

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 2050)
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Union,)
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and)
)
U.S. ENVIRONMENTAL PROTECTION AGENCY)
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Agency)

PETITION FOR REVIEW OF
NEGOTIABILITY ISSUE

Pursuant to Section 2424.4 of the Authority's Rules and Regulations, the Union submits this Petition for Review of a Negotiability Issue. The dispute concerns the use of official time by Union representatives. A copy of the text of the proposal appears as Attachment A.

The Union holds exclusive recognition for approximately 1,100 professional employees at the Agency's Washington, D.C. headquarters. Since about July, 1990 the parties have been discussing the need for a change in the way that official time has been used and accounted for by certain Union representatives. During these negotiations, the Agency made unsolicited oral

allegations regarding the negotiability of portions of the Union's proposal. On July 26, 1991 the Union submitted a written proposal, Attachment A. At the same time, the Union formally requested the Agency's position on the negotiability, of the proposal. The Union's letter appears as Attachment B. As of August 5, 1991, ten days after submission of the proposal and request for a position on negotiability, no reply had been received by the Union from the Agency on this matter. The Union cannot say which portion(s) of the proposal the Agency finds non-negotiable. We are filing this Petition for Review to preserve our timeliness.

EXPLICIT MEANING OF THE PROPOSAL

The un-numbered paragraph makes plain the Union's intent to completely replace Article V of the existing collective bargaining agreement (CBA) with the Proposal, and to make the Proposal part of the November, 1986 CBA.

Paragraph 1 of the Proposal means that those employees occupying the named positions will be on 100% discretionary official time, subject to the other provisions of the Proposal, during their tenures in those offices. The Union Executive Board names the persons occupying the Senior Vice-President and Vice-President for Health and Safety positions from the group of six Vice-Presidents elected each May; the other officers named are elected specifically into those offices by the Union members during the May elections.

Paragraph 2 means that Union representatives other than those named in Paragraph 1, such as the remaining Vice-Presidents and stewards, who perform representational duties may do so in official time subject to the 5000-hour time bank (running from October 1 through September 30, next) and other provisions of the Proposal.

Paragraph 3 means that if the 5000-hour time bank runs out during the fiscal year, a case-by-case review will be carried out by the Labor-Management Committee (LMC) to resolve the need for more time. The structure and functions of the LMC are laid out in Article III of the existing CBA.

Paragraph 4 means that the existing time accounting process will be used and modified to the extent that management will keep records of the use of time from the bank and report the use to the Union biweekly. Persons using the time bank will be identified as having begun use after their first use, but their specific use will not thereafter be reported to the Union. If management wishes to keep such records of use by individuals, the Union has no objection.

Paragraph 5 means that use of official time by Union representatives in participating in a Total Quality Management (TQM) program will not be counted against the time bank. This provision is in recognition of the fact that there is no CBA between the parties covering TQM at present, though the Union has asked for bargaining on the program. Thus there is no basis for predicting how much, if any, time will be required for the Union to

participate. After one year of operation under this proposed agreement, the issue of how much time should be allotted for TQM will be reviewed and the CBA will be adjusted accordingly, if necessary.

Paragraph 6 means that a presumptive Fully Successful rating (mid-range in terms of points, i.e. 375) will be granted to those Union representatives on 100% discretionary official time, and that no harassment of or other adverse impact upon those employees will be perpetrated by management. This language is necessary due to the current harassment now occurring, chiefly of the present President, President-Elect and Chief Steward.

Paragraph 7 means that any Union representative who has been using at least 60% official time for a one year period and who, for any reason, returns to his/her regular Agency job with the expectation of resuming essentially full time duties there, is eligible for retraining. This retraining will be provided by the Agency at no cost to the employee and shall run for no longer than 120 days, but shall be of such length as to satisfy both the employee and the supervisor as to adequacy. During the retraining period no performance records will be kept nor rating done, but counseling will be expected if appropriate.

Paragraph 8 means that if allegations are made of harassment of Union representatives or of abuse of official time by Union representatives, the charge will be promptly investigated by the LMC. The LMC will try to resolve the allegation. If no resolution

by the LMC is possible, other administrative remedies will be applied, i.e. grievance, unfair labor practice charge, administrative discipline, etc. Resolution of any such allegations will be a priority function of the LMC.

Paragraph 9 means that in specific cases of emergency, as defined in the Proposal, Union representatives on 100% discretionary official time may be called upon to perform work for the Agency. This provision is explicitly designed to limit the ability of management to recall a Union official to Agency work to those situations which are truly emergency. The parties agree in this provision to a flexible definition of emergency that retains for management its right to assign work and retains for the Union its right to conduct representational work under section 7131 (d) of the Statute. This paragraph also intends to permit special recognition of work performed by Union representatives on an emergency basis. This extends to recognition that a recall to duty, without preparation or training in a situation that is critical to the Agency's fulfilling its mission, if the duty is performed well, should receive special acknowledgement. This special acknowledgement is in the form of eligibility for a rating of "Exceeds Expectations" (425 or more points). The intent is not to require such a rating but merely to permit that rating to replace the otherwise mandatory "Fully Successful" rating that would be given for "non-ratable" performance under 100% discretionary official time.

Paragraph 10 means that the uses specified therein are the exclusively authorized uses of official time. We believe that the language in each subsection of this paragraph is explicit enough to define each use listed. However, since items a., c., q. and r. have been the focus of some discussion and occasional disagreement between the Union and the Agency, these will be expanded upon here.

Item a. means that communication in any medium, i.e. bulletin boards, memoranda, public address system announcements, newsletter articles, etc. is permitted, so long as the communications are aimed at bargaining unit members in general and not limited to dues paying Union members. Communications limited to Union members only would approach the threshold definition of "internal union business". We do not intend to communicate with Union members about internal Union business while on official time.

Typical communications would include notification of bargaining unit members of receipt of management proposals to move or reorganize them or otherwise change their terms and conditions of employment. There would be a solicitation of views of the bargaining unit members about such management proposals, and these views would be assessed and bargaining positions developed from the responses. Meetings might be called among the affected employees and Union representative(s).

We do not intend to use official time to write, produce and distribute newsletter articles about internal Union business, such as elections, changes in dues, etc. or articles that otherwise are

of interest only to dues paying members. However, articles about grievances or ULPs filed, or other issues involving terms and conditions of employment could be done under authorized official time.

Item c. means that we would intervene in incipient, low-intensity disputes between bargaining unit employees and their managers in an attempt to resolve them before the dispute reaches a level requiring a grievance or other formal action being filed. An example of such intervention is a recent incident in which a Union representative spoke to a supervisor about the difficulty an employee was experiencing in getting time off for physical therapy for an injury. The issue was settled without formal processes being invoked.

Item q. means that the Union wants to be able to perform legitimate representational functions, such as those in Items a. and c. above, that are not readily predictable or identifiable in advance, but which meet the specific criteria set forth in language taken directly from section 7101 of the Statute with respect to the purposes of the Statute. The reason for inclusion of this item is that in the Agency's counter proposal of March 21, 1991, the functions spelled out in Items a. and c. of the current Proposal were not mentioned, even though the parties recognized, after discussions, that these are legitimate representational activities simply not foreseen by the Agency in its research into the matter. We do not want to foreclose any other such activity simply for

having not foreseen it and listed it explicitly in this Proposal.

We do not seek a completely open-ended charter to do absolutely anything on official time simply by calling it "representational". Thus we have included, as guidance for any adjudication that might flow from our use of official time for an activity which is not listed explicitly, the language of the Statute regarding the purpose of the Statute in insuring labor organizations the right to conduct truly representational business on official time.


Item r. means that the Union has the right to use official time to respond to inquiries from the public, including journalistic media, concerning issues affecting the terms and conditions of employment of the bargaining unit that the Union has raised with the Agency. This Item arises out of practical, as opposed to theoretical, situations. That is, in 1987-88, bargaining unit employees were affected by emissions from renovations at EPA Headquarters.

The Union, among other activities, filed a grievance and conducted non-official time, informational picketing at EPA Headquarters. Newspaper, magazine and television coverage of these events led to many inquiries from the public about the situation, and the Union responded to these inquiries. The Agency, of course, presented its point of view to those inquiring about the case; we believe that the Union has a parallel right to present the employees' point of view as their exclusive representative.

We do not intend this Item to authorize use of official time for any and all contacts with the public and journalists, but only for those situations in which there is a clear representational issue dealing with terms and conditions or employment of bargaining unit members. For example, if a journalist were to inquire as to the Union's view of the adequacy or burdensomeness of an Agency regulation on waste disposal, we would retain the right to respond under the First Amendment, but that response would be given on our own personal time, not official time. If, however, we had filed a grievance over, e.g. the authorship of the scientific support document for that regulation, then we would respond on official time to questions about that grievance. We would not use official time to discuss whether the regulation was adequately protective, overly burdensome, etc.

There is no unfair labor practice charge currently pending on this subject before the FLRA General Counsel.

Respectfully Submitted,



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Representative for
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STATEMENT OF SERVICE

I hereby certify that a copy of this Petition For Review was served on this date on the following parties.

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