Federal Mediation & Conciliation Service

IN THE MATTER OF THE ARBITRATION BETWEEN **COUNCIL OF PRISONS LOCALS (AFL-CIO) AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 919,** **Union,** and **UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, UNITED STATES PENITENTIARY, LEAVENWORTH, KANSAS** **Employer.**	**FMCS No. 13-56997** **ARBITRATOR'S DECISION AND AWARD**

INTRODUCTION

This arbitration arises pursuant to a Collective Bargaining Agreement (hereinafter "Agreement") between the FEDERAL BUREAU OF PRISONS (hereinafter the "EMPLOYER" or "AGENCY") and the COUNCIL OF PRISON LOCALS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (hereinafter the "UNION"), under which DAVID GABA was selected to serve as Arbitrator and under which his Award shall be final and binding among the parties.

A hearing was held before Arbitrator Gaba on February 11, 2014. The parties had the opportunity to examine and cross-examine witnesses, introduce exhibits, and fully argue all of the issues in dispute. A transcript of the proceeding was provided. Briefs were received on March 24, 2014.

APPEARANCES:

On behalf of the Union:

Mr. Russell Gildner
Union Representative
AFGE Local 919
United States Penitentiary
1300 Metropolitan Avenue
Leavenworth, KS 66048

On behalf of the Employer:

Valerie J. Jackson
Labor Relations Specialist
U.S. Department of Justice
Federal Bureau of Prisons
346 Marine Forces Drive
Grand Prairie, TX 75051

ISSUE

The Union and the Employer did not stipulate to the issues, but rather provided slightly different versions of the issue. At hearing, the Union formulated the issue as follows:

> That official time was not granted to two elected Union Officers because unreasonable conditions were required by the Agency.

The Employer formulated the issues as:

> Did the Agency violate Master Agreement Article 11, Section A, Article 7, and Article 6, Section A; and 5 U.S.C. 7131, when on May 2, 2013, Captain Dennis Treadway did not approve official time for individuals to attend the North Central Regional Caucus Training because the agency might incur overtime costs?

The arbitrator accepts the Employer's Statement of the Issue.

RELEVANT CONTRACT PROVISIONS

The relevant portions of the Master Agreement between the Federal Bureau of Prisons and Council of Prison Locals, American Federation of Government Employees, read in part:

ARTICLE 5 – RIGHTS OF THE EMPLOYER

Section a. Subject to Section b. of this article, nothing in this section shall affect the authority of any Management official of the Agency, in accordance with 5 USC, Section 7106:

1. to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

2. in accordance with applicable laws:

    a. to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

    b. to assign work, to make determination with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

    c. with respect to filling positions, to make selections for appointment from;

        (1) among properly ranked and certified candidates for promotion; or

        (2) any other appropriate source; and

    d. to take whatever actions may be necessary to carry out Agency mission during emergencies.

Section b. Nothing in this section shall preclude any agency and any labor organization from negotiating:

1. at the election of the Agency, on the numbers, type, and grades of employees or positions assigned to any organizational sub-division, work project, or tour of duty, or the technology, methods, and means of performing work;

2. procedures which Management officials of the Agency will observe in exercising any authority under this agreement; or

3. appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such Management officials.

Section c. The preferred practice whenever Bureau of Prisons positions are announces under Section a(2)(c), above is to select from within the Bureau from all qualified applicants. This shall not be construed as limiting the recruiting function or any other rights of the Employer.

In accordance with 5 Code of Federal Regulations (CFR) Section 335.103, which the procedures used by an agency to identify and rank qualified candidates may be proper subjects for formal complaints or grievances, nonselection from among a group of properly ranked and certified candidates is not an appropriate basis for a formal complaint or grievance.

ARTICLE 6 – RIGHTS OF THE EMPLOYEE

Section a. Each employee shall have the right to form, join, or assist a labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided by 5 USC, such right includes the right:

1. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of government, the Congress, or other appropriate authorities; and

2. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees in accordance with 5 USC.

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ARTICLE 7 – RIGHTS OF THE UNION

Section a. There will be no restraint, interference, coercion, or discrimination against any employee in the statutory exercise of any right to organize and designate representatives of their own choosing for the purposes of collective bargaining, presentation of grievances, labor management related activity, representation of employees before the Employer, or upon duly designated Union representatives acting as an agent of the Union on behalf of an employee or group of employees in the bargaining unit.

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Section c. The Union will notify the Employer of the identity of its officers and representatives in writing. When additions/deletions to this list are made, the Union will notify the Employer at its earliest convenience.

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Section e. Union representatives will be permitted to leave their work sites to perform and discharge their representational responsibilities after being properly relieve. This will be done in accordance with the following:

1. local Union representatives desiring to perform and discharge their responsibilities must request the time from their supervisor prior to leaving the work site. When Management

initiates the need for a representative, Management will coordinate with the affected supervisor and secure the representative's relief. If initiated by the Union, the representative will inform the supervisor of the anticipated time that the representative will be away from the work site, where the representative may be contacted, and the general nature of the function to be performed (i.e., meeting, complaint, etc.). It is understood that specific individuals or problems will not be discussed;

2. for the purpose of representation (i.e., investigatory examination, to assist an employee with a problem, disciplinary meetings, etc.), the supervisor will ensure that the designated representative is expeditiously relieved. If the representative is unable to be relieved, the function that the representative requested to be relieved for will be rescheduled to a time when the representative is able to attend.

   For the purpose of pre-scheduled meetings to which the Union has membership, the Employer will provide the Union with a list of scheduled meetings for the month. If the Union designates a representative for these meetings, the supervisor will ensure that the designated representative is relieved to attend the meeting; and

3. upon returning to the work site, representatives will notify their supervisor. The supervisor shall calculate the amount of time used and forward it to the timekeeper for the time and attendance record.

Section f. The Employer and the Union agree to the scheduling, at the local level, of at least one Union representative, designated by the Union, to daytime hours of work. Daytime hours of work is defined as those hours between 6:00 a.m.to 6:00 p.m.. (sic) Monday through Friday. This will be done in accordance with the Employer's rotation policy, if applicable, provided that this does not adversely affect the Union's ability to provide representation.

Section g. Provided that there is no significant disruption of departmental operations, the work schedule of the local Union President and at least two other local Union officers will be adjusted, at the Union's request, to allow these individuals to attend Union meetings. The Union will coordinate the schedule change with the appropriate supervisor(s), and the Union will address any concerns of employees affected by the change.
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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

3. except when specifically agreed to in advance, travel-related expenses for the Union's use of official time will not be paid by the Employer.

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 same 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

4. the above procedures will not apply to any Union representative utilizing 100% official time. For purposes of notification, the procedures set forth in Article 7, Section h. will be followed.

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:
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7. to travel to and attend training that is mutually beneficial to the parties. The Agency at its option may pay any travel-related expenses;
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Section d. The Council President will be on 100% official time. He/she will also be entitled to a bank of two thousand and eighty (2,080) hours of official time on a yearly basis, beginning with the effective date of this Agreement. These hours may be allocated to the six (6) Regional Vice Presidents and the one (1) national Secretary/Treasurer for the purposes outlined in Section c.. (sic) these hours may not be carried over if not used.
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2. use of the time bank will be required for all instances of official time used by the national officers with the exception of training time which is covered in Section h. of this article, and to attend meetings called by Management officials at the national level. This time does not cover any Union official other than the six (6) Regional Vice Presidents and the one (1) Secretary/Treasurer; and

3. allocations from the time bank are not to be used for internal Union business. If a national officer desires to engage in such business, the time for conducting same must be from his/her own bank of annual leave or leave without pay. It is understood that such forms of leave are subject to approval by the employee's supervisor.

The President of the Council of Prison Locals may request additional hours for the bank in increments of forty (40) hours based upon demonstrated need. Any such request will be made in writing to the Chief, Labor Management Relations and Security Branch.

Section e. Any Union representative not on 100% official time will be granted official time in accordance with Section c. of this article.

Section f. Those national representatives utilizing official time from the time bank will be assigned the day shift. Monday through Friday, while using this time.

Section g. When an employee is elected or appointed to a national officer's position, there will normally be no delay in his/her ability to begin utilizing time from the time bank. Conversely, those representatives who are no longer in office, either through election or appointment, will be removed from this status as soon as practicable.

Section h. Employee Union representatives will be excused from duty, workload permitting, to attend training which is designed to advise representatives on matters within the scope of 5 USC, and which is of mutual benefit to the Employer and the Union. The employee Union representative wishing to attend such training will present a vendor's written description of the course to the Employer which demonstrates which portion of the training is mutually beneficial. Union representatives attending training authorized under this section shall be assigned to the day shift, Monday through Friday, while attending training.

The parties agree that training under this section is generally of mutual benefit when it covers areas such as contract administration, grievance handling, and information related to federal personnel/labor relations laws, regulations, and procedures. Training is not mutually beneficial when it deals with matters related to internal Union business.

Each local will be entitled to eighty (80) hours per calendar year of official time for such training during the term of this Agreement.

Forty-two hundred (4200) hours per calendar year will be authorized to the President, Council of Prison Locals, to meet additional training needs under this section. These hours will be automatically increased by an additional fifty (50) hours each time the Employer opens a new institution. For the purposes of accountability for this time, as such allocations are made, the Council President will notify the Chief, Labor Management Relations and Security Branch, and the respective institution Chief Executive Officer, in writing. The Chief of the Labor Management Relations and Security Branch will also be provided with a quarterly report by the Council President itemizing the current use and balance of such training. Such reports will be submitted no later than the fifteenth calendar day following the end of a quarter. Failure to submit such reports in a timely manner will result in the discontinuance of these training hours.

The President of the Council of Prison Locals will be allocated a one time bank of 2,080 hours of official time to distribute as he/she sees fit to assist in the training of Union officials concerning this Agreement. As allocations are made by the Council President for this purpose, a report will be made to the Chief, Labor Management Relations and Security Branch.

ARTICLE 18 – HOURS OF WORK

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Section m. Employees may request to exchange work assignments, days off, and/or shift hours with one another. Supervisory decisions on such requests will take into account such factors as security and staffing requirements and will ensure that no overtime cost will be incurred.
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Section s. Notification of shift or assignment changes for employees not assigned to sick and annual relief will be confirmed in writing and signed by the Employer, with a copy to the employee.
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ARTICLE 31 – GRIEVANCE PROCEDURE

Section a. The purpose of this article is to provide employees with a fair and expeditious procedure covering all grievances properly grievable under 5 USC 7121.

Section b. The parties strongly endorse the concept that grievances should be resolved informally and will always attempt informal resolution at the lowest appropriate level before filing a formal grievance. A reasonable and concerted effort must be made by both parties toward informal resolution.

Section c. Any employee has the right to file a formal grievance with or without the assistance of the Union.

1. after the formal grievance is filed, the Union has the right to be present at any discussions or adjustments of the grievance between the grievant and representatives of the Employer. Although the Union has the right to be present at these discussions, it also has the right to elect not to participate;

2. if an employee files a grievance without the assistance of the Union, the Union will be given a copy of the grievance within two (2) working days after it is filed. After the Employer gives a written response to the employee, the Employer will provide a copy to the Union within two (2) working days. All responses to grievances will be in writing;

3. the Union has the right to be notified and given an opportunity to be present during any settlement or adjustment of any grievance; and

4. the Union has the right to file a grievance on behalf of any employee or group of employees.

Section d. Grievances must be filed within forty (40) calendar days of the date of the alleged grievable occurrence. If needed, both parties will devote up to ten (10) days of the forty (40) to the informal resolution process. If a party becomes aware of an alleged grievable event more than forty (40) calendar days after its occurrence, the grievance must be filed within forty (40) calendar days from the date the party filing the grievance can reasonably be expected to have become aware of the occurrence. A grievance can be filed for violations within the life of this contract, however, where the statutes provide for a longer filing period, then the statutory period would control.

1. if a matter is informally resolved, and either party repeats the same violation within twelve (12) months after the informal resolution, the party engaging in the alleged violation will have five (5) days to correct the problem. If not corrected, a formal grievance may be filed at that time.

Section e. If a grievance is filed after the applicable deadline, the arbitrator will decide timeliness if raised as a threshold issue.

Section f. Formal grievances must be filed on Bureau of Prisons "Formal Grievance" forms and must be signed by the grievant or the Union. The local Union President is responsible for estimating the number of forms needed and informing the local HRM in a timely manner of this number. The HRM, through the Employer's forms ordering procedures, will ensure that sufficient numbers of forms are ordered and provided to the Union. Sufficient time must be allowed for the ordering and shipping of these forms.

1. when filing a grievance, the grievance will be filed with the Chief Executive Officer of the institution/facility, if the grievance pertains to the action of an individual for which the Chief Executive Officer of the institution/facility has disciplinary authority over;

2. when filing a grievance against the Chief Executive Officer of an institution/facility, or when filing a grievance against the actions of any manager or supervisor who is not employed at the grievant's institution/facility, the grievance will be filed with the appropriate Regional Director;

3. when filing a grievance against a Regional Director, the grievance will be filed with the Director of the Bureau of Prisons, or designee;

4. in cases of violations occurring at the national level, only the President of the Council of Prison Locals or designee may file such a grievance. This grievance must be filed with the Chief, Labor Management Relations and Security Branch, Central office; and

5. grievances filed by the Employer must be filed with a corresponding Union official.

Section g. After a formal grievance is filed, the party receiving the grievance will have thirty (30) calendar days to respond to the grievance.

1. if the final response is not satisfactory to the grieving party and that party desires to proceed to arbitration, the grieving party may submit the grievance to arbitration under Article 32 of this Agreement within thirty (30) calendar days from receipt of the final response; and

2. a grievance may only be pursued to arbitration by the Employer or the Union.

Section h. Unless as provided in number two (2) below, the deciding official's decision on disciplinary/adverse actions will be considered as the final response in the grievance procedure. The parties are then free to contest the action in one (1) of two (2) ways:

1. by going directly to arbitration if the grieving party agrees that the sole issue to be decided by the arbitrator is, "Was the disciplinary/adverse action taken for just and sufficient cause, or if not, what shall be the remedy?"; or

2. through the conventional grievance procedures outlined in Article 31 and 32, where the grieving party wishes to have the arbitrator decide other issues.

Section I. The employee and his/her representative will be allowed a reasonable amount of official time in accordance with Article 11 to assist an employee in the grievance process.

ARTICLE 32 – ARBITRATION

Section a. In order to invoke arbitration, the party seeking to have an issue submitted to arbitration must notify the other party in writing of this intent prior to expiration of any applicable time limit. The notification must include a statement of the issues involved, the alleged violations, and the requested remedy. If the parties fail to agree on joint submission of the issue for arbitration, each party shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard. However, the issues, the alleged violations, and the remedy requested in the written grievance may be modified only by mutual agreement.

Section b. When arbitration is invoked, the parties (or the grieving party) shall, within three (3) working days, request the Federal Mediation and Conciliation Service (FMCS) to submit a list of seven (7) arbitrators.

1. a list of arbitrators will be requested utilizing the FMCS Form R43;

2. the parties shall list on the request any special requirements/qualifications, such as specialized experience or geographical restrictions;

3. the parties shall, within five (5) workdays after the receipt of the list, attempt to agree on an arbitrator. If for any reason either party does not like the first list of arbitrators, they may request a second panel;

4. if they do not agree upon one of the listed arbitrators from the second panel, then the parties must alternately strike one (1) name from this list until one (1) name remains; and

5. the arbitrator selected shall be instructed to offer five (5) dates for a hearing.

Section c. The grieving party will be able to unilaterally select an arbitrator if the other party refuses to participate, only if the grieving party:

1. gives written notification to the HRM of its intent to unilaterally select an arbitrator; and

2. allows a time period of two (2) workdays for the HRM to participate in the selection after the written notification.

Section d. The arbitrator's fees and all expenses of the arbitration, except as noted below, shall be borne equally by the Employer and the Union.

1. the Employer will pay travel and per diem expenses for:

    a. employee witnesses who have been transferred away from the location where the grievance arose;

    b. employee witnesses who were temporarily assigned to the location where the grievable action occurred; and

    c. employee witnesses where the parties mutually agree to hold the hearing at a site outside the commuting area;

2. the Employer will determine the location of the arbitration hearing; however, in the event that the Union, in good faith, advises the Employer that the designated location is unacceptable, the hearing will then be held at a mutually agreed upon neutral site; and

3. in Council-level grievances, the Employer will determine the location of the hearing. The Employer will pay the travel and per diem expenses for the Union witnesses and one (1) Council representative. The Employer will not be responsible for the travel and per diem expenses of more than five (5) Union witnesses unless mutually agreeable to the parties or ordered by the arbitrator.

Section e. The arbitration hearing will be held during regular day shift hours, Monday through Friday. Grievant(s), witnesses, and representatives will be on official time when attending the hearing. When necessary to accomplish this procedure, these individuals will be temporarily assigned to the regular day shift hours. No days off adjustments will be made for any Union witnesses unless Management adjusts the days off for any of their witnesses.

1. the Union is entitled to the same number of representatives as the Agency during the arbitration hearing. If any of these representatives are Bureau of Prisons employees, they will be on official time;

2. the Union is entitled to have one (1) observer in attendance at the hearing. If Management has an observer, the Union's observer will be on official time.

Section f. The Union and the Agency will exchange initial witness lists no later than seven (7) days prior to the arbitration hearing. Revised witness lists can be exchanged between the Union and the Agency up to the day prior to the arbitration.

Section g. The arbitrator shall be requested to render a decision as quickly as possible, but in any event no later than thirty (30) calendar days after the conclusion of the hearing, unless the parties mutually agree to extend the time limit. The arbitrator shall forward copies of the award to addresses provided at the hearing by the parties.

Section h. The arbitrator's award shall be binding on the parties. However, either party, through its headquarters, may file exceptions to an award as allowed by the Statute.

The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of:

1. this Agreement; or

2. published Federal Bureau of Prisons policies and regulations.

Section l. A verbatim transcript of the arbitration will be made when requested by either party, the expense of which shall be borne by the requesting party. If the arbitrator requests a copy, the cost of the arbitrator's copy will be borne equally by both parties. If both parties request a transcript, the cost shall be shared equally including the cost of the arbitrator's copy.

Other relevant language includes 5 U.S.C. 7131 as follows:

§7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase

of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

FACTS

After a thorough review of the testimony and documentary evidence presented by the Parties and careful consideration, I make the following Findings.

The United States Penitentiary (Leavenworth) is a medium-security federal prison housing over 2,000 male inmates in Leavenworth, Kansas. The penitentiary is operated by the Federal Bureau of Prisons, a division of the United States Department of Justice. It employs approximately 360 staff members.

The American Federation of Government Employees (AFGE) represents a bargaining unit including employees at the Agency. The Council of Prisons Locals (AFL-CIO) American Federation of Government Employees Local 919 ("Union") and U.S. Department of Justice, Federal Bureau of Prisons ("Agency" or "Employer"), are currently parties to a Master Collective Bargaining Agreement.

Background

Matthew Gum, Joseph Gulley, Sandra Tyler and David Scharinger are Correctional Officers employed at the United States Penitentiary in Leavenworth, Kansas. Matthew Gum, Joseph Gulley, Sandra Tyler and David Scharinger are members of the American Federation of

Government Employees Local 919 and are covered by the parties' Collective Bargaining Agreement.

The Union was holding the North Central Regional Caucus Training from May 21, 2013, to May 23, 2013, in Colorado Springs, Colorado. This grievance involves the official time requested by Officers Gum, Gulley, Tyler and Scharinger to attend this training.

In a Memorandum dated April 11, 2013, Paul Laird, Regional Director, advised "All North Central Region Wardens" that:

> ...The training has been deemed mutually beneficial, and officials who will be attending are authorized official time under Article 11 of the Master Agreement. Individuals will also be entitled to official time for the amount of time necessary to travel to and from this training on May 20, 2013, and May 24, 2013, as addressed in Article 11, section c (7).
>
> In accordance with Article 11, section h, employee Union representatives will be excused from duty, workload permitting, to attend training which is mutually beneficial. In addition, the schedules for Union representatives attending this training should be day watch, Monday through Friday. Each institution has the authority to determine the number of individuals who may attend the training session.
>
> Each local is authorized 80 hours of official time for mutually-beneficial training. If your local Union has exhausted their allotment of time, additional hours must be obtained from a national representative prior to approval for the time in questions. Requests for additional hours must be made through Mike Rule, Regional Vice President.

In an e-mail to Mr. Rule dated April 11, 2013, Officer Gum stated: "If possible can we get allotted more official time so we can attend training in kansas city (sic). And also for the training in May for CPL."

On April 30, 2013, Dale Deshotel, President of the AFGE Council of Prison Locals, notified Warden Claude Maye that: "In accordance with article 11 section H, I am hear (sic) by authorizing 320 hours of advanced time to AFGE Local 0919. This Local will be sending eight

members to the North Central Regional Caucus. The caucus will be held May 20-24, 2013 in Colorado Springs, CO."

Officer Gum's duty assignment from March 17, 2013 to June 15, 2013, was for Visiting Room Number 2. Officer Gum is President of the American Federation of Government Employees, Council of Prison Local 919. Officer Gulley's duty assignment from March 17, 2013 to June 15, 2013, was for Visiting Room Number 1. Officer Gulley holds the position of Union Vice-President of Local 919.

Article 11, section h of the Master Agreement states:

> Employee Union representatives will be excused from duty, workload permitting, to attend training which is designed to advise representatives on matters within the scope of 5 USC, and which is of mutual benefit to the Employer and the Union. The employee Union representative wishing to attend such training will present a vendor's written description of the course to the Employer which demonstrates which portion of the training is mutually beneficial. Union representatives attending training authorized under this section shall be assigned to the day shift, Monday through Friday, while attending training.

As elected Union officers, Officer Gum and Officer Gulley are allowed reasonable Official Time to attend activities as outlined in the parties' Master Agreement. Both Officers Gum and Gulley's work schedules include working Friday, Saturday, and Sunday.

Officer Matthew Gum

On or about April 30, 2013, Officer Gum advised Captain Treadway of his desire to attend the North Central Regional Caucus. In a follow-up email to Captain Treadway dated May 12, 2013, Officer Gum stated: "Sir Im (sic) inquiring about my official time from May 20th to May24th 2013. Has it been approved" (sic) Captain Treadway responded to Officer Gum's e-mail on May 13, 2013, stating: "Your request can not be granted due to no available staff to

cover your position for the time requested." In fact, staff was available; however, the staff covering for Officer Gum would have been earning overtime.

Officer Joseph Gulley

Likewise, in an e-mail dated April 30, 2013, Officer Gulley advised Captain Treadway that "I need 40 hours of official time for Monday May 20th-Friday May 24th for the North Central Regional Caucus. Attached is the agenda for this training." The e-mail chain printed by Officer Gulley indicates that the e-mail to Captain Treadway was "Read" on "5/1/2013" at "1:20 PM."

In an e-mail to Captain Treadway dated May 12, 2013, Officer Gulley stated: "I am inquiring about my request for official time for training May 20th-May 24th, has this been approved?" Captain Treadway responded to Officer Gulley's e-mail on May 13, 2013, stating: "Your request can not be granted due to no available staff to cover your position for the time requested." Again, staff was in fact available; however, the staff covering for Officer Gulley would have been earning overtime.

Officer Sandra Tyler

In an e-mail dated April 30, 2013, Officer Sandra Tyler advised Captain Dennis Treadway that "I am requesting official time to attend Union training in Colorado on May 20-24." On May 9, 2013, Captain Treadway advised Officer Tyler that "You are approved to attend this training, as you are on scheduled Annual Leave." On May 10, 2013, Officer Tyler sent Captain Treadway an email stating: "Just wanting to clarify, I am approved to attend union training in Colorado not on official time but using my scheduled annual leave?" Captain Treadway advised Officer Tyler in an email dated May 13, 2013, that: "You will be allowed to utilize official time for that week if you choose too (sic). Just let me know if you are deciding to go to the training and the change can be made." Officer Tyler advised Captain Treadway in an

e-mail dated May 17, 2013, that: "I will be going to Colorado for training May 20-24 if you could please change my annual to official time I would appreciate it." In an email dated May 17, 2013, Captain Treadway advised Officer Tyler, "will do, be safe." Officer Tyler's use of Official Time is no longer at issue in this matter.

Officer David Scharinger

In an e-mail dated May 1, 2013, Officer Scharinger advised Captain Treadway that "I'm requesting Official Time to attend the North Central Regional Caucus, May 20-24." Captain Treadway advised Officer Scharinger via e-mail dated May 9, 2013, that "You are approved to attend the requested training. Please advise if you plan on attending." Officer Scharinger's use of Official Time is no longer at issue in this matter.

The Grievance

On May 3, 2013, Matthew Gum, President, AFGE Local 919, filed a formal grievance on behalf of the Union, stating that the Agency had violated the "Master Agreement, article 11, section A, article 7, and article 6, section A, 5 U.S.C. 7131" by:

> On May 2, 2013, I was informed by Captain Dennis Treadway, that he would not approve official time for individuals to attend the North Central Regional Caucus because the agency might incur overtime costs.
>
> 8. Request remedy (i.e., what you want done)
> 1) The agency approve official time for any and all individuals selected by the Union to go to the North Central Regional Caucus.
> 2) The agency immediately cease and desist from interfering with lawful union activities.
> 3) Make whole any employee damaged in any way by this action.
> 4) The agency pay any and all attorney fees.
> 5) Captain Dennis Treadway be required to attend training in Labor Management Relations.
> 6) Anything else the Arbitrator deems necessary.

Article 31, Section g, of the parties' Collective Bargaining Agreement states:

> After a formal grievance is filed, the party receiving the grievance will have thirty (30) calendar days to respond to the grievance.

In a letter dated June 3, 2013, Warden Claude Maye advised Mr. Gum that "This is in response to the grievance, received on May 3, 2013, filed on behalf of AFGE Local 919." In addition, Warden Maye stated:

> As to the merits to your claim, a total of five union officials requested to attend the caucus, three of which are from Custody (Officers Tyler, Scharinger, and Rush). In addition, we approved you as the Local President, and Mr. Thomasee or Mr. Gulley, as the Local Vice President. to attend You were informed that Officer Sharinger would be allowed to attend; however, we would not fill behind him with overtime because this is a specialty post (SHU Property Officer), at which time you responded that you would file if we didn't fill behind Officer Scharinger. Additionally, Management informed you that we would have to augment behind Officer Rush, and you did not agree with that. As a result of Management not agreeing to fill behind Scharinger and Rush with overtime, you and Officer Thomasee or Gulley elected not to attend. Management did not deny any union officials official time to attend the caucus, but rather the Local opted to only send three officials.
>
> Based on the aforementioned, your grievance is denied.

Warden Maye's response was not timely and violated the parties' Collective Bargaining Agreement. Warden Maye's violation of the contract in this case is de minimis and does not impact the outcome of this matter.

In a Memorandum dated June 27, 2013, Mr. Gum advised Warden Maye that the Union was invoking arbitration on the grievance filed by Local 919, alleging that:

> On May 2, 2013, I was informed by Captain Dennis Treadway, that he would not approve official time for individuals to attend the North Central Regional Caucus because the agency might incur overtime costs. The Union is requesting the following remedies be granted by an Arbitrator:
> 1) The agency approve official time for any and all individuals selected by the Union to go to the North Central Regional Caucus.
> 2) The agency immediately cease and desist from interfering with lawful union activities.
> 3) Make whole any employee damaged in any way by this action.
> 4) The agency pay any and all attorney fees.

5) Captain Dennis Treadway be required to attend training in Labor Management Relations.
6) Anything else the Arbitrator deems necessary.

On February 11, 2014, a hearing was held before Arbitrator David Gaba at the U.S. Department of Justice, Federal Bureau of Prisons in Leavenworth, Kansas.

DECISION

Was the Contract Violated?

It is axiomatic that a Union alleging a violation of a Collective Bargaining Agreement must bear the burden of proof. The standard of proof for contractual disputes is preponderance of the evidence. Preponderance of the evidence can be defined as:

> The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.[1]

The applicable standards for contract interpretation are also well established. Where the language in a collective bargaining agreement is clear and unambiguous, the arbitrator must give effect to the plain meaning of the language. This is so even when one party finds the result unexpected or harsh. Words are to be given their ordinary and popularly accepted meaning unless other evidence indicates that the parties intended some specialized meaning.[2] As stated by Elkouri and Elkouri:

> Arbitrators have often ruled that in the absence of a showing of mutual understanding of the parties to the contrary, the usual and ordinary definition of terms as defined by a reliable dictionary should govern. The

[1] *Black's Law Dictionary*, (8th ed. 2004).
[2] *Seattle School District*, 119 LA 481 (2004).

> use of dictionary definitions in arbital opinions provides a neutral interpretation of a word or phrase that carries the air of authority.[3]

However, the question of whether relevant language is ambiguous turns on the facts of each case. A party's offered interpretation may not ultimately be found to best reflect the negotiated intent of contract language, but if plausible contentions can be made for conflicting interpretations, then an ambiguity will be said to exist.[4] Language does not become ambiguous merely because parties disagree over the meaning of a phrase or contract provision. An arbitrator must decide whether, judged in context, a single, obvious, and reasonable meaning appears on the face of disputed language. If so, then no ambiguity is present. If the language can be given more than one plausible interpretation, then an ambiguity is said to exist.

Was the Employer's Response to the Grievance at Issue Timely Filed?

Article 31, Section g, of the parties' Collective Bargaining Agreement states:

> After a formal grievance is filed, the party receiving the grievance will have thirty (30) calendar days to respond to the grievance.

The Union's Formal Grievance form was filed on May 3, 2013. The Union alleges that the Agency's response "was not only untimely when it was produced one day after the mandated 30 days, but that its untimeliness was a disrespectful slap in the face when it was provided 11 days after the Caucus began…" Upon cross-examination at hearing, Warden Maye testified that:

> 61
> Q. In accordance with the Master Agreement, how much time do you have to respond to a Grievance, sir?
> A. You get 30 days.
> ***
> Q. This is a calendar of May and June, 2013, on which we have numbered the days

[3] Elkouri and Elkouri, *How Arbitration Works,* 490-91 (5th ed. 1997).
[4] *Northern Ill. Mason Employees Council,* 91 LA 1147, 1153 (1988); Elkouri & Elkouri, *How Arbitration Works*, 434 (6th Ed 2003).

sequentially following the date of request, and please feel free to verify the numerical order. Do you see any discrepancies with the numerical order as it is written on this document?

A. I don't understand the question.

Q. Starting from Saturday the 4th-

A. Okay.

62

Q. -which would be number 1, ending with if you would turn the-

A. Okay.

Q. -ending with Monday, the 3rd of June which would be 31-

A. Okay.

Q. -how many days would that be?

A. 31.

Q. 31 days. What was the date of your Response to the Union?

A. June 3rd.

Q. So from the 4th the Grievance, if you would look at Joint Exhibit 2.

A. Okay. So we took 31 days to respond.

Warden Maye is an extremely capable administrator who was endeavoring to address a complicated issue. In the instant case, the Agency took one extra day to respond due to a weekend. As the late response does not affect the Award in this case, it is immaterial; however, the Employer is certainly on notice that future failures could result in the Union prevailing in matters where the merits do not favor them.

When is a Union Official Eligible for Official Time?

"Official Time" usually refers to on-the-clock time provided to federal employees and their union representatives to participate in labor-management activities. There are two broad categories of official time. The first is referred to as "statutory" official time, which is used to carry out specific activities provided for in statute or regulation, e.g., negotiating a labor

agreement. Authority for this type of official time is found at USC Title 5 Sec. 7131(a). In most cases, organizations establish the conditions for using this time via statutes or regulations.[5]

However, employees who are union officials are not entitled to use official time for the conduct of internal union business; for example, soliciting new members or running for union office.[6] For the most part, the current situation does not appear to involve "statutory" official time, but rather involves "contractual" official time.[7] This is time that union representatives devote to training, reviewing grievances, and general representational activities that are not encompassed within "statutory" official time, and is not an automatic entitlement. However, necessary official time for these purposes may be negotiated.[8] In negotiating official time, union and management negotiators may settle upon "any amount agreed to be reasonable."[9]

Federal labor agreements such as the one at issue routinely contain provisions that allow union officials to use "official time" to carry out various representational functions; for example, presentation of a grievance, service on a safety committee, or participation in meetings with management. In this case, questions concerning who may use this time, how much time is

---

[5] *See*, (FLRA-Federal Labor Relations Authority USC Title 5 Sec. 7131), (MSPB-Merit Systems Protection Board 5 CFR Section 1200), OSC Office of Special Council, (EEOC-Equal Employment Opportunity Commission 29 CFR Part 1614.605 & EEOC Regulation MD-110 Chapter 6), and (OSHA-Occupational Safety and Health Administration, 29 CFR part 1960.10(d) & EO 12196), (OWCP-Office of Workers Compensation, 20 CFR 10.701). An example of statutory official time would be a complainant who is an employee of an agency and who requires a reasonable amount of official time, if otherwise on duty, to prepare an EEO complaint and to respond to agency and EEOC requests for information. If the complainant has designated another agency employee as a representative, that employee shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to agency and EEOC requests for information. 29 CFR 1614.605(b). A complainant's right of EEO representation is sufficiently tied to his employment status, so that abridgment of that right by the agency would result in a direct and personal harm to a term, condition, or privilege of the complainant's employment, and thus render him aggrieved. *(Story v. Department of the Treasury*, EEOC No. 05970843 (1999), 100 FEOR 3003). Denying the complainant official time to represent co-workers in connection with petitions for EEOC review of MSPB decisions was "tantamount to reprisal discrimination." *(Harrell v. U.S. Postal Service*, EEOC No. 01942166 (1995), 95 FEOR 3213).

[6] USC Title 5 Sec. 7131(b).

[7] *See,* USC Title 5 Sec. 7131(d).

[8] *VA Medical Center, Brockton, Mass.,* 23 FLRA 542, 86 FLRR 1-1797.

[9] 5 USC 7131(d).

available, what procedures are necessary to obtain and use it, and precisely when it may be used, were negotiated and set out with specificity in the parties' Collective Bargaining Agreement.

Article 11 of the parties' Agreement sets forth in part that:

> Section a. Official time is defined as paid duty time used for various labor relations and representational obligation 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; …
>
> 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; …**(emphasis added)**

The parties decided that "*reasonable* official time *will* be granted…" What is considered reasonable? "Reasonable," as defined by the *American Heritage Dictionary* is:

> **rea•son•a•ble** (rē zə-nə-bəl)
> *adj.*
> 1. Capable of reasoning; rational: *a reasonable person.*
> 2. Governed by or being in accordance with reason or sound thinking: *a reasonable solution to the problem.*
> 3. Being within the bounds of common sense: *arrive home at a reasonable hour.*
> 4. Not excessive or extreme; fair: *reasonable prices.*
>
> rea son•a•bil i•ty, rea son•a•ble•ness n.
> rea son•a•bly adv. [10]

Synonyms of "reasonable" include: rational, sensible, sane, level-headed, intelligent, common-sense, common-sensical, tolerant, endowed with reason, conscious, cerebral, capable of reason, thoughtful, reflective, percipient, reasoning, ratiocinative, cognitive, perceiving, consistent, broad-minded, liberal, generous, unprejudiced, unbiased, persuasible, malleable,

[10] *The American Heritage® Dictionary of the English Language*, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. Published by Houghton Mifflin Company. All rights reserved.

flexible, agreeable. fair, right, just, judicious, prudent, sound, wise, equitable, moderate, temperate, within reason, impartial, humane, politic, sapient, discreet, analytical, objective, circumspect, making sense, standing to reason, see also judicious, moderate, plausible, logical.[11]

If a request is "reasonable," the next question is how much latitude the Agency has to deny the request. In drafting their Agreement, the parties chose to use the word "will." They did not choose words such as may, could, can, or any other permissive term. According to the *American Heritage Dictionary*, the word "will" means many things, but the relevant entry when the term is used as a verb is:

> **will** (wĭl)
> *v.* willed, will·ing, wills
> *v.tr.*
> 3. To decree, dictate, or order. [12]

In short, the Agency has no power to refuse to grant the time off if the Official Time request is "reasonable."

Based on these facts and on the language of Article 11 of the parties' Agreement, it is evident that there is no question that the May 2013 training session in Colorado was "mutual[ly] beneficial." Article 11, section h, of the Collective Bargaining Agreement specifically references "mutual benefit when it covers areas such as contract administration, grievance, handling, and information related to federal personnel/labor relations law, regulations, and procedures" as examples of training subject matter that is mutually beneficial. At hearing, Warden Maye stated:

> 106
> A. We felt it was in the best interest of the Agency, felt it was mutually beneficial, at a minimum, that the President and the Vice President

[11] *Roget's 21st Century Thesaurus, Third Edition.* Philip Lief Group 2009.
[12] The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. Published by Houghton Mifflin Company. All rights reserved.

18 go. We truly wanted the President and Vice
19 President to go and get this training. We thought
20 it would help the Institution. It's not so much
21 that we was trying to direct who go, but we just
22 felt it was in the best interest of the Agency, to
23 help both parties, Labor, as well as Management.

It appears that the parties eventually agreed that Official Time should be granted for the training.

Did the Employer Approve Official Time for Officers Gum and Gulley to Attend the North Central Regional Caucus Training?

Officers Tyler, Scharinger, Gum and Gulley were all under the supervision of Captain Treadway. It is the Employer's position that it "did not disapprove Messer Gum, Gulley or Scharinger and Ms. Tyler's request for official time to attend the Regional Caucus Training." However, the Employer argues that both Officers Gum and Gulley's "request to attend the Regional Caucus Training was initially denied." The Employer further argues that "the Agency would have incurred overtime cost to cover Officer's Gum and Gulley's post while they attended the Regional Caucus Training." Under the Agency's rationale, management could routinely deny Official Time requests until the day before a training session and then simply change their mind and claim there was no contract violation.

Officers Gum, Gulley and Tyler made their initial requests for official time to attend the North Central Regional Caucus Training to Captain Treadway on April 30, 2013. Captain Treadway did not respond to either Officer Gum or Officer Gulley's emails until after they sent follow-up emails to him on May 12, 2013, responding that: "Your request can not be granted due to no available staff to cover your position for the time requested." Two weeks after their requests, Officer Gum and Officer Gulley thought that their requests were being denied in violation of the Collective Bargaining Agreement.

The Employer alleges that the grievance filed by Officer Gum on May 3, 2013, was filed prematurely as the Employer had not yet determined:

> ...which Union Officials were approved or disapproved to attend the Regional Caucus Training (JE 2, AE 3, 6, UE 3, 6). Messer Gum and Gulley testified that Correctional Officers Sandra Tyler and David Scharinger were not approved for official time to attend the Regional Caucus (TR 26 – 27, 29, 46). Mr. Gulley's request was denied on May 13, 2013, he would have no way of knowing his request would be denied at the time the grievance was filed (TR 58).

Yes, eventually Warden Maye wisely overturned the decision of Captain Treadway; however, by that time it was too late for the officers to make plans to attend the training. There is a legal maxim that "justice delayed is justice denied."[13] Courts routinely agree, and as stated by one court: "Justice delayed is indeed justice denied."[14] If the original denial was in error, Warden Maye's decision weeks later to allow overtime does not cure the contract violation.

Is the Agency Required to Authorize Overtime to Provide Employees an Opportunity to use Official Time?

The key question in this matter is: should union officials be authorized to use Official Time even when it means that overtime would be required? The Agency states that "Captain Treadway requested permission from Warden Maye to incur overtime cost so that Officers Gum and Gulley could attend the Regional Caucus Training (TR 25, 44, 88, 92-95). Once Captain Treadway received permission to authorized (sic) overtime, he informed Officer Gum and Gulley of his decision to approve their official time request (118-119, 122-125)."

However, at hearing, Captain Treadway testified:

> 122
> **Q. So you were not able to grant overtime for this official time?**
> A. Not at that time, no.

It is clear that the issue was simply out of Captain Treadway's hands and that there would always be (at best) a delay in approving Official Time when overtime is required. The Employer alleges

[13]The quote is often attributed to William Gladstone, but such attribution is not verifiable.
[14] *Gould, Inc. v. United States*, 67 F.3d 925 (Fed. Cir. 1995).

that "It is unclear what sections of the Collective Bargaining Agreement the Union thinks that Management violated..." The Employer argues that it "believes in Article 11, Section H. the phrase 'workload permitting' gives the Agency discretion in covering positions for union representatives during times of training."

The question then becomes: what does the term "workload permitting" in the parties' contract mean? The Union argues that:

> The agency provided contradicting testimony with regards to their position on '*workload permitting'.* On one hand Captain Treadway provided testimony (T119:19 - 120:4) and evidence (A4) that suggested he denied the official time due to staffing concerns yet, both Warden Maye (T92:21 - 93:23) and Captain Treadyway (sic) (T132:16 - 20), testified to their willingness to incur overtime costs, in order to send the new Union officers to training that they agreed, was mutually beneficial.

The Union is correct as to the Agency's shifting theories in this matter; however, there is no denying that Captain Treadway was forbidden to grant the request as it required overtime.

This matter is simply about two possible interpretations of the term "workload permitting," and, surprisingly, there are no cases on point. The undersigned has reviewed both F.L.R.A. decisions and the BNA data base of labor arbitration awards and can find no cases that touch on whether "workload permitting" requires the use of overtime. Neither side has propounded any evidence to indicate their intent when inserting the term "workload permitting" into their Collective Bargaining Agreement, and I am left with two possible options to define a term that is vague.

In looking at a reliable dictionary, we find "workload" defined as:

> **work·load** (wûrk'lōd')
> *n.*
> **1.** The amount of work assigned to or expected from a worker in a specified time period.

> **2.** The amount of work that a machine produces or can produce in a specified time period.[15]
>
> **workload** ('wɜːkˌləʊd)
> *n*
> **1.** (Industrial Relations & HR Terms) the amount of work to be done, esp in a specified period by a person, machine, etc.[16]

From the above, it appears there is no limitation on Official Time other than "[T]he amount of work assigned to or expected from a worker in a specified time period." Workload is workload and the term has no reference as to who should perform the "workload" or what they should be paid. It would appear that a better reading of the parties' contract would require the use of overtime to enable Official Time if there are people available to perform the work. Clearly, it is possible to staff a penitentiary in such a manner that any request for Official Time would require the use of overtime. The foregoing would result in Official Time never being granted and the provisions for the use of Official Time would simply be illusory.

Ultimately, the parties could have bargained language that would make the granting of Official Time contingent on there being employees available to cover the shifts at straight time. However, the contract is simply silent and places no such limitation on the use of Official Time. If there are employees available to do the "work to be done," then Official Time should be granted, regardless of it necessitating the use of overtime.

Remedy

This brings the undersigned to the question of remedy. The remedies requested by the Union include:

> a. provide a minimum of eight (8) hours of straight time pay plus interest to Matt Gum for his personal time spent on the phone obtaining daily

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[15] The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. Published by Houghton Mifflin Company. All rights reserved.
[16] Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003.

updates and the teleconference with Regional Director Paul Laird while off duty;

b. order the agency to approve and/or deny Official Time requests in strict accordance with the Master Agreement;
c. require a mass email and bulletin board posting of the offense(s) and corrective action(s);

d. grant any additional back pay, or impose any sanctions, the arbitrator deems appropriate for the aforementioned violations of the Master Agreement.

In *U.S. Dept. of Agriculture Rural Development, Washington, D.C.*,[17] the Authority upheld an arbitrator's award where he found that the grievant was entitled to be paid straight time for the time she spent performing duties on non-duty time for which she should have been granted Official Time. Additionally, the Authority has ruled that re-crediting of annual leave is appropriate when annual leave is taken to perform representational activities for periods when Official Time should have been granted, but was improperly denied.[18]

The appropriate remedy for a contract violation of this sort is to put the aggrieved employee in the position he would have occupied but-for the contract violation. "The general rule is that when a wrong has been done, and the law gives a remedy the compensation shall be equal to the injury." "The latter is the standard by which the former is to be measured." "The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed."[19]

Officer Gum testified under oath that:

16
6 **Q. Were you contacted during the caucus,**
7 **regarding your absence, by any other Union**
8 **officials of CPL?**
9 A. Yes. Jordan Toot, Secretary-Treasurer

[17] *U.S. Dept. of Agriculture Rural Development, Washington, D.C.*, 60 FLRA 527 (2004).
[18] *VA Medical Center, Brockton, MA*, 21 FLRA 388, 391 (1986); *Dept. of Homeland Security, Customs and Border Protection*, El Paso, TX, 61 FLRA 122 (2005).
[19] *Naekel v. Department of Transportation*, 88 FMSR 7022, 850 F.2nd 682 (Fed. Cir. 1988), pp. 4-5.

10 of this Local, contacted me on a daily basis to
11 give me updates of what was going on.
12 **Q. He's at this Local?**
13 A. Yes.
14 **Q. Okay.**
15 A. As well as the Regional Director. I had
16 to do a teleconference with him. On my day off, I
17 was calling in. He was apologizing, saying, "Sorry
18 that I couldn't make it"-
***
17
18 **Q. You stated the Regional Director**
19 **contacted you?**
20 A. Through Jordan Toot, yes. And we had to
21 do a teleconference because the Regional Director
22 wanted to talk to all the Presidents and he was
23 under the impression that they were all going to be
24 there. And so-
***
18
11 **Q. So the Regional Director, you spoke to**
12 **him directly concerning this matter, or over the**
13 **phone-**
14 A. Yes, sir.
15 **Q. -and he apologized to you for your**
16 **inability to attend-**
17 A. Yes.
18 **Q. -due to your denial of official time?**
19 A. That is correct.

Consequently, Officer Gum should be reimbursed for his personal time spent on activities that should have been covered by Official Time. However, as Officer Gum never testified with specificity as to how much personal time he spent on the above phone calls, he should only be reimbursed if he sets forth in a sworn statement the amount of personal time he was required to spend.

The Agency will also be ordered to approve and/or deny Official Time requests in strict accordance with the Master Agreement and this Award.

CONCLUSION

Difficult facts make for difficult cases and I truly sympathize with the Agency for the outcome in this case as this seems to be one of first impression on the issue of using overtime to

cover for employees granted Official Time. The burden rests on the Union to show by a preponderance of evidence that their interpretation of the contract is correct; they have done so. The Employer violated the Collective Bargaining Agreement by denying Union Officers' requests for Official Time.

AWARD

The grievance is sustained. Officer Gum should be reimbursed at straight time for his personal time spent on activities that should have been covered by Official Time provided he submits a sworn statement setting forth the time. The Agency is ordered to approve and/or deny Official Time requests in strict accordance with the Master Agreement and this Award.

All fees and expenses charged by the Arbitrator shall be shared equally by the parties as provided for in Article 32, Section d. of the parties' Collective Bargaining Agreement.

/s/ David Gaba
David Gaba, Arbitrator
April 22, 2014
Seattle, Washington