency supervision. Additionally, requiring Management to provide official time for travel purposes is inefficient. This point is important because, as of yet, the Union has yet to provide any indication where it will relocate. Relatedly, if the Union locates far, attempting to call back employees for work-related reasons could prove challenging.

- **Union Position**

The Union opposes Management's language in its entirety and offers no counterproposal. Management did not offer its proposal until the parties signed Article 28. The Union is "obligated" to adhere to Executive Order 13,837, "Ensuring Transparency, Accountability, and Efficiency in Taxpayer

Funded Union Time Use" (Official Time Order). Section 4.iii prohibits agencies from granting unions office space. Management's proposal would effectively limit the Union's ability to meet with employees while the Union tried to comply with the Order's limitation on using Agency office space. This scenario would prevent the Union from performing its representational functions.

The Union concedes that other spaces are available on the Agency's facilities. However, the Agency's interpretation of the Air Force Instruction requires the Union to not only obtain insurance for the *entire* building, it also calls upon the Union to insure the sidewalks and to pay for certain utilities. This approach is not cost effective for the Union. Worse still, Management, through an Agency property official at negotiations, explained that the Union may be evicted at any time. Management's proposed arrangement is simply untenable.

The Agency's concerns about safety are overblown. The Union has secured an off-base location that is 1 mile away from the Agency's facilities and avoids the intersection cited by Management as a "threat." The short distance will also permit for a quick recall of any employees needed by Management.

- **Conclusion**

The Panel will order the Agency to withdraw its proposal. Management's proposal is based primarily upon the concepts of official-time abuse and safety concerns. Although the Agency's positions are laudable ones, neither of them are supported by Management's arguments.

The Agency is concerned that if the Union were to relocate off base, official-time abuse could skyrocket. But, it is unclear how the simple act of relocating 1-mile away would create such an environment. The Union would still be bound by the same amount of official time imposed upon it described above, and it would still have to go through the proper channels for procuring official time. Management has not cited any conditions for the official-time request process that would have to be altered if the Union moved to a different location. This argument, then, is misplaced.

Management also claims it would not be reasonable, necessary, or in the public interest to allow official time

use for travel purposes. But, Management has already conceded that the Union should receive *some amount* of official time per year as a reasonable, necessary, and in the public interest exercise of their statutory duties. Travel time would come out of that "bucket." How the Union wishes to use its allocated time, then, is up to the Union.

Official time should not be used for travel, the Agency further alleges, because of the availability of other areas on the base. Yet, Management limitations on this availability through its interpretation of the Air Force Instruction. Instructions that apply solely to an agency are substantively negotiable unless an agency argues there is a legal "compelling need" for the instruction to remain intact. Management has made no such claim. Thus, the substance of the Air Force Instruction was, and remains, entirely negotiable as a matter of law. Indeed, the Instruction nearly states as much. In this regard, the Instruction explains that insurance must be obtained "*as determined* by the person exercising delegated authority to execute." (emphasis added). That "person's" determination is the equivalent of an exercise of discretion, and such exercises are subject to negotiations. As the foregoing demonstrates, the Agency had ample room to negotiate under the Air Force Instruction but did not do so. The Union's decision to not utilize other base facilities must, therefore, be viewed through the lens of Management's unfounded recalcitrance to deviate from the Instruction and consider alterations to its framework.

The Agency's safety concern is overbroad. It raises a litany of concerns that are premised upon speculation of things that *could* happen if the Union were to relocate off of base. But, Management has offered no evidence that a single Agency employee has suffered any sort of duty-time injury whilst participating in Union activities. Further, the Agency attempts to make much of a traffic intersection located near the facility but offers no attempt to explain its position relative to base access and entry points. Moreover, the evidence provided by the Agency consists of an Agency official relaying what was conveyed to him by a third-party individual who accessed records of some sort. That is, the Agency asks the Panel to accept evidence that is premised upon multiple levels of hearsay. And, in any event, the Union appears to be relocating only roughly 1-mile away and not close to the intersection in question.

Based on all of the above, the Agency's arguments will

be rejected. Accordingly, the Agency is ordered to withdraw its proposal.

**ORDER**

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above.



Mark A. Carter  
FSIP Chairman

December 19, 2019  
Washington, D.C.

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