

**OPINION AND AWARD**

**IN THE MATTER OF ARBITRATION**

between

U.S. Bureau of Prisons

and

American Federation of Government  
Employees, Local #171

FMCS # 06-50145-7

Grievance:  
Denial of Official Time

Arbitrator: Charles R. Greer  
Hearing Date: September 27, 2006  
Hearing Location: El Reno, Oklahoma

Appearances for the Agency:

Betty Gannon, Labor Relations Specialist and Advocate  
Ann Wedding, Employee Services Manager

Appearances for the Union:

Donny Boyte, Chief Steward, Local #171, and Advocate  
Tom Townley, Chief Steward

Witnesses Called by the Union:

Barry Edwards, Correctional Program Manager/Unit Manager and Witness  
Scott Willis, Associate Warden and Witness  
Joseph Scibana, Warden and Witness  
Mike Kelly, Vice President, American Federation of Government Employees, District 9, and  
Witness  
Sam E. Craven, Case Manager, President of Council of Local #171, Grievant, and Witness

## BACKGROUND FACTS

The parties are the United States Bureau of Prisons and American Federation of Government Employees (AFGE), Local #171. The grievance involves the Bureau's Federal Correctional Institution - El Reno, which will be referred to hereafter as the Agency. The Grievant, Sam Craven, a Case Manager with the Agency, is President of Local #171, hereafter referred to as the Union, and has been employed by the Agency since March 1983. The Grievant has been an officer in the Union since 1988. As President of the Union, the Grievant has representation obligations for bargaining unit employees at both the El Reno facility and at the Federal Transfer Center in Oklahoma City.

On July 13, 2005 at 11:45 a.m., the Grievant, who was Vice President of the Union at the time, sent an e-mail to his supervisor, Barry Edwards, a Correctional Program Manager/Unit Manager, at the Agency's El Reno facility, requesting official time. The e-mail asked for official time from 7:00 a.m. to 8:30 a.m. on July 14 for the purpose of meeting with Mike Kelly, the Vice President, for AFGE, District 9, in order to brief him on labor relations matters concerning the Union before his upcoming meeting with Warden Joseph Scibana. The Grievant also requested official time for the remainder of the day on July 14 to gather evidence and compile data for Kelly and AFGE "for grievances and third party reviews that AFGE will be representing me on. These issues involve but are not limited to Denial of official time, violation of the FSLA and Back pay act, Unfair labor practices, Union reprisal, and discrimination."<sup>1</sup> In addition, the Grievant's e-mail stated that he had been on sick leave and that he had only recently become aware of Kelly's meeting with the Warden. The Grievant's e-mail also stated that if his request were denied that he would have to perform the work on off-duty time.

Later that day, after reading the Grievant's e-mail, Edwards checked with Warden Scibana to confirm Vice President Kelly's appointment with the Warden and then responded to the Grievant's

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<sup>1</sup> Union Exhibit #1.

request with a verbal denial.<sup>2</sup> He then followed up on July 14 with a written memorandum documenting the denial. At 7:43 a.m. the Grievant then sent an e-mail to Edwards' supervisor, Associate Warden Scott Willis, appealing Edwards' denial of his request. In that e-mail the Grievant noted that he would need official time from 8:30 a.m. until 3:30 p.m. At 8:16 a.m. Willis responded in an e-mail to the Grievant and concurred with Edwards' decision to deny the request for official time. On August 16, 2005 the Grievant filed a grievance with Gerry Maldonado, the Director of the Agency's South Central Region, who was based in Dallas, Texas, protesting the denial of official time. The Grievance stated that:

The agency refused to allow the grievant official time to meet with the National American Federation of Government Employees 9<sup>th</sup> District Vice President. The meeting with Warden Scibana was prearranged by the grievant and AFGE Vice President. The grievant had to compile data, gather evidence and confer with the AFGE Representative on his off duty time. This time was 1:45 minutes [sic] 07/13/2005, 6 hours 7/14/2005.

As a remedy the Union asked for the following: a posting for at least 60 days, training for the Warden on the Master agreement and 5 USC, a written apology from the Warden to the Union and AFGE 9<sup>th</sup> District Vice President, back pay to the Grievant for his performance of work for the Agency during off duty time on July 13 and 14, 2005, attorney's fees, and anything else deemed appropriate by the Arbitrator. On September 15, 2005 Linda Rivers, Employee Services Administrator for the South Central Region, denied the grievance without addressing the merits. However, her response noted that the Union should have filed the grievance at the local level with Warden Scibana and that the Union had recently filed other grievances on the issue of official time. The parties were unable to resolve the grievance and the arbitration provisions of the Collective Bargaining Agreement were invoked.

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<sup>2</sup> On July 13, 2005 Edwards was working a schedule that started at 12:30 p.m.

## COLLECTIVE BARGAINING AGREEMENT

Relevant provisions of the Collective Bargaining Agreement are as follows:

### Article 11 OFFICIAL TIME

Section a. Official time is defined as paid duty time used for various labor relations and representational obligations in accordance with laws, rules, regulations, and this Agreement.

1. reasonable official time will be granted to elected/appointed Union officers, designated stewards, and other representatives authorized by the Union, in accordance with this article and to the extent that official time falls within the duty hours of the Union officer, steward, and/or representative affected;
2. the Union and the Agency recognize that the granting of official time may ultimately lead to improved labor management relations. Such a relationship is in the interest of all parties, including the public; and ...

Section b. The procedures for approval of official time will be:

1. for locals covering one institution/facility, procedures outlined in Article 6 and 7 will be followed;
2. for locals covering more than one institution/facility, approval must be obtained from the appropriate supervisor, who will coordinate with affected Wardens and supervisors;
3. for other situations, such as performing Union activities at an institution/facility not within the local and/or region, approval may only be granted by the Regional Director or designee. To initiate this process, the Union representative should submit his/her request through his/her supervisor, who will forward the request through the Warden for concurrence, to the Regional Director or designee; and...

Section c. It is understood that official time for designated Union representatives can be granted using the procedures set forth in Article 6(h), 7(e), and 11(b) of this Agreement for the following purposes:

11. to confer with national staff representatives of the Union in connection with a grievance, arbitration, and/or unfair labor practice charge; and ...

It is understood that preparation time can be granted for the circumstances stated above after proper approval as stated in this section.

Official time will not be used for internal Union business, as stated in 5 USC, 7131(b).

### ISSUE

Because the parties were unable to agree on a statement of the issue the Arbitrator framed the issue as follows:

Did the Bureau violate the agreement by denying Sam Craven official time to gather information and meet with Mike Kelly, Vice President of A.F.G. E., District 9? If so, what shall the remedy be?<sup>3</sup>

### POSITION OF THE UNION

The following are the main points on which the Union presented evidence and argument:

#### **Performance of Agency Work during Off-Duty Time**

When the Agency denied the Grievant's request for 1 ½ hours of official time on the morning of July 14 to brief AFGE Vice President Kelly, he had to use non-duty time on the evening of July 13 for a telephone briefing. Furthermore, because of the denial of his request, also on July 14, for six hours of official time to collect evidence and data for Kelly and AFGE, he was forced to use non-duty time to complete this work. As a result of the Agency's denial of his requests for official time the Grievant then performed the work during his off duty time "to insure he met his legal obligation of representing the bargaining unit..."<sup>4</sup>

#### **Not a Social Visit with Warden**

The Agency's claim, that Vice President Kelly's visit with the Warden Scibana was simply a social visit, is not true. Because of the challenging labor relations climate between the parties, which has existed for some time, the Grievant, requested that Kelly intervene to help improve the relationship. When the Agency denied the Grievant's request for official time to brief Kelly prior to his meeting with Scibana, the Grievant had to communicate with Kelly over the phone the night before the meeting. As a result, Kelly's meeting with the Warden was less productive than it could

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<sup>3</sup> Hearing transcript, page 176. The Union's post hearing brief did not include this statement of the issue, but instead included the following as a statement of the issue: "Did the agency violate Master Agreement, 5 U.S.C., the Fair Labor Standards Act and the Back pay act, when they denied Sam Craven's rights to official time to meet and confer with Mike Kelly involving issues pertaining to bargaining unit employees at the Federal Correctional Institution El Reno, and the Federal Transfer Center Oklahoma City and official time to gather needed information for Mike Kelly to properly review the issues and present them to a third party or attorney to represent this local."

<sup>4</sup> Union's post hearing brief, page 5.

have been, because the telephone briefing was not as beneficial as a face-to-face briefing. Indeed, Scibana's characterization of the meeting with Kelly was inaccurate as Scibana claimed at the arbitration hearing and in a memo that Kelly told him that "he himself didn't get along very well with Sam Craven and thought him to be inflexible..."<sup>5</sup> Scibana's statement is in contrast to the testimony of both Kelly and the Grievant, which indicated that they have known each other for almost 20 years, are good friends, and have had a working relationship for 12 years.

#### **Unfair Limitations on Official Time**

At the time of Vice President Kelly's visit, the Agency had been unfairly limiting the Grievant's official time to prepare for arbitrations. Past limitations of his preparation time have been the subject of arbitrations and one arbitrator ruled that the Agency had wrongly limited the Grievant's request for official time to 16 hours when he requested 80 hours. The arbitrator ruled that he should have had 80 hours for preparation. In another case the arbitrator ruled that the Grievant should have had approximately 57 hours to prepare for an arbitration hearing. There were two critical issues that the Grievant needed to brief Kelly on before his meeting with the Warden. One issue was a termination, which involved access to evidence, and the other was a 30-day suspension of an employee who had not been the recipient of previous disciplinary action.

#### **Timeliness of Request**

The Agency has been obfuscating on the Grievant's requests for official time. More specifically the Grievant testified as follows:

"What happens is, is a lot of times -- and they were playing some games there at the time -- they would not open up my request until the end of the day. And I would always do the request, call Barry [Edwards] and tell him the request was there and that was a particular case in here. I put it in writing and then I called and told them it was in writing."<sup>6</sup>

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<sup>5</sup> Agency exhibit #2.

<sup>6</sup> Transcript, page 219.

Furthermore, the Agency has obfuscated by failing to provide witnesses for the arbitration hearing. It failed to have Linda Rivers, who denied the grievance, appear at the hearing and it also failed to have Gerry Maldonado, with whom the grievance was filed, appear at the hearing.

#### **Appropriateness of Requested Remedy**

The Federal Relations Authority (FLRA) upheld Arbitrator Charles Feigenbaum's award of back pay with interest to the president of a local union who was denied official time to perform union business. In that case, which involved the U.S. Department of Agriculture Rural Development and AFSCME Local #3870, the arbitrator found that the agency improperly denied the grievant's request for official time and thereby violated an established practice. As a result, the grievant had to perform the union representational duties on non-duty time. More specifically, the FLRA found that the requirements of the Back Pay Act were met because the agency's denial of the grievant's request for official time, and her subsequent performance of 25 hours of representational duties during non-duty time, constituted an unjustified personnel action resulting in a loss of pay.<sup>7</sup>

#### **POSITION OF THE AGENCY**

The following are the main points on which the Agency presented evidence and argument:

##### **Untimely Request of Questionable Nature**

Since Vice President Kelly's visit with Warden Scibana was only a social visit there was no need for the Grievant to brief Kelly or attend the meeting. If the meeting was intended for an official union purpose, why did Kelly remain in the meeting with the Warden when he found that officials from Local #171 would not be attending? Furthermore, the Grievant submitted his request the day before the day he wanted the official time even though he has been told previously to submit his requests for official time with greater lead time so that the Agency would have adequate time to respond. Nonetheless, on July 13 the Grievant, who had been off work on sick leave, made a request for official time leaving the Agency without sufficient time to respond. In this instance the

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<sup>7</sup> Federal Labor Relations Authority, Case #0-AR-3862 (60 FLRA 527), December 30, 2004.

Grievant made his request less than 24 hours before the beginning of the requested official time. Furthermore, the Grievant's request did not specify whether his proposed use of official time with Vice President Kelly was in the capacity of an employee or as an employee's representative. In addition, Agency managers were unaware that the Grievant had arranged the meeting between Kelly and Scibana, until after the meeting. Indeed, after becoming aware of the Grievant's role in setting up the meeting, Scibana offered official time for the Grievant to meet with Kelly at a later date. The Agency has room for discretion in approving Union requests for official time as the language in CBA Article 11, Section c specifies that "official time for designated Union representatives **can be granted....**"<sup>8</sup> More specifically, the Agency must consider its mission for inmate safety and security when responding to such requests.

#### **Amount of Official Time**

The Grievant had received a great amount of official time prior to his request on July 13. Indeed, he has received "hundreds and hundreds of hours of official time which he has been granted the great majority of ..."<sup>9</sup> More specifically, in March 2005 the Grievant was on official time 157.5 hours relative to a total of 184 possible work hours. In April 2005 he had 88 official time hours relative to 169 possible hours, while in May he had 104 official time hours relative to 176 possible work hours, and in June 2005 he had 104 official time hours relative to 176 possible work hours. In July 2005 he had 3 hours of official time through July 14. The Grievant's request ignored the importance of the case work that he needed to perform as part of his responsibilities as a case manager. Indeed, the "Master Agreement states that official time 'can be' granted, there are other considerations, especially when the mission of the Agency is the safe and secure management of inmates."<sup>10</sup>

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<sup>8</sup> Agency post-hearing brief, page 6.

<sup>9</sup> Testimony of Warden Scibana, transcript page 145.

<sup>10</sup> Agency's post-hearing brief, page 6.



### **Requested Remedy Is Inappropriate**

There is no basis for the Grievant's claim for back pay since he received pay for eight hours of work on both July 13 and 14. The Grievant "took some sick leave [on July 13] and he worked for the rest of the day. On July 14 he worked for and was paid again eight hours for a day."<sup>11</sup> In addition, in the Grievant's initial request he asked for official time for July 14 and made no such request for July 13. He should not be allowed to make a request for official time on a retroactive basis for an earlier day. In addition,

Pursuant to 5 USC Section 7131, official time is authorized "during the time the employee otherwise would be in a duty status". It would, therefore, be inappropriate for the grievant to receive eight hours of pay for July 13 and 14 along with another one hour and 45 minutes on July 13 and seven hours of July 14.<sup>12</sup>

Decisions by arbitrator's and the FLRA support the Agency's position. More specifically, the FLRA has upheld an arbitrator's award in a case involving the U.S. Immigration and Naturalization Service and AFGE Local 1917.<sup>13</sup> In this case, in which the CBA specified that official time was limited to regular duty hours, a union officer filed a grievance requesting that annual leave, used to conduct official union business, be changed to official time and that compensatory time be provided for weekends used to conduct business. The arbitrator ruled against the grievant because she had not established that she had requested official time for some of the days in question and that she failed to establish that the agency improperly processed her request. Also Arbitrator Floyd Wood ruled for the Agency in a case involving the El Reno Facility and AFGE Local #171 in which he found that the Agency did not violate the CBA by failing to provide more official time to union officers, Tim David and Tom Townley, to prepare for the arbitration. Arbitrator Wood also ruled in favor of the Agency on the issue of whether the Agency retaliated, coerced, or discriminated against Tom Townley for

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<sup>11</sup> Transcript, page 13.

<sup>12</sup> Agency's post-hearing brief, page 6.

<sup>13</sup> Federal labor Relations Authority, Case No. 0-AR-1653 (33 FLRA 885), January 18, 1990.

requesting official time.<sup>14</sup> Finally, in a case involving the Federal Correctional Institution in Elkton, Ohio and AFGE Local #607, Arbitrator Arnold G. Franke ruled that the union had failed to establish that the agency had violated the CBA by denying requests for official time. Indeed the arbitrator found that the amount of official time granted had actually been increasing, in contrast to the union's contention that it had been decreasing. Arbitrator Franke also noted that the average amount of official time granted at the facility, at which there were approximately 240 employees in the bargaining unit, had increased from 72 hours per month in 2002 to 81 hours per month in 2004, and that the average for the first eight months of 2005 was 120.9 hours per month.<sup>15</sup>

## DISCUSSION AND OPINION

### Nature of Kelly's Visit with the Warden

Warden Scibana's memorandum, which described the meeting with Vice President Kelly, indicated that the bulk of the meeting was of a social nature and that Kelly talked about his background, family, etc. for approximately 45 minutes and then brought up the topic of labor relations. "Then he [Kelly] asked me how the labor-management relations were at FCI, El Reno. I told him they were strained. He asked me how he could help. So, I informed him on what I believed would help. Upon hearing my comments, he stated he would try and talk with the Union and get back to me."<sup>16</sup> Indeed, Kelly who had asked for the meeting with the Warden after being requested by the Grievant to intervene, framed the meeting as an opportunity for the two to get to know each other. While Kelly framed the meeting in this manner, his actions were not inconsistent with a

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<sup>14</sup> Arbitrator Floyd L. Wood, Federal Bureau of Prisons, Federal Transfer Center, Oklahoma City, Oklahoma and American Federation of Prisons Locals 33, Local 171, FMCS Case #05-03917 (June 25, 2006). Arbitrator Wood's decision provides no guidance for the present case because he provided no explanation of the circumstances, evidence, or the basis for his decision on this issue.

<sup>15</sup> Arbitrator Arnold G. Franke, Federal Bureau of Prisons, Federal Correctional Institution, Elkton, Ohio and American Federation of Government Employees Local #607 (November 30, 2005).

<sup>16</sup> Agency Exhibit #2.

meeting that deals with labor relations. Personal actions used to establish a positive personal relationship between principles in labor relations are a reasonable, desirable, and often times essential precondition for the improvement of a strained labor relations climate. Indeed, this is essentially what occurred as Kelly moved on to a discussion of the nature of labor relations at the facility and then inquired as to how he could help. Thus, the meeting may be most accurately characterized as a Union initiative to improve the labor relations climate between the parties. However, the Agency denied the Grievant's request for official time to help prepare Kelly for his session and he had to devote non-duty time to brief Kelly on this initiative. While the Agency can be presumed to have been unaware that the Grievant had been the catalyst behind the meeting, its argument, that it presumed that the meeting was solely for the purpose of a social occasion is unpersuasive, given the level of experience of the Agency officials involved.

#### **Request for Official Time**

Article 11, Section a. 1 of the CBA specifies that "reasonable official time will be granted to elected/appointed union officers..." while Article 11, Section c. states that "It is understood that official time for designated Union representatives can be granted using the procedures set forth..." The inclusion of procedures for requesting official time establishes that management has some discretion in granting official time. On the other hand, in Article 11, Section c. 11 the CBA states that one of the purposes for official time is "to confer with national Union staff representatives of the Union in connection with a grievance, arbitration, and/or unfair labor practice." It is clear that official time has been allowed in the past for union business that deals with grievances, arbitration, and related labor relations issues. Nonetheless, there have been arbitrations over the reasonableness of the amount of official time allowed. Warden Scibana's testimony that most requests for official time have been approved also indicates that some requests have been denied, and Linda Rivers' mention of previous grievances over official time indicates that this official time is an ongoing issue.

Given the CBA language and the practices of the parties, the essence of this grievance is whether the Agency's denial of the request was reasonable. One indication of the reasonableness

of the Agency's denial may be obtained by looking to industry practice. While not controlling, arbitrators have used industry practice to interpret the meaning of contract language as follows:

Evidence of the custom and practice of the industry in which the parties operate may shed light on the intended meaning of an ambiguous provision. An even stronger guide is supplied when the same agreement has been entered into by one employer with several unions or by one union with several employers. In these situations, practice of any of the pairs of parties operating under the agreement may be taken as some indication of the intended meaning of the language used, but the arbitrator would not be bound by such practice.<sup>17</sup>

In the present case, Vice President Kelly, who has responsibility for 85 AFGE locals, testified that he had never been denied access to a local representative.

You know, and the thing is, we represent different agencies, the D.A.'s, you know, Food Inspectors, the D.O.T. locals. I have never had any problems, you know, securing a little time for me to talk to one of my officers. This is the first, period.<sup>18</sup>

Another indication of the reasonableness of the Agency's denial may be obtained from an examination of whether the denial was arbitrary. In this case, the Agency acknowledged that Edwards initially misunderstood the Grievant's e-mail as a request for official time for the purpose of attending the meeting between Scibana and Kelly. On the other hand, the Grievant could have explained in his request to Edwards that he had arranged the meeting between Vice President Kelly and Warden Scibana, which could have provided Edwards with a clearer understanding of the upcoming meeting. While the Grievant's e-mail to Edwards noted the need for 1 ½ hours of official time to brief Vice President Kelly for his upcoming meeting with the Warden, that part of the e-mail made no reference to such issues. On the other hand, the latter part of the Grievant's e-mail specifically mentioned his need to gather evidence and compile data for Kelly and the purposes were specifically identified as for grievances and third party reviews, unfair labor practices, denial of official time, violation of FSLA, and the Back Pay Act. Nonetheless, since neither of the Grievant's

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<sup>17</sup> Alan Miles Ruben, Editor-in Chief, *Elkouri & Elkouri: How Arbitration Works*, 6<sup>th</sup> Edition, Washington, D. C.: Bureau of National Affairs, 2003, pp. 460-461.

<sup>18</sup> Transcript, page 190.

two requests was for the purpose on which Edwards based his denial, Edwards' action was based on an incorrect interpretation of the request and was therefore arbitrary.

An additional indication of the reasonableness of the Grievant's request may be obtained by the amount of time that he has previously requested and has been granted and through comparisons with similar bargaining relationships. The Agency argued that the Grievant has used a "great deal of official time"<sup>19</sup> and that he made requests for "hundreds and hundreds of hours of official time which he has been granted the majority of them."<sup>20</sup> Thus, the Agency has implied that the Grievant has used an unreasonable amount of official time. Nonetheless, the Agency did not explain how the Grievant's use of official time compared with trends over time at this facility or with comparable Agency facilities. As indicated in the arbitration award cited earlier involving the Elkton, Ohio facility, official time for that bargaining unit of approximately 240 employees has ranged from 72 hours per month in 2002 to 120.9 hours per month for the first eight months in 2005.<sup>21</sup> While the Grievant's official time from March to June 2005 ranged from 88 to 157.5 hours per month, he also has greater representational responsibilities involving approximately 400 to 450 bargaining unit employees.<sup>22</sup> Furthermore, the number of official hours; in the absence of information on the level of labor relations activity, such as the number of grievances (which is subject to manipulation), suspensions, terminations, and arbitrations; provides little indication of abuse of official time. Moreover, both parties have acknowledged that their labor relations environment is strained, which would be consistent with greater needs for official time on the part of Union representatives. Accordingly, there is insufficient evidence to conclude that the Grievant was requesting and using an

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<sup>19</sup> Agency post-hearing brief, page 3.

<sup>20</sup> Transcript, page 145.

<sup>21</sup> The Arbitrator is unaware of the number of union officers who used official time at the Elkton facility.

<sup>22</sup> Transcript, page 213.

excessive amount of official time.

Further indication of the reasonableness of the Grievant's request may be obtained by considering the Agency's need to balance such requests with the demands of its mission to provide for the safety and security of inmates. However, the Agency did not make a compelling argument that the Grievant's case load prevented him from receiving official time for Union business since he is currently assigned as an extra case manager with two inmates, instead of the usual 150 to 200 inmates, although he has a non-traditional holdover case load, which includes approximately 1,500 inmates

Finally, reasonableness may be assessed by the timeliness of the Grievant's request. The Grievant explained in his e-mail of July 13, that he did not have much notice of the meeting because he had been out on sick leave. Agency Exhibit 1 indicates that for the month July, the Grievant was on sick leave on July 1, July 7 (or 2.5 hours), July 8, July 11, July 12, and July 14 (3 hours). The exhibit also indicates that during the week before Kelly's visit with Scibana, the Grievant worked on July 5 (with 2 hours of official time), July 6, and July 7 (5.5 hours). Because the Grievant was on sick leave for several days prior to the meeting it seems reasonable that the Grievant had not known about the meeting for a long period of time and that he did not fail to request official time in a timely manner. The Agency has asked for more lead time to process the Grievant's requests for official time and the Grievant should be sensitive to this matter. However, it does not appear in this instance that the Grievant was unreasonable in the timing of his request because Edwards had time to check with Scibana about the Grievant's request.

#### **CONCLUSION**

The Arbitrator has respect for the Agency's obligation to place priority on its mission of the safe and secure management of inmates when making decisions on requests for official time. The Arbitrator is aware that at least one other arbitrator has found that the Agency was justified in denying a request for official time in the circumstances on which he ruled. However, the Arbitrator is also aware that an agency may undermine a CBA by unreasonably limiting the amount of official

time allowed for labor relations duties, such as processing grievances and preparing for arbitrations. Indeed, one arbitrator has found that unreasonable limitations on official time may chill the willingness of employees to serve as union stewards.<sup>23</sup> On the other hand the Agency may reasonably be expected to challenge a request for official time when it has reason to believe that there is abuse of official time.

In this case the Agency's denial of the Grievant's requests for official time violated the CBA because it did not meet the standard of reasonableness. More specifically the Agency's action failed the standard of reasonableness because (1) the requests dealt with conferring with national Union staff and with grievance, arbitration, and/or unfair labor practice matters, (2) the Agency denied the request on the basis of an initial misunderstanding of the request, (3) the Agency's claim, that the Grievant's work load as an extra case manager precluded granting him official time, was unpersuasive, (4) there was insufficient evidence that the Grievant has used an unreasonable amount of official time, and (5) the Grievant had a plausible excuse for his submission of the request with little lead time. As a result of the Agency's unreasonable denial of the Grievant's request, the Grievant was adversely affected by an unjustified personnel action and is entitled to be compensated for the work he performed on non-duty time without compensation. However, the Union should not interpret this award as an indication that the Agency is obligated to grant all requests for official time. This is not the intention of this award as there were several specific factors in the present case, which led to a decision to sustain the grievance.

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<sup>23</sup> Anan Miles Ruben, Editor-in-Chief, *Elkouri & Elkouri, How Arbitration Works*, 6<sup>th</sup> ed., Washington, D.C.: Bureau of National Affairs, 2003.

## AWARD

The grievance is sustained. The Agency violated the CBA by failing to grant 1 ½ hours of official time to the Grievant for the purpose of briefing AFGE Vice President Kelly for his upcoming meeting with the Warden and by failing to grant 6 hours of official time to the Grievant to collect evidence and compile data for Kelly and the AFGE related to grievances and third party reviews. The Agency is directed to do the following: (1) Post an acknowledgement of these violations for 60 days. (2) Pay the Grievant back pay with interest for 1 ½ hours of non-duty time devoted to briefing AFGE Vice President Mike Kelly after his request for 1 ½ hours of official time on July 14 was denied. (3) Pay the Grievant back pay with interest for 6 hours of non-duty time devoted to gathering evidence and compiling data on grievances after his request for 6 hours of official time on July 14 was denied.



Charles R. Greer, Arbitrator  
Fort Worth, Texas  
December 18, 2006