IN THE MATTER OF THE ARBITRATION BETWEEN:	.	
The Library of Congress (Agency)	.	
	.	FMCS Case No. 07-51235
	.	Grievance 2007-1
	.	Library of Congress
and	.	
	.	Grievance 2007-4
	.	American Federation of
	.	State, County and Munici-
American Federation of State, County and Municipal Employees Guild Local 2910 (Union)	.	pal Employees Guild Local 2910
_____	.	

Hearing held on January 25, 2007 in Washington, D.C.
Before: James M. Harkless, Arbitrator

Appearances

For the Agency	For the Union
Charles M. Carron, Esq. Director of Workforce Management Catherine Hurst Weber Labor Relations Specialist	Barbara Kraft, Esq. Kraft Eisenman Alden PLLC

These consolidated Grievances concern the Union's reporting of official time for representational duties, and the Agency actions in dealing with it. On October 16, 2006, the Agency filed Grievance 2007-1 against the Union. It reads in part:

> On August 31, 2006, Charles Carron, Director of the Library's Office of Workforce Management, Human Resources Services (WFM), sent an email to Saul Schniderman, President of the Library of Congress Professional Guild, AFSCME Local 2910, as follows:

My office has responsibility for compiling reports on official time for union representational activity. I have recently analyzed the reports from the first half of Calendar Year 2006, and have found numerous gaps. Official time is limited by the collective bargaining agreements, which set maximum hours for specified representatives. These are maximum limits, not blanket entitlements to official time. Moreover, under the Statute, paid official time must be "reasonable, necessary, and in the public interest." 5USC Sec. 7131 (d). Official time may not be used for internal business of a labor organization. 5USC Sec. 7131 (b). While my Office has been receiving reports from a number of AFSCME 2477 and 2910 stewards and chief stewards, many of those reports do not contain enough information to determine whether official time is properly being used. For example, the phrase "chief steward duties" is not sufficient. My Office needs to know the purpose of each contact, or if it is a meeting with supervisors or managers that does not count against the contractual limit on official time hours, we need to know the names of the supervisors and managers and topic(s) discussed so that we can verify the meeting dates and times with those supervisors and managers... Another significant gap is that my Office is not routinely receiving reports from the labor organization presidents. There is no automatic entitlement to official time for the presidents; rather, you are required to make the same reports and you are subject to the same limitations of law as are other union representatives. Even if these obligations have been ignored in the past, these are legal obligations governed by the Statute and the collective bargaining agreements. Over the years, the labor organi--zations have been reminded repeatedly of these time reporting obligations. The purpose of this email is to remind you one last time of your legal and contractual responsibilities regarding official time (including reporting) and to request your immediate and sustained compliance. Otherwise, my Office will be required to take appropriate steps to enforce these official time and time reporting requirements...

On September 18, 2006, Mr. Schniderman responded to Mr. Carron by memorandum, taking the position that the official time negotiated in the CBA is presumed to be reasonable and that the Guild's Chief Steward need only describe his or her representational work as "Chief Steward Duties," with no further specificity. Mr. Schniderman did not address the issue of official time reporting by the President or other Guild officials.

On September 18, 2006, Mr. Carron responded to Mr. Schniderman by email, as follows:

> Saul - Thank you for the memo of 9/18/06. I would like to clarify that I am not accusing the Guild, or any of its representatives, of having abused official time. Rather, I am making an inquiry into the use of official time to ensure that the requirements of the collective bargaining agreement and the Statute are being met. I cannot judge whether the time being spent is "reasonable" under the CBA or the Statute if I don't know what representational activities the Guild's officers are engaged in. For example, Council 26 activities, voter registration, Guild office housekeeping, office hours to be available to meet with bargaining unit members, and other activities would not constitute appropriate use of official time. Also, I can't confirm the time that you are spending in meetings with management if you do not report the particulars of those meetings (date, time, and who from management was there). Section 3.D. of the CBA says that "the use of official time for representational activity will be recorded on a Form 468." That language is not specific to stewards and therefore includes officers including yourself. We can discuss alternative documentation as long as it satisfies the Library's need to ensure that official time is being used only for lawful purposes under the Statute. The Guild is required to cooperate in inquiries into the use of official time per Art.6 Sec.5 As for employee confidentiality, there is no need to disclose the name of a prospective grievant. If you want to discuss, I am available 9/21 or 9/22, anytime between 8:00 and 4:00.

On September 26, 2006, and again on October 6, 2006, representatives of WFM (Charles Carron and Gerald Greenwood, Team Leader of the Labor-Management Relations Team) met with representatives of the Guild (President Saul Schniderman, Chief Steward Melinda Friend and Council 26 representative Peter Inman) to discuss these issues. The Guild agreed that Mr. Schniderman and Ms. Friend would submit their reports of representational activities for the upcoming four-day workweek (October 10-13, 2006) to the Office of Workforce Management on October 13, 2006, and that the parties would meet on October 16, 2006 to discuss whether the level of detail on those forms satisfied the Library's requirements.

On October 12, 2006, Mr. Schniderman sent Mr. Carron a memorandum dated October 13, 2006, restating the Guild's position and concluding as follows:

> We are fully aware of our reporting responsibilities under the Statute and the CBA. At the same time, we are obligated to protect the privacy and confidentiality of our bargaining unit members, and the integrity of our union contract.
>
> We hope that we can resolve any misunderstandings at our meeting on Monday, October 16.

On October 16, 2006, Mr. Carron and Mr. Greenwood met with Mr. Schniderman, Ms. Friend and Mr. Inman to discuss these issues. The Guild provided copies of the reports of representational activities for Mr. Schniderman and Ms. Friend for Pay Period 20. The Guild only provided the categories of activities for which official time was claimed: "Discuss complaint, discuss grievance/consultation with deBlander; Weiss"; "Discuss complaint with reps, Dispute Prep, consultation deBlander"; Disc. Compl., Consultation"; "HR, OWM, DR"; "Discuss Compl, Grievance Prep, Dispute Prep"; "OWM, HR" and "Disc. Comp." The Guild confirmed that in the Guild's view this is the extent of the Guild's obligation to report the purposes for which official time is claimed. At the conclusion of this meeting, Mr. Carron presented this grievance orally to the Guild's representatives.

The Library now presents the grievance in writing. The Guild has been, and continues to be, in violation of Article 6 of the Collective Bargaining

Agreement between the parties by providing insufficient detail in official time reports and in response to Mr. Carron's inquiries. Due to this insufficient detail, the Library is unable to determine whether all time being claimed as official time is being used for representational functions, nor is the Library able to determine whether such use is reasonable under the Federal Service Labor-Management Relations Statute, 5 USC Section 7131(d).

In this grievance and any ensuing arbitration the Library seeks the following relief: (1) that the Guild's representatives, including the President and Chief Steward, provide sufficient detail in their official time reports to enable the Library to determine whether all time being claimed as official time is being used for representational functions and whether such use is reasonable; and (2) that any insufficiently documented official time from September 1, 2006 and ongoing be converted to annual leave or Leave Without Pay (LWOP).

Date: October 16, 2006

. . .

Union President Schniderman responded to the Agency grievance on November 13, 2006,[1] in part as follows:

. . .

On April 16, 2002, the Guild and the Library signed and executed its current Collective Bargaining Agreement which includes the Article 6, Guild Representation:

ARTICLE 6. GUILD REPRESENTATION

Section 1. The Library agrees to recognize one (1) Chief Steward for the bargaining unit and a steward for each seventy-five (75) employees in the bargaining unit.

Section 2. [A.] Stewards designated by the Guild are authorized to perform the following duties on behalf of employees within the organizational unit to which they have been assigned by the Guild:

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[1]It was incorrectly dated "10/13/06".

2. discuss complaints, grievances, and appeals with bargaining unit employees and/or other Guild representatives;

3. prepare and present grievances and appeals on behalf of bargaining unit employees;

4. attend meetings with supervisors and management officials to discuss grievances and appeals; and

5. represent employees in grievance, appeal, and dispute resolution proceedings.

[B.] Stewards and Guild officers are responsible for serving as representatives for the purposes of collective bargaining, handling grievances and appeals, furthering effective labor-management relations, or acting in accordance with applicable regulations and agreements on behalf of an employee or group of employees.

. . .

Section 3. Official Time for Representational Functions

[A.] Actual times for meetings with management and time for presentation of grievances, disputes, complaints, etc., shall not be charged against the official time provided below.

[B.] The Guild President and Chief Steward shall be allowed a reasonable amount of official time to perform their duties as employee representatives, subject to the limitations of law. The amount of time used may not exceed 1560 hours per person per year.

[C.] Each steward will be allowed a maximum of twenty (20) hours per month for preparation of grievances, disputes, appeals, etc., with the option to transfer hours between stewards by written notice (except in emergencies) to the Library in advance. In emergency situations the written notice will follow. Under extraordinary circumstances the Guild may exceed its allotted monthly time and the hours will be subtracted from the next month and used in the current month.

[D.] The use of official time for representational activity will be recorded on a Form 468.

Section 4. Guild representatives will advise their supervisors before leaving their assigned work areas for the purposes indicated above. The supervisor's permission will normally be granted except when in his/her opinion workloads preclude such approval. Prior to contacting an employee on official time, the steward shall contact the employee's supervisor, advise him/her of his/her reasons therefore, and obtain permission to contact the employee. Supervisory permission will normally be granted except where workloads preclude such approval. The stewards will report to their supervisors when they return to their assigned duties.

Guild representatives will comply with management decisions to delay or deny official time. When a supervisor delays or denies a request for official time, deadlines will be extended and meetings rescheduled as necessary.

Section 5. The Guild recognizes its responsibility to ensure that its representatives do not abuse their use of official time by unduly absenting themselves from their assigned work area, and such representatives will make every effort to perform representational and consultation functions in a proper and expeditious manner. Nothing contained in this section permits the Library to willfully, arbitrarily, or capriciously abuse its authority by refusing to grant official time for stewards and/or officers to perform their representational functions. The parties will cooperate in inquiries into the use of official time.

Section 6. The Guild agrees to supply the Labor Management Relations Office in writing, and shall maintain on a current basis, a complete list of all officers and stewards. The Guild will notify the Library as to who will be using representational time.
Section 7. The Library agrees it will consult with the Guild prior to placing stewards on special assignments and/or details away from the area in which they serve.

Discussion

The Library's grievance against the Guild states that the Guild "has been, and continues to be, in violation of Article 6 of the Collective Bargaining Agreement between the parties by providing insufficient detail in official time reports and in response to Mr. Carron's inquiries." The exact provision of

Article 6 which the Guild has allegedly violated is not cited.

The first time the Guild was made aware of what these "insufficient details" were was on September 18, 2006, when Mr. Carron's [sic] sent the Guild an email stating that: "My office needs to know the purpose of each contact... In meetings held between the parties - on September 26, 2006, on Oct. 6, 2006, and on Oct. 16, 2006 - Mr. Carron made clear that what he means by "purpose of each contact" is this: he wants Guild representatives to identify on Form 468 the exact nature of the discussion, e.g. harassment of employee, as well as the location of where the employee works, e.g. Arts and Science Division. In his grievance against the Guild, Mr. Carron correctly described the 3 meetings that were held between the parties as discussions as to "whether the level of detail on those forms satisfied the Library's requirements."

But what Mr. Carron failed to state in his grievance is that these "details" and "Library requirements" were issued by him, unilaterally, and were never agreed upon by the parties in our current Collective Bargaining Agreement or in any previous CBA. A reading of Article 6 shows this. In fact, these matters - concerning the level of specificity to be provided by the Guild representatives on the sign-out sheet - were fully discussed by the parties in 1996 during contract negotiations over the previous Collective Bargaining Agreement and were never implemented.

At least since 1985 Guild representatives have been reporting their time in the "purpose of contact" box in general categories. These general categories, e.g. "discuss complaint," "grievance preparation", "bargaining prep", etc. were established so that the Guild representatives did not have to identify the division where the employee works or have to specify the detailed description of the meeting. This type of reporting of official time in general categories has been accepted by the parties for the past 20 years as a past practice. The general categories were taken from Article 6; also, these general categories reflect the reporting of official time in Executive Branch agencies.

Starting on September 18, 2006, and in the 3 subsequent meetings, the Office of Workforce Management has suddenly and unilaterally sought to change this established past practice by making up "requirements"

for Guild representatives and issuing “inquiries” to the Guild and then, in the instant case, filing a grievance when we don’t comply.

In his September 18, 2006 memo to me, as president of the Guild, Mr. Carron stated, “I would like to clarify that I am not accusing the Guild or any of its representatives, of having abused official time.” The reason Mr. Carron made this statement is because Guild representatives never abuse the official time that is granted them. Yet, even though he cannot cite one instance of abuse of official time by Guild representatives, Mr. Carron has unilaterally issued “requirements” which are outside the Collective Bargaining Agreement. Then he grieves the Guild because he, apparently, expects these requirements to be violated.

Also, if the Guild were to adhere to the requirements issued by Mr. Carron, we would be in violation of Article 3 (Employee Rights) of our Collective Bargaining Agreement. Section 10 of Article 3 states:

> Section 10. Employees shall have the right during working hours to contact the following officials or offices:
>
> [a.] appropriate Guild representatives;
> [b.] Human Resources Services;
> [c.] Equal Employment Opportunity Counselors...;
>
> . . .
>
> Normally, an employee will be allowed to telephone or visit the aforementioned offices. Upon notification to his/her supervisor an employee may be requested to delay making a visit when workload or other organization exigencies require that the employee remain at his/her worksite. Employees have the responsibility to exercise their right judiciously and expeditiously. **Employees may be required to state the general purpose of the contact but will not be required to discuss in detail with their supervisor the reasons they wish to contact any of the above officials or offices.** (emphasis added)

If Guild representatives were to provide the level of specificity which Mr. Carron desires, we would be in violation of our own contract and would, in essence, be “snitching” on employees who visit our office. Moreover, Mr. Carron’s insistence on this detailed

level of reporting for employees who come to the Guild Office - but not the other offices listed in section 10 - singles out these employees and discriminates against them for participating in their union.

Furthermore, in this grievance Mr. Carron seeks the following “relief” for violations of these requirements: that Guild representatives using “insufficiently document official time” from Sept. 1, 2006 and ongoing be converted to annual leave or Leave Without Pay. Since no Guild officer or stewards report their official time in the manner he desires, this would mean docking the pay or annual leave of every officer and steward who has used official time from Sept. 1, 2006 onward. All Guild officers and stewards report their official time according to the provisions of Article 6 and proscribed by past practice. Moreover, the extraordinary remedy Mr. Carron seeks in placing Guild representatives on Leave Without Pay or annual leave constitutes a penalty or reprisal under Section 2 of Article 3, and is therefore a violation of the Master Contract.

In point of fact, the Guild is not and never has been in violation of Article 6 of the Collective Bargaining Agreement. This is obvious because on October 16, 2006 at the very same meeting where Mr. Carron delivered to the Guild the current grievance, he handed us a letter reopening Article 6 ... with proposed new language which includes the very specificity of detail concerning reporting official time that he accuses us of violating. He is trying to have it both ways.

Decision

Article 36 (Negotiated Grievance Procedure) defines a Library grievance against the Guild as “any claimed breach of a personnel regulation or agreement by the Guild or its officers or agents.” The Library has not proven such a breach. Moreover, Section 1 of Article 36 establishes the grievance procedure as the exclusive procedure for addressing contract violations, thereby precluding Mr. Carron’s request for authority to place Guild representatives on Leave Without Pay or enforced annual leave.

The harsh remedies suggested in the Library’s grievance - that Guild representatives including the President and the Chief Steward be put on enforced annual leave and or Leave Without Pay for any

> "insufficiently documented official time" - are unwarranted.
>
> The grievance is denied. (Bold type in original)

In the meantime, on November 1, 2006, the Union filed Grievance No. 06-10 against the Agency. It briefly recites the events on August 31, and September 18, 2006, mentioned in the Agency grievance and Union response, as well as meetings on September 6 and 14, 2006 between officers of the Union, AFSCME Local 2477, and representatives from AFSCME Council 26 to discuss a response to Carron's August 31, 2006 email. It then reads in part:

> On September 26, 2006, Saul Schniderman, Peter Inman (AFSCME Council 26), and Melinda Friend met with Charles Carron and Gerry Greenwood (a team leader in WFM) about official time... At the meeting, Ms. Friend quoted from a clarifying memorandum issued by Human Resources Services on December 21, 2004 (Attachment 4), to show that the supervisor had the responsibility to ensure that each instance of official time is properly requested in advance by the union representative, that permission is granted based on workload and other organizational needs, and that the time reported was in fact utilized for appropriate representational activities. Sometime after the meeting ended, Gerry Greenwood called Ms. Friend's supervisor, Allan Teichroew, and told him to no longer initial Ms. Friend's Form 468 (Time for Representational Activities). On the morning of September 27, ... Teichroew informed Ms. Friend he was no longer authorized to initial her Form 468. Ms. Friend is a senior archives specialist in the Manuscript Division who was elected chief steward by the Guild membership.
>
> On September 27, Mr. Greenwood requested a meeting with Ms. Friend. At the meeting he said that Mr. Schniderman's supervisor was also called and told not to initial Mr. Schniderman's Form 468. Mr. Greenwood stated that they were afraid that the initialing of the form by the supervisor would signify that the Library ... agreed that what was written on the form was sufficient. Mr. Schniderman is a cataloger in the

Copyright Office who was elected president of the Guild.

On October 6, 2006, Mr Schniderman, Mr. Inman, and Ms. Friend again met with Mr. Carron and Mr. Greenwood where it was agreed that during the four remaining days in the pay period, Mr. Schniderman and Ms. Friend would write a level of specificity on their Forms 468 that they believed was in agreement with the collective bargaining agreement. Copies of their forms were to be presented to Mr. Greenwood at the meeting scheduled for October 16, 2006. In an email by Mr. Carron to Ms. Friend, Ms. Friend was asked to confirm that if initialing of forms by Ms. Friend's and Mr. Schniderman's supervisors began again that the Guild would not claim that such initials were an acknowledgment that the level of specificity in the official time reports satisfied the obligations of the CBA. Under the circumstances, it was clear to Ms. Friend that if she did not make the confirmation, Mr. Schniderman and she would be put on LWOP for all of the time which was claimed as official time. Under duress and having no choice, Ms. Friend made the confirmation...

On October 13, 2006, Mr. Schniderman sent a memorandum to Mr. Carron stating that Guild officers and stewards do not engage in internal union business on official time. The memorandum also referred to the Inspector General's report which stated, "Union members appear to properly use their personal time for internal union business, such as organizing new members or campaigning for office, or when acting as an officer/delegate at the union's regional or national level..." (

On October 16, 2006, Mr. Carron and Mr. Greenwood met with Mr. Schniderman, Ms. Friend and Mr. Inman to discuss the issues. Mr. Schniderman and Ms. Friend presented copies of their Forms 468 where they demonstrated their willingness to go beyond what was called for in the CBA by indication the name of the supervisor and/or office with which they met. (Attachment7) Mr. Schniderman and Ms. Friend said they could not give more information than "discuss complaint", "discuss grievance", etc. where it related to individuals because it would be a violation of the employee's privacy. Mr. Carron and Mr. Greenwood said that forms as filled out did not provide enough specificity.

At the end of the meeting, Mr. Carron handed to Guild representatives both a reopened Article 6 ... of the CBA, and a grievance against the Guild. In the grievance, Mr. Carron sought "relief" in two areas: ... Similarly, in the reopened Article 6 ..., Mr. Carron proposed new language which included the following; (1) "In the case of official time pursuant to subsections B and/or C., such records shall include beginning and ending times of each representational activity and a description of the activity sufficiently detailed to enable the Library to ensure that the activity meets the standards of this Article and the Federal Service Labor-Management Relations Statute (such as, "attendance at safety inspection" or "review staff from Division X about new performance requirements"). Names of aggrieved employees need not be disclosed but the purpose of each meeting must be included in the time record." (2) The Parties will cooperate in inquiries into official time, "including inquiries by the Labor Management Relations Office to the Guild concerning the specifics of representational activities for which official time had been requested or used (other than the name of an aggrieved bargaining unit member). Failure to provide sufficient information in response to such an inquiry will result in conversion of the official time to annual leave or Leave Without Pay ... If the Guild believes that the time thus converted actually qualified as official time, the Guild may grieve pursuant to Article 36."

The positions taken in the grievance and the reopened Article 6 are mutually inconsistent. In the grievance, management asks for a clarification as to the level of specificity of detail in reporting official time in similar language as in the reopened Article 6. If as alleged, this level of specificity already exists in current Article 6, then there is no reason to propose new language in reopened Article 6. By reopening Article 6, management concedes that this level of specificity is not required in the current contract.

The same logic applies to management's right to summarily impose LWOP without going through the grievance process under Article 36...

The behavior of WFM in this instance violates numerous CBA and federal statutory provisions, and constitutes numerous unfair labor practices. They are as follows:

[At the hearing the Union withdrew some portions of the grievance which are deleted here]

In this instance, Mr. Carron and Mr. Greenwood suspended the authority of the supervisors of Mr. Schniderman and Ms. Friend to initial and grant their use of official time in circumstances where Mr. Carron acknowledged that he knew of no abuses of official time. They took this action to seek a concession from Guild officials on a legal question, and indeed they secured the concession because Ms. Friend's personal circumstances were such that she could not lose two weeks pay. Such behavior constitutes willful, arbitrary, and capricious abuse prohibited in Section 5 of Article 6.

Management's behavior in threatening to place Mr. Schniderman and Ms. Friend on LWOP over a dispute over the interpretation of the CBA violates Section 2 of Article 3 relating to Employee rights. That section provides as follows:

> [Section 2.] Each employee, without exception, has the right, freely and without fear of penalty or reprisal, to form, join, and assist the Guild or to refrain from such activity, and each employee shall be protected in the exercise of this right. Except as otherwise provided in 5 USC Ch. 71, such rights include the right (a) to act for a labor organization in the capacity of a representative ... The Library shall take action required to assure that employ employees in the bargaining unit are apprized of their rights and that no interference, restraint, coercion, or discrimination is practiced to encourage or discourage membership in a union.

By taking the authority to place Guild representatives on LWOP and/or enforced annual leave, WFM effectively assumes a power which can be easily wielded to drive employees from leadership positions in the Guild. If the mere assertion of a reporting infraction can result in being placed in LWOP status, there will be no effective protection for Guild representatives laboring over confidential and contentious matters. As a result, the protections for participating in the Guild as a representative are completely compromised.

For the same reason, management's behavior in threatening Mr. Schniderman and Ms. Friend with LWOP and/or enforced annual leave in circumstances where Mr. Carron acknowledged he was unaware of no abuse violates 5 U.S.C. &7102 relating to employees' rights. That provision provides as follows:

> **Section 7102. [Employee's] rights**
> Each employee shall have the right to form, join, or assist any labor organization ... freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of that right. Except as otherwise provided under this chapter, such right includes the right -
> (1) to act for a labor organization in the capacity of a representative...

The rights accorded to employees to participate in labor organizations and serve as representatives can not be given effect under a threat that representatives can easily be placed on LWOP due to mere assertions by WFM of reporting infractions. The taking of such authority by managers in an adversarial relation with the Guild restrains employees from exercising their rights under Chapter 71 of Title 5, and constitutes an unfair labor practice under 5 U.S.C. &7116(a)(1).

. . .

REMEDY

That the Library acknowledge to the Guild in writing the following:

(1) That suspending the authority of the supervisors of the Guild President and Chief Steward to initial their forms 468 ... and giving themselves [Mr. Carron and Mr. Greenwood] such authority in order to gain an advantage in a dispute over the interpretation of the Master Contract violated 5 U.S.C. &7102, and constituted an unfair labor practice under 5 U.S.C. 7116(a)(1).

. . . (bold type in original)

On November 2, 2006, the Union sent the Agency a letter amending the grievance by adding to the Remedy:

6. Cease and desist from interfering with the representational rights of Guild officers and stewards as

they exercise these rights under the Statute and the Collective Bargaining Agreement.

The Agency responded to the grievance on November 15, 2006, in part as follows[2]:

Positions of the Parties

. . .

Position of the Library

It is the position of the Library (1) that the Library never threatened to convert Guild officials' reported official time to LWOP unilaterally; ... (5) that the WFM has not undertaken to suspend the role of supervisors in granting or denying official time, although if the Library were to determine that the WFM would assume the role of granting or denying official time, the CBA authorizes WFM to perform such a role, and that regardless of any CBA provision identifying roles of supervisors, management's right under Section 7106(a)(2)(b) of the Statute to assign work and determine the personnel by which agency operations shall be conducted permits WFM to perform functions that are identified in the CBA as supervisory functions; ...

Statement of Facts

On September 24, 2004, the Inspector General of the Library of Congress issued an Investigation Report ... to the Librarian of Congress, entitled "Management Needs to Capture Data on Official Time used by Union Representatives." The Report contained the following findings:

(a) Union officers and stewards were not fully accounting for their representational time.
(b) "[T]he amount of official time charged to representational activities cannot be determined with any precision."
(c) "To evaluate the reasonableness of the official time employees use for representational functions and its impact on Library operations and employee representation, management needs reliable records."

[2]The Agency response numbered it "Grievance 2007-4".

(d) Senior Library management “needs to ensure that Library managers capture data on ... the types of activities covered by the hours used.”
(e) “Both union leaders and management “need to take an active role in ensuring taxpayers that official time requested or used is reasonable and proper.”
(f)WFM “does not have time-reporting records needed to determine if the portion of each [union] president’s time devoted to representational activities complies with the collective bargaining agreement or if the time is reasonable.
(g) Records of time spent on collective bargaining are needed “to provide management with a complete record of official time of employees use for union representational activities.”
(h) “Once union officers and stewards begin fully reporting their time spent on representational activities ...then the Office of Workforce Management needs to monitor this time to ensure compliance with the appropriate collective bargaining agreement.”
(i) Because time spent on representational activities is not strictly monitored or accounted for, “we cannot state with certainty whether personal time is always used” for internal union business.
(j) “Since the [Guild] president does not submit a detailed breakdown of the use of [official] time, we cannot confirm or refute whether he conducts internal union business during this time.”

Guild representatives’ official time reports filed in 2006 have substantially the same level of specificity as official time reports filed in 2003-2004.

The parties disagree on the degree of specificity that the Guild is required to provide in its representatives’ official time reports. The parties have exchanged correspondence and have discussed their respective positions on this matter. The Library has assured the Guild in writing and orally that the names of aggrieved bargaining unit employees need not be disclosed in reports of official time.

The Library has not accused the Guild, or any of its representatives, of having abused official time. Rather, the Library has stated that the Guild’s official time reports do not provide sufficient information for the Library to determine whether official time is being used for appropriate representational functions, nor whether the amount of time is reasonable.

On or about September 26, 2006, WFM advised the supervisors of the Guild's President and Chief Steward that they should not initial official time reports that did not contain the specificity the Library had advised the Guild was required in such reports. The Library's sole purpose in withholding such supervisory initials was to preclude the Guild from asserting in subsequent litigation that the Library had acknowledged the sufficiency of the official time reports submitted by Guild representatives. The Library communicated this to the Guild on or about September 28, 2006.

On or about October 6, 2006, the parties agreed that the supervisors would resume initialing the official time reports and the Guild would not claim that the initials were an acknowledgment that the level of specificity in those reports satisfied the obligations of the CBA, nor that the time reported was reasonable under the Statute. The Library never stated to the Guild, nor implied, that the Guild's President or Chief Steward, or any representative, would be charged Leave Without Pay ... as a result of their supervisors not initialing their official time reports.

On October 16, 2006, the Library filed the Library of Congress Grievance, seeking the following relief: (1) that the Guild's representatives, including the President and Chief Steward, provide sufficient detail in their official time reports to enable the Library to determine whether all time being claimed as official time is being used for representational functions and whether such use is reasonable; and (2) that any insufficiently documented official time from September 1, 2006 and ongoing be converted to annual leave or LWOP. Thus, Guild representatives would be charged LWOP only by order of an arbitrator interpreting the CBA and the Statute pursuant to the parties' Negotiated Grievance Procedure.

Discussion

The Guild's Challenge to the Library's Grievance Must be Made in Response to That Grievance Rather than in This Grievance.

The Guild asserts that the Library Grievance should be rejected, making the following arguments:

(a) that the guidelines established by the U.S. Office of Personnel Management ... establish four broad categories for reporting of official time ; (b) that employee privacy would be violated by the level of specificity requested by the Library ; and (c) that the level of specificity sought by the Library was proposed in Master Contract bargaining and was ultimately abandoned.

_____

This is not accurate. The OPM guidelines prescribe statistical reports that the Executive Branch agencies must file with their own agencies. In any event, OPM's guidelines do not apply to the Library, which is a Legislative Branch agency.

In fact, no employee privacy interests are violated, for the following reasons:
(a) Reporting meetings with supervisors and managers raises no privacy concerns regardless of the subject.
(b) Reporting preparation for negotiations (for example, on revised Library of Congress regulations, Multi-Year Affirmative Employment Programs Plan, Merit Selection Plan ...) raises no privacy concerns.
(c) Reporting meetings with employees regarding known matters (such as already-filed grievances, or already-served proposed adverse actions) raises no privacy concerns.
(d) The Library has advised the Guild that the Guild need not report the name of an employee in a matter that has not yet been brought to the attention of management; the Guild can report just the subject of the discussion.
(e) Employees must request official time from their supervisors to meet with the Guild. Pursuant to Article 3, Section 10 of the CBA, employees are required to state the general purpose of the contact with the Guild. Thus, management already knows the employee has an issue and the general nature of that issue. The Library does not seek any more specificity in official time reports. The Library's interpretation of the specificity required in reporting official time is consistent with this Section.

. . .

The Library has assured the Guild that potential grievants' identities need not be disclosed, which was in dispute in Master Contract bargaining.

. . .

The Guild's Claim that the Library Threatened Guild Representatives with Their Reported Time Being Converted to LWOP is Unsupported by the Facts.

The Library has not threatened any Guild representatives with their reported official time being converted to LWOP...

The Library Has Not Refused to Grant Official Time.

The Library has not refused to grant official time for the Guild's stewards and/or officers to perform their representational functions. Accordingly, there can be no valid claim of a violation of Article 6, Section 5 of the CBA.

WFM has not Suspended the Authority of Supervisors to Grant Official Time.

WFM has not suspended the authority of supervisors to grant or deny official time. WFM did instruct supervisors not to sign official time reports until the Guild agreed not to assert that such signatures constituted a waiver by the Library of its position expressed in the Library Grievance. In any event, after-the-fact supervisory initials on official time reports do not constitute the granting of official time, nor does the withholding of such signatures constitute denial of official time.

. . .

Decision

Having found no violation of the Collective Bargaining Agreement nor any applicable statute or regulation, this grievance is denied.

At the hearing, the parties could not agree on the framing of the issues presented for determination in these two grievances. Therefore, they accepted the Arbitrator's request that they grant him authority to formulate them, based upon their presentations. Actually, in its post-hearing brief the Union substantially agreed with the Agency's statement of the issues in

Grievance 2007-1.[3] Based on this, and the parties' presentations, the issues in that Grievance are:

> Have Union representatives complied with the provisions of Article 6 of the parties' April 16, 2002 Collective Bargaining Agreement and those in 5 USC, Chapter 71 in reporting official time for their Union representational activities? If not, what is the appropriate remedy?

With regard to Grievance 2007-4, after considering the parties' differing statements of the issues, and their presentations, the Arbitrator finds them to be:

> Did the Agency violate Article 6, Section 5, Article 3, Section 2 of the parties' April 16, 2002 Collective Bargaining Agreement, or 5 U.S.C. Section 7102, and Section 7116(a) in dealing with, and discussing, the official time reports of the Union President and Chief Steward in September and October 2006? If so, what shall be the remedy?

The Union has quoted the pertinent provisions in Article 6 of the Collective Bargaining Agreement (CBA) in its response to the Agency grievance, set out above on pages 5-7.

The Agency quoted portions of the "Official Time" provisions in 5 U.S.C. 7131 in its grievance. It reads in full:

> (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 would otherwise be in a duty status. The number of employees for whom official time is authorized under

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[3]Despite this, the Union asserted it understood the Agency grievance was limited to the official time reports of its President and Chief Steward. The Arbitrator finds from the wording in the Agency grievance, the Union response to it, as well as the Union's own grievance, that the Union was well aware the Agency grievance encompasses the official time reports of both the Union stewards and officers.

this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by an 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 an amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

The Union has included Article 3, Section 2 of the CBA, on which it relies, in its grievance set out above on page 14. It also has quoted the relevant portions of 5 U.S.C., Section 7102 in its grievance (page 15 above).

The Unfair Labor practices provisions in 5 U.S.C. Section 7116 (a) read in part:

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency-

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;...

In their grievances and responses, the parties have mentioned most of the relevant background facts concerning these disputes. They also presented testimony and documentary evidence reiterating and supplementing this background. Based on all this, it is set out as follows.

As indicated in the Agency response to the Union grievance, on September 24, 2004, the Agency Inspector General sent a memorandum to the Agency Head concerning his Investigation Report on "... Official Time Used by Union Representatives." The memorandum containing the Report reads in part:

> The Office of the Inspector General has completed a review of the amount of official time charged to representational activities by union officials. An anonymous hotline allegation regarding union officers exceeding the time allowed in collective bargaining agreements for representational activities precipitated this Library-wide review. Based on our findings, the amount of official time charged to representational activities cannot be determined with any precision. This is attributable to (1) some union officials not fully complying with the time-reporting requirements, (2) supervisors not effectively ensuring that union officials follow time-reporting requirements, and (3) supervisors not forwarding time-reporting records to Human Resources Services. Given the budget constraints facing federal agencies, Congress has expressed concern about the amount of time and expense connected with union representational activities. If the Congress asked the Library for an accounting, we would not be able to provide accurate data.
>
> Senior Library management needs to ensure that Library managers capture data on (1) the amount and cost of the hours used for union representational activities, as well as the number of employees using those hours, and (2) the types of activities covered by the hours used. Moreover, management needs to evaluate this data by comparing cumulative data with limits set in the collective bargaining agreements... Both union leaders and management need to take an

active role in ensuring taxpayers that official time requested or used is reasonable and proper. I recommend that you issue a memo to union representatives and supervisors and/or Service Unit heads requesting accountability for representational activities...

The attached Report reads in part:

INTRODUCTION

This report presents the results of our review of the amount of official time charged to representational activities by union officials... The purpose of this review was to determine if Library management is capuring data on (1) the amount and cost of the hours used for union representational activities, as well as the number of employees using those hours, and, (2) the types of activities covered by the hours used...

BACKGROUND

. . .

Title 5 U.S. Code, Section 7131, *Official Time,* states in part, “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.” Under Title 5 U.S. Code, Section 7131, Congress allowed official time in two broad categories. First, employees have a statutory right to receive official time to negotiate collective bargaining agreements and participate in impasse proceedings...

Second, the law permits agencies and unions to negotiate official time in connection with other labor-management activities, as long as the time is deemed reasonable, necessary, and in the public interest. Examples include time spent meeting with employees to discuss problems in the workplace, handling employee grievances or formal administrative appeals, attending meetings called by the agency, and receiving training on labor relations topics...

. . .

The collective bargaining agreements with ... Local 2910, American Federation of State, County, and

Municipal Employees, AFL-CIO,... and Local 2477 ... require documenting of official time for representational activities ... by the union member ... Locals 2910 and 2477 use a multipart form “Time for Representational Activities Form.” The form covers a pay period and supervisors are supposed to route the copies to the appropriate office: (1) Human Resources Services, (2) Guild or Union Office, (3) Service Unit, and (4) retained by the supervisor.

. . .

FINDINGS AND RECOMMENDATIONS

Management Needs to Ensure that Stewards Complete “Time for Representational Activities” Forms and Forward Them to the Office of Workforce Management

Union officers and stewards from Locals 2910 and 2477 are not fully accounting for their representational time on the “Time for Representational Activities Form.” For those stewards that are properly accounting for their time, some supervisors have not been diligent in forwarding the forms to the Office of Workplace Management... To evaluate the reasonableness of the official time employees use for representational functions and its impact on Library operations and employee representation, management need reliable records...

The Collective Bargaining Agreement with AFSCME Local 2910, ... states, “The use of official time for representational activity will be recorded on a form 468.”... For the first half of calendar year 2004, the presidents of both locals did not complete time-reporting forms.

. . .

Instead of the present manual system, an automated agency-wide time-reporting system would provide data that are more accurate on the amount of official time spent on union representational activities...

Recommendations

1. Library supervisors need to ensure that union officers and stewards from Locals 2910 and 2477 complete “Time for Representational Activities” forms and forward them to the Office of Workplace Management...

2. HRS needs to investigate the costs/benefits of implementing an automated agency-wide time reporting system for union representational activities.

Official Time Used by Stewards Appears Reasonable, But We Cannot Determine if Presidents' Time is Reasonable.

Interviews with Library supervisors indicated that the amount of official time union stewards and officers (other than the president) spend on representational activities is reasonable. Most supervisors we talked with described the time spent as minimal... The presidents of the three unions reviewed apparently spend 100 percent of their time on union representational duties including time spent meeting with management. Due to the lack of any time-reporting documents, we could not determine if this time was reasonable.

. . .

Recommendation

1. Once union officers and stewards begin fully reporting their time spent on representational activities ..., then the Office of Workforce Management needs to monitor this time to ensure compliance with the appropriate collective bargaining agreement.
2. The Office of Workplace Management should track the amount of time both union officials and Library management spend on collective bargaining.

Union Officials Appear to Conduct Internal Union Business on Personal Time

Union members appear to properly use their personal time on union business, such as organizing new members or campaigning for office, or when acting as an officer/delegate at the union's regional or national level. However, the time spent on representational activities is not strictly monitored or accounted for. Therefore, we cannot state with certainty whether personal time is always used. Supervisors interviewed stated that the union officials conduct internal union business during lunch breaks.

> The president of Local 2910 also serves as president of AFSCME Council 26. His supervisor informed us that in the past he has taken leave for union business. As stated earlier, the Local 2910 president spends nearly 100 percent of his time on representational activities or meeting with management. Since the president does not submit a detailed breakdown of the use of this time, we cannot confirm or refute whether he conducts internal union business during this time.
>
> **Recommendation**
>
> None.
>
> . . . (emphasis in original)

Thereafter, on November 17, 2004, the Deputy Librarian sent a memorandum to the Service Unit/Infrastructure Heads informing them of the Inspector General's (I.G.) report. It also stated in part:

> . . .
>
> Each master collective bargaining between the Library and the four recognized labor organizations includes explicit language requiring the employee representative to record his or her use of official time for representational activities. It is the responsibility of each supervisor or manager to ensure that official time claimed by an employee representative in your organization is properly described, including the amount of time recorded, and that this record is maintained.
>
> I have asked the Director for Human Resources to provide detailed guidance on how each supervisor or manager ... will meet our obligation to report this use of official time. ..

Director of Human Resources Teresa Smith again sent this memorandum to the Service Unit/Infrastructure Heads, on December 21, 2004, with a memorandum requesting them to forward it to their managers and supervisors. She also sent copies to WFM

Director Carron and to Union Locals 2910 and 2477. It reads in part:

. . .

> ... (HRS) is exploring the possibility of tracking official time in the newly-deployed WebTA time and attendance system. In the interim, accurate and complete manual record-keeping is essential to ensure that official time is being utilized only for purposes permitted under law and applicable collective bargaining agreements.
>
> Each AFSCME union representative - including the president and other elected officials has the duty to account for official time by completing a "Time for Representational Activities" form each pay period. The supervisor of each union representative then has the responsibility to route copies of the form to the Office of Workforce Management in Human Resources Services ..., the applicable union office ..., and the Service Unit or Infrastructure Unit. The supervisor should retain a copy of the form. According to a recent audit, there is incomplete compliance with these official time reporting requirements. To ensure that official time is being used only for appropriate purposes, it is essential that these forms be completed and distributed each pay period.
>
> Upon receipt of its copies of the forms, ... (HRS) will verify that the official time reported for the AFSCME Locals does not exceed the specific hourly limits in the various collective bargaining agreements. However, it is each supervisor's responsibility to ensure that each instance of official time is properly requested in advance by the union representative, that permission is granted based on workload and other organizational needs, and that the time reported was in fact utilized for appropriate representational activities...

Shortly thereafter, on December 30, 2004, Union Chief Steward Friend sent a memorandum to the Union Stewards, with a copy of Smith's recent memorandum to the Unit Service heads, and the memorandum from the Deputy Librarian. Also, Friend's memo stated in part:

. .

> According to the memorandum, "A recent audit [by the Office of the Inspector General] disclosed that union officials and other union representatives ... are not regularly accounting for their use of official time for union representational activities." ...
>
> Because of the audit, the Library has decided to begin tracking and monitoring the amount of official time used by the two locals. Therefore, beginning January 10, 2005, the first pay period of 2005, EVERYONE using official time (including Saul and me)[4] will begin filling out these forms for each pay period. All official time used by officers and stewards WILL be recorded on Form 468 as per our contract. I urge you to familiarize yourselves with Article 6 of the collective bargaining agreement especially with the time limit of 20 hours per month per steward.
>
> I realize that some of you submit your 468s religiously only to have them accumulate on the desks of your supervisors. Therefore, I will be writing each of your supervisors to remind them of their responsibility to forward your forms to Human Resources Services... (emphasis in original)[5]

On January 4, 2005, Friend sent a memo to the supervisors of Guild Officials concerning the use of Form 468; also indicating where they should distribute each copy of the Form.

Then, on January 7, 2005, Friend sent an email message to Union Stewards stating in part:

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[4]As indicated in the I.G report, the Union President had not been filling out the Form 468 concerning his union representational time as President; neither had Friend been doing so as Chief Steward. This had been the practice when Friend became Chief Steward in May 2003, and when Schniderman became President in 1998.

[5]On May 28, 2003, Friend had sent a memo to the Union Stewards reminding them always to fill out Form 468 for each pay period, as required under Article 6, Section 3.D. Friend also mentioned she was not receiving the Union copy for many of them, but this might be the fault of their supervisor.

> Please remember that any time you attend a meeting where management is present or any time you actually meet with management is NOT to be counted against your 20 hours per month. The time with management is still recorded on Form 468, but under the column marked "Library." You only have to worry about exceeding the 20 hours per month under the "Labor Organization" column...

About the same time, Friend distributed a sheet to the Stewards on "Signing Out for Representational Activities", setting out the information they should include on the Form 468 in which column for each type of representational activity. It reads in part as follows[6]:

. . .

Representational Activity	**Info for Form**	**Column**
complaint	Discuss complaint	Labor organization
Grievance	Discuss grievance	Labor organization
Grievance	Grievance prep...	Labor organization
Grievance	Grievance pres.	Library
Appeal	Discuss appeal	Labor organization
Appeal	Appeal prep...	Labor organization
Appeal	Appeal presen...	Library
EEO	EEO discussion	Labor organization
EEO	EEO prep...	Labor organization
EEO	EEO presen...	Library
Meeting with Management	Meeting with Man...	Library
Bargaining	Bargaining prep...	Labor organization
Bargaining	Bargain...with Man.	Library

Please remember:

Give no other information-only what is specified on Form 468.

. . .(bold type in original)

As Friend had indicated in her December 30 memo to the Union Stewards, in January 2005, she and Union President Schniderman began filling out Form 468 noting the times they spent each day

[6]Friend testified these categories were in a memo of a prior Chief Steward to the Stewards.

on official time for representational duties, the amount attributable to meetings with management and the amount for their other representational duties to be charged to the maximum of 1560 hours set in Article 6, Section 3.B. of the CBA. In the "Purpose of Contact" column of the 468, Friend listed "Chief Steward duties" for all these activities. Schniderman wrote "Presidential Duties" for all his activities in that column.

About this same time, Agency management entered into discussions with the WebTA vendor to explore whether Union requests for official time could be handled on that system, as the I.G. Report had suggested. Director of Human Resources Smith informed the Unions of this in their regular monthly meeting. As a result, Schniderman sent Smith an email on January 10, in effect, asking her to call him before making a final decision. After Smith indicated she would, Schniderman wrote on January 12 that there was language in the CBA barring this. In a reply the same day, Smith recognized that the CBA provides for recording representational activity on Form 468. However, Smith said they could discuss this further when she had more information on how it might work on the WebTA.

The Agency continued discussions with the vendor during the remainder of the year and the first quarter of 2006. About April, the vendor informed the Agency what it would be able to do. However, the Agency concluded not to implement this. Carron then put on his calendar for July doing a six month audit of the form 468s filed that year from January. After doing so, Carron sent the

August 31, 2006 email to Schniderman set out above in the Agency grievance.

As indicated in the Agency grievance (page 3 above), Schniderman responded on September 18. Although this response is not set out in full, it included much of what the Union said later in its answer to the Agency grievance. Carron's response to this the same day is included above in the Agency grievance.

The testimony of the witnesses differs as to what happened on September 26, when, as indicated in the Agency grievance, the Union response, and the Union grievance, Carron and Greenwood met with Schniderman, Friend, and Inman. There is no dispute that the parties talked about the I.G. report and what information Union stewards and officers were required to include on the Form 468 concerning their representational activities on official time. It also is clear both sides felt strongly about their positions, and may have been fervent in expressing them. Even so, the Arbitrator is not persuaded that Carron made any statement during this meeting that he would put the Union representatives on Leave Without Pay.

There is no question, as indicated in the Union grievance and the Agency response, that the same day following the meeting Greenwood spoke with the supervisors of Friend and Schniderman. He told the supervisors not to initial their Form 468s, if they did not contain the information the Agency believed was required. Moreover, as mentioned in the Union grievance and the Agency response, the next day, Greenwood informed Friend of this. He also

explained the Agency took this action to prevent the Union from claiming later that their supervisors' initials on the 468 denoted the information included was sufficient.

The parties met again on October 6, 2006. As the Arbitrator assesses it, from the Union grievance, the Agency response, and the witnesses' testimony, after discussing why Friend and Schniderman's supervisors had not initialed their recent 468s, Carron proposed the Agency would resume having their supervisors initial these Forms, if the Union would agree this did not constitute Agency acceptance of the level of specificity listed concerning the representational activities performed. There also is no dispute that shortly thereafter the parties agreed to this through an exchange of emails between Carron and Friend. However, the emails were not presented in evidence.[7]

It also is clear that the parties agreed at the October 6 meeting that for the next four-day workweek from October 10-13, Friend and Schniderman would submit their 468s in the way they believed complied with the CBA; that they would present them to Carron and Greenwood on October 16, and the parties would discuss whether they could agree on that issue.

Thereafter, as indicated in the Agency grievance, and the Union response, Schniderman sent a memo to Carron on October 13. In effect, it confirmed this understanding, and emphasized in

[7]Friend testified she agreed to this thinking it would keep her and Schniderman from "maybe from being put on LWOP"; that she "was afraid of the leave without pay."

some detail that Union officers did not engage in internal Union business on official time. The memo also stated:

> We are aware of your concerns about the manner in which Ms. Friend and I are documenting our time on Form 468. As you know Ms. Friend and I have been providing more information on Form 468 since January 2005 following the issuance of the inspector general's report. We know that our contract states that actual times for meetings with management under Section 3A of Article 6 are not to be charged against our 1560 hours (each) of employee representational time under Section 3B. We also understand that you may need a more detailed reporting under Sections 3A and 3B. [It ended as set out in the Agency grievance above on page 4]

As indicated in the Agency grievance and that of the Union, on October 16, Friend and Schniderman presented their Form 468s for Pay Period 20 to Carron and Greenwood. This Pay Period was for October 2-13. Friend's 468 had entries for October 12 and 13 during the October 10-13 workweek. The entry for October 12 has the date of departure and return (10:00-4:30).[8] The "Amount of Official Time" recorded in the "Library" column is "1.0", and in the "Labor Organization" column it is "5.0". In the "Purpose Of Contact" column, Friend wrote: "Discuss complaint, discuss grievance consultation". In the "Destination" column Friend put in a location under the "Room No." column. For October 13, Friend wrote departure and return times of 9:45 and 4:30. She wrote "1.0" hours as the "Amount of Official Time" in the "Library" column, and "5.25" hours in the "Labor Organization" column. In

[8]The Form 468 has a column for the initials of the Union representative and the supervisor after both the "Depart" and "Return" columns.

the “Purpose of Contact” column, Friend wrote: “Discuss complaint with reps, dispute prep, consultation”; with the same “Room No.” under the “Destination” column.

Schniderman’s Form 468 for Pay Period 20 included entries for each of the four days in October 10-13 workweek. For October 10, he listed departure and return times as 10:30 - 6:00. He placed “1" hour as the “Amount of Official Time” under the “Library” column, and in the “Purpose of Contact” column wrote “OWM, HR” for this. He also put “6" hours that day, as the “Amount of Official Time” in the “labor Organization” column. For “Purpose of Contact” during those hours, Schniderman wrote: “Disc Comp, Consultation”. For October 11, Schniderman gave the same departure and return times. He put “2" of these hours as the “Amount of Official Time” in the “Library” column, and for “Purpose of Contact” wrote: “HR, OWM, DR”. He also wrote “5" hours that day as the “Amount of Official Time” in the “Labor Organization” column. For “Purpose of Contact” during that time, Schniderman wrote: “Disc compl, grievance Prep, Dispute Prep”. Schniderman made similar notations on the 468 for October 12 and 13. The “Destination” column was blank for each day.

Carron and Greenwood did not agree at the meeting that the information Friend and Schniderman filled in on these Form 468s concerning their use of official time satisfied the provisions in Article 6 of the CBA. Therefore, as indicated in the Agency and Union grievances, Carron presented the Agency grievance to the Union representatives. He also gave them a proposal to reopen

bargaining on Article 6. It is set out in part above in the Union grievance on page 13.

At the hearing, the Agency presented the 468s for 13 Union Stewards which it received for Pay Periods 17 through 26, 2006 (August 20, 2006 to January 6, 2007). It also submitted those received for Friend and Schniderman for those Pay Periods. There were one or two 468s from five of these Stewards; with little or no official time indicated for representational activities.

The Form 468 from Union Steward Kristin Anderson for Pay Period 18 has one entry for September 12, 2006. It includes departure and return times (1:15 - 2:00). The "Amount of Official Time" columns are blank. Anderson wrote: "Meeting with management" as the "Purpose of Contact", and provided a "Room No." under the "Destination" column. Anderson's 468 for Pay period 20 is almost the same, except she wrote "1.75" as the "Amount of Official Time" from 2:00 - 3:45 in the "Library" column.

Union Steward Daniel Cohen's 468 for Pay Period 18 has three days. For September 13, he put down departure and return times of 10:30-11:30. Cohen placed this hour of official time under the "Library" column. As the "Purpose of Contact", he wrote: "Bargaining -OCGM [illegible]", and provided a "Room No." in that column. For September 14, Cohen put down departure and return times of 2:00-3:00, and placed that hour of official time in the "Labor Organization" column. He wrote: "Consult, advise grievant" in the "Purpose of Contact" column, and filled in a "Room No." under the Destination" column. For September 15, Cohen had

departure and return times of 11:00-2:30. For “Amount of Official Time”, he put “0.5" in the “Library” column and “3.0" in the “Labor Organization” column. In the “Purpose of Contact” column, Cohen wrote: “Represent Barg Unit Member - Weingarten rights”, and provided a “Room No.”

Union Steward Kent Dunlap completed 468s for each of the Pay Periods. The one for Pay Period 17 has entries for two days. The first on August 24 has departure and return times of 11:00-12:15. Dunlap placed a check mark in the “Library” column for this official time. As the “Purpose of Contact”, Dunlap wrote: “Bargaining - Performance Req. Contracts”, and put in a “Room No.” under the “Destination” column. On August 30, Dunlap had departure and return times of 1:30-2:30. He made a similar notation of this official time in the “Library” column. In the “Purpose of Contact” column, he wrote: “Bargaining - Voluntary Leave Bank”, and put in a “Room No.” Dunlap’s other 468s are filled in the same way, except some have the official time checked in the “Labor Organization” column only and some have it also in the “Library” column. An example of the former is the 468 for Pay Period 25. There, Dunlap had four days listed on official time. On each day he checked the “Labor Organization” column for that time. For “Purpose of Contact”, Dunlap wrote: “Preparation letter to FLRA” on December 12, “FLRA -Midterm Neg. Appeal” on December 13, “Discussion FLRA” on December 18, and “Grievance Discussion” on December 21.

Union Steward Donna Ellis had two 468s for Pay Periods 19 and 23. On the first, Ellis provided departure and return times for official time on one day (10:00-11:45), and placed it under the “Labor Organization” column. Ellis wrote: “Consultation” in the “Purpose of Contact” column, and filled in a “Room No.” For the second Pay Period, Ellis put in similar information on one day (1:30-3:00) when she used official time. However, she did not mark the “Amount of Official Time” in either column.

Union Steward Nan Ernst had 468s for each of the Pay Periods, except one. Ernst completed them in a similar manner as Dunlap.

For Pay Periods 21 to 26, Friend filled in the “Amount of Official Time” separately in the “Library” and “Labor Organization” columns, and provided the “Purpose of Contact” for each of these time periods. However, Friend left the “Room No.” column blank on each 468. As an example, Friend’s 468 for Pay period 21 is as follows. On October 16, it had departure and return times of 9:45-3:30. Friend wrote “1.0" of this time in the “Library” column, and for “Purpose of Contact” put “Meet w/WFM re official time, talk to Weiss in DRC, and [illegible]”. On another line, Friend also put “4.25" in the “Labor Organization” column for that day. Under “Purpose of Contact” she wrote “Union reps meetings, prep for meeting, discuss complaints”. On October 17, Friend had departure and return times of 10:00-4:30. She put “0.5" in the “Library” column for that day, and wrote under “Purpose of Contact” “Talk to deBlander re vol. leave bank LCR & ex-

tension of 06-09 grievance”. On another line, Friend put “5.5" in the “Labor Organization” column. For “Purpose of Contact” she wrote “discuss complaints, meet with union reps, prep for meeting, discuss grievance”. On October 18, Friend had departure and return times of 10:30-4:30. She put “5.5" in the “Labor Organization” column, and under “Purpose of Contact” wrote “Discuss complaints, prep for meetings, meet w/union reps, meet w/RIFees”. On October 19, Friend had the departure and return times of 10:00-4:30. She put all these hours (6.0) in the “Labor Organization” column. For “Purpose of Contact”, Friend wrote “Discuss grievances, discuss complaints, meet w/union reps, discuss ABA, AMED”. On October 20, Friend had departure and return times at 10:00-4:30. She put “5.5" in the “Labor Organization” column, and wrote for “Purpose”, “Prep for meeting w/union reps, meet w/union reps, discuss complaints, prep for arbitration”. On another line, Friend placed “0.5" of official time that day in the “Library” column. She wrote the “Purpose” for this as “phone call with Pullins re perf appeal”. Friend provided similar information on the 468 for the remaining four days in that Pay Period. In Pay Periods 22-26, Friend also provided the same type of information on the other 468s.

The remaining Form 468s of the Union Stewards are filled out about the same way as Friend’s. So are those of Schniderman, but, unlike his 468 for October 10-13, they do not clearly indicate which of the representational activities listed were on official time attributable to the amount of time marked in the “Library”

column and which were attributable to the amount in the “Labor Organization” column.

The parties’ Agreements have included an Article on “Guild Representation” since the one which became effective on June 14, 1978. While much of the language in that Agreement is similar to the current one, there was no provision for recording the use of official time on a Form 468, as in Article 6, Section 3.D. of the current Agreement. Instead, Article VI, Section 7 of the 1978 Agreement contained identical language as that in Article VI, Section 4 of the current Agreement about Guild representatives advising their supervisors before leaving their assigned work areas, with an additional sentence. It reads: “The amount of time used will be noted on an appropriate form to be developed jointly by the parties.”

Article VI, Section 4 in the 1978 Agreement provided Union Stewards a maximum of 2,080 hours in any calendar year for representational duties. The President and Chief Steward had an annual maximum of 1,040 hours for such activities. Similar to the current Agreement, it provided that “actual time for meetings with management and time for presentation of employee grievances at various stages of the grievance procedure or adverse actions and appeals shall not be charged against” that official time.

Donald Panzera, Chief of the European and American Acquisitions Division, testified for the Agency that he was the Union Chief Negotiator for the 1978 Agreement. In effect, he testified it was the parties’ understanding that the official time allo-

cated to Union representatives in that Agreement for representational activities was to be accounted for using a form. Although he identified Form 468, as that form, it appears that the parties adopted a somewhat similar form also captioned “Time For Representational Activities”. The earliest one in the record has the notation “13-210 (rev 2/88)” at the bottom. The record contains another slightly different form with the same caption, and the notation “13-210 (rev 1/92") at the bottom.

Panzera related there was some discussion in negotiating the 1978 Agreement on the information to be provided on the form. His recollection was it “hinged” primarily around questions of confidentiality, and the fact that the form was accessible at the supervisor’s desk or nearby where it could be seen by anyone. Therefore, Panzera said the Union resisted specifying certain information. Panzera said it was his understanding, however, it was agreed “the information should be useful in terms of accountability.” He stated “under the first contract ... the form was a little different then, but the same basic idea – Guild business or grievance preparation probably wasn’t specific enough, and ... we [the Union] needed to provide a little bit more information, so there could be accountability.” Panzera added: “Now exactly how much specificity would be required is difficult to spell out in detail because circumstances might differ. But the idea was to provide accountability, so that ... the Guild could account for the fact that it was being used.”

Panzera also indicated that in the 1983 Agreement, when he

also was the Union Chief Negotiator, the official time allocated to the Union President and Chief Steward was increased to 1,560 hours.

In May 1990, the Parties entered into an Agreement which had provisions on "Guild Representation" in Article VII, Section 6 of that Article contained the same language as Article VI, Section 7 of the 1978 Agreement mentioned above on page 40; but the last sentence is different. It reads: "The amount of time used, telephone number, and purpose of contact will be noted on an appropriate form to be developed jointly by the Parties."[9]

The 1990 Agreement was in effect when the parties negotiated the Agreement which became effective in August 1997. During those negotiations which began in 1994, Panzera was on the Agency bargaining team, and its Chief Negotiator. At some time prior to March 29, 1996, the parties requested assistance in reaching agreement from the Federal Impasses Panel (FSIP). In a letter on that date, the FSIP Acting Executive Secretary wrote Philip Melzer, Chief Negotiator for the Union and Panzera who was then Chief of the Exchange and Gift Division a letter stating in part:

> After due consideration of the request for assistance in the above-referenced case, the Panel determines ... that the impasse is to be resolved pursuant to the following procedure: ... During the training and the negotiation phase, the CADR trainer will apply the interest-based approach to the following seven issues identified by the parties from among those that remain unresolved: ... (2) official time ... Once the interest-based training is completed, the

[9]The 13-210 (rev 2/88) Form already contained those items.

parties shall proceed without delay to engage in negotiations...

The parties shall jointly notify the Panel, in writing, by June 4, 1996, of the status of the dispute... the Panel shall then take whatever action it deems appropriate to resolve the impasse.

Thereafter, Melzer and Panzera sent the FSIP Executive Director a letter which they signed on May 28, 1996. It reads in part:

On April 22-26, May 6-10, 1996, the Library of Congress ... and the American Federation of State, County, and Municipal Employees, Local 2910 ... met with representatives of the Federal Labor Relations Authority, ... (CADR) Program to attempt resolution of several issues pending in ... Case No. FSIP 29. The following subjects were addressed during the CADR sessions:

. . .

4. Official Time

. . .

As a result of the meetings with CADR the following matters were clarified and resolved:

. . .

4. <u>OFFICIAL TIME</u>

. . .

RE: *Union Representatives: Permission to contact employees*

AGREED: 5/7/96
Use Article VII. Section 6. of the negotiated agreement, except the last sentence.
[*See Attachment G.*]

RE: *Representational Time Form*

AGREED: 5/8/96

> Copies of completed form will be provided to the Guild. The Library and the Guild will jointly prepare a memo from the Guild to Mr. Yee[10] identifying the type of activity to be included on the form and work out any related issues or problems in the labor-management cooperation meetings. The Library and the Guild will also cooperate on steward and supervisor training regarding use of the form.
>
> Examples of activity identified are:
>
> - ADR
> - NGP
> - EEO
> - Appeals
> - Health and Safety
> - Adverse Actions
> - Performance Evaluations
> - Meeting with Complainant
>
> **AGREED: 5/24/96**
> The Library and the Guild have drafted a joint memo to Mr. Yee regarding this subject.
> . . .(emphasis in original)

Panzera acknowledged on cross-examination that the above listed examples of activity were of those to be included in the "Purpose of Contact" column on the Representational Time form. However, Panzera did not know whether the parties ever prepared a memo to Yee on this. Panzera said he was not directly involved in these discussions or the development of the form.

Peter Inman was on the Union bargaining team for the 1997 Agreement. At that time, he was a Cataloguer in the Agency Cataloging Directorate. Inman testified for the Union that during these negotiations the Agency wanted greater specificity under the "Purpose of Contact" column in the Time for Representational Activities Form. Inman asserted: " For instance, it was proposing

[10]Yee was Head of the Labor Relations Office.

that grievance investigation was not enough information and they wanted us to specify, for instance while we were dealing with the contract violation or regulation and if so, to cite the contract article or the LCR ... number." Inman said "there was a great deal of discussion about that", and it was not resolved through FMCS. He gave other examples of this such as providing the type of discrimination for "EEO", or the subject of consultation concerning mid-term bargaining.

Inman indicated the parties were using the 1/92 Form at that time, and it was not changed as a result of this bargaining. He did not know about a memo on this subject which the parties drafted to Yee, and was uncertain about the other statements quoted above in the May 28, 1996 letter to the FSIP Executive Director.[11] He also was uncertain as to what the attachments were which are mentioned in that letter.

In any event, the August 1997 Agreement includes Article 6 on "Guild Representation". Article 6, Section 3.D. reads: "The use of official time for representational activity will be recorded on a form to be developed by the parties." Also, in Section 4, on Union representatives advising their supervisors before leaving their work areas for representational activity, the last sentence in Article VII, Section 6 of the 1990 CBA, quoted above on page 42, was removed. As Inman indicated, afterwards, the parties continued to use the 1/92 form with no change.

[11]Neither party had a copy of the memo to Yee.

Inman was the Union Chief Negotiator for the current 2002 Agreement. He testified neither party reopened Article 6. However, Section 3.D. is changed from the 1997 CBA to read: "The use of official time for representational activity will be recorded on a Form 468." No evidence was presented on when the parties agreed to the Form 468 which Union representatives were submitting in 2006. From the notation "468 (2003/12)"on it's bottom, it appears Form 468 was adopted at that time. This form is essentially the same as the 1/92 form, except there are no references to CREA, the Union representing Agency employees in the Congressional Research Service, in it or inclusion under the "Purpose of Contact" section, references to Articles in the CREA Agreement, Article VII, Sections 3.A and B in the 1990 Guild CBA[12] or Articles in the Local 2477 CBA. Instead, Form 468 has "(See Guild Article 6/Union Article XII)" under "Purpose of Contact".[13]

On cross-examination, Inman agreed he had filled in representational activity forms as he understood the parties' CBA required. Inman then identified some 1/92 forms he completed in 1998 and 1999, when he either was a Union Steward or the Union

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[12]Article VII, Sections 3.A and B in the 1990 CBA are the same as Article VI, Sections 2.A and B in the 1997 and 2002 CBAs.

[13]Like the others, Form 468 has "Date" column, a section for "Time of Departure/Return and Initials", with separate columns underneath to denote "Depart" and "Return", and a column for "Initials" after each. There also is a section for "Amount of Official Time", with separate "Library" and "Labor Organization" columns underneath, a "Purpose of Contact" section, and a "Destination (Where Applicable)" section, with separate columns for "Room No." and "Phone No." underneath. All the forms also have 16 lines on which to fill in this information.

Steward Director. The first one for Pay Period 1 in 1998, is as follows. For January 6, Inman wrote departure and return times (8:35-11:40), and under “Amount of Official Time” put “2.2" hours in the “Library” column and “0.2" hours in the “Labor Organization” column. Under “Purpose of Contact”, Inman wrote “Complaint disc; Bargaining prep”, and put a “Room No.” under the “Destination” column. Also, on January 6, the form has departure and return times of 1:00-2:00, with this hour listed in the “Library” column. For “Purpose of Contact”, Inman wrote “Bargaining prep”, and put in a “Room No.”. On January 7, Inman had departure and return times of 1:15-3:15. He put these hours in the “Library” column, and wrote “Bargaining prep (ASCD Phy. Sci, Perf eval)” under the “Purpose of Contact” column, with two locations in the “Room No.” column. On January 8, the departure and return times were 1:25-2:30, with “1" hour in the “Library” column. Inman wrote “RCCD CG” under the “Purpose of Contact” column,[14] with a “Room No.” in that column. On January 12, the departure and return times were 3:30-4:30, with this hour designated in the “Library” column. The “Purpose of Contact” listed is “Bargain prep (perf eval)”, with a “Room No.” in that column. Inman had two listings for January 13. The first was for 8:40-12:25, with these hours in the “Library” column. The “Purpose of Contact” written is “Bargain prep (Perf eval) (PE) Info mtg”, with two

[14]Inman explained that “ASCD Phy. Sci” refers to the Arts and Sciences Division. Physical Sciences, and “RCCD/CG” to a consultation group meeting with various Divisions of the Cataloging Directorate.

locations in the “Room No.” column. The second that day was from 2:30-4:45, with the time under the “Library” column. For “Purpose of Con-tact”, Inman wrote “Consult prep; w mgmt.”, and listed two loca-tions in the “Room No.” column. On January 14, Inman had depar-ture and return times of 2:30-3:15. He put “0.3" in the “Labor Organization” column, wrote “Complaint discussion” in the “Pur-pose of Contact” column, and provided a “Room No.” On January 16, Inman had the same amount of time listed in the “Labor Organiza-tion” column. For “Purpose of Contact”, he wrote “Dispute prep”, with a “Room No.”.

Inman completed the other four official time forms in the same manner. In the “Purpose of Contact” columns he wrote other subjects such as: “ULP prep”, “ Dispute resolution”, “Steward mtg.”, “Consult prep; w mgmt (MSS)”, “Japan I/II tm mtg”, “Barg prep (Alt disc)”, and “Bargain prep (IU Reorg)”.[15]

In rebuttal testimony, Carron presented a December 13, 2006 “Memorandum For Human Resources Directors of Executive Depart-ments and Agencies” from an Associate Director in the U.S. Office of Personnel Management (OPM). The “Subject” is: “Call for Fiscal Year (FY) 2006 Official Time Data and Transitioning [sic] to e-Payroll Official Time Data Collection”. Carron explained this is an annual letter from OPM that the Agency has received since

[15]When Inman was Chief Steward of the Union from about April 1998 to March 1999, he always wrote “Chief Steward” under “Purpose of Contact” on the form. Inman testified he never received instruc-tions to fill it out differently from either the Union or Agency Management.

2002. Carron related the Agency, as part of the Legislative Branch of government, is not covered by the reporting requirement in this Memorandum. It includes a "Guidance for Reporting of Union Official Time" which reads in part:

. . .

Definitions and Terminology

Official Time means all time, regardless of agency nomenclature, granted to an employee by the agency to perform representational functions under 5 U.S.C. Chapter 71 or by collective bargaining agreement, when the employee would otherwise be in a duty status.

Representational Functions refers to activities undertaken by employees acting on behalf of the union or fulfilling the union's responsibility to represent bargaining unit employees in accordance with 5 U.S.C. Chapter 71 or a collective bargaining agreement.

Official Time Reporting Categories- agencies are asked to report four categories of official time use.

Term Negotiations- time used by union representatives to prepare for and negotiate a basic collective bargaining agreemet or its successor.

Mid-Term Negotiations- time used to bargain over issues raised during the life of a term agreement. This includes bargaining over procedures ...

Dispute Resolution- time used to process grievances up to and including arbitration and appeals of bargaining unit employees before various third parties, such as the MSPB,FLRA and EEOC.

General Labor-Management Relations- time used for activities not included in the above three categories. Examples ... include meetings between labor and management officials to discuss general conditions of employment (but not bargaining), labor-management committee meetings, labor relations training for union representatives ... Where a union official does not currently report his/her official time by category and where a collective bargaining agreement prevents management from re-

> quiring the union official to report those hours by category, management is requested to make a reasonable effort to allocate that union official's hours among the four categories based on their knowledge of the union official's activities... (emphasis in original)

The Union submitted similar memoranda on the OPM website for several prior fiscal years which also include summary reports of official time hours used in most of the federal departments and agencies, with the rate of official time hours expended annually per bargaining unit employee. In effect, Carron testified that these OPM reports and categories serve a different purpose than the categories of representational activity on official time required in Form 468.

Discussion

The main dispute between the parties in the Agency grievance involves the type of information Union Stewards and officers are required by Article 6 of the CBA to supply in the "Purpose of Contact" portion of Form 468, as to their representational activities on official time, and in meetings with management in that capacity which are not counted against the maximum amount of official time hours the parties have set in Article 6 to perform representational duties. However, the problem for the Arbitrator in deciding this dispute is there the absence of any language in Article 6 directly addressing the information that is required in the "Purpose of Contact" section. The only provision in Article 6 dealing with this is Section 3.D. It states: "The use of official time for representational activity will be recorded on a Form

468." There simply is no other provision expressly stating how that recording should be done. Moreover, both parties have tended to side-step this problem in their arguments. The Agency more than the Union.

The facts establish that the parties' arrangement for a form to record the use of Union representational activity on official time goes back to their 1978 Agreement. It provided in Article VI, Section 7: "The amount of [official] time used will be noted on an appropriate form to be developed jointly by the parties." Furthermore, it appears from their discussions during negotiations that, in agreeing to this, the parties expected the form to be useful; i.e., to be "helpful" in accounting for the official time Union Stewards and officers use for their representational duties. At the same time, it is apparent from those talks they recognized the Union concern about the confidential aspect of such activities.

The record does not contain the form the parties adopted in 1978. Nonetheless, it appears from Panzera's testimony it was essentially in the same format as Form 468, and the 1988 and 1992 forms which preceded it. Thus, in line with the parties' intent that the form be helpful in accounting for the official time Union representatives used, it provides for recording, on each such occasion, the date and time a Union Steward or officer takes official time, the initials of the person using it, and their supervisor, the "Purpose of Contact" for this use, and the "Destination (where applicable)", with a "Room No." or "Phone No." It

also allows for noting the amount of that time attributable to meetings with management, under Article VI, Section 3.A., and the amount chargeable against the maximum official time allowed for representational duties in Article VI, Section 3.B. or C. of the CBA.

What is required in each of these items, except “Purpose of Contact”, is obvious. However, it is not completely clear from the words “Purpose of Contact” what kind of information the parties’ meant to be included as to the representational activity for which official time is used. Also, there is no evidence as to how Union Stewards and officers completed the form in the years immediately after 1978 up to early 1996 that might be helpful in discerning their intent.

This weakens the Union assertion in its post-hearing brief: “That the parties’ official time practices have remained the same under a series of CBA’s is uncontroverted in the record.” Indeed, as the Agency points out, the Union in its response to this grievance asserted:

> At least since 1985 Guild representatives have been reporting their time in the “purpose of contact” box in general categories. These general categories, e.g. ”discuss complaint,”, “grievance preparation”, “bargaining prep”, etc. were established so that Guild representatives did not have to identify the division where the employee works or have to specify the detailed description of the meeting...”

The fact of the matter, though, is there is no evidence in the record demonstrating how Union representatives filled in the

"Purpose of Contact" section from 1978 to 1996. Moreover, there is not much on this afterwards.

The record does show that in early 1996, while negotiating for the Agreement which they eventually adopted in August 1997, the parties reached impasse on a number of issues. One of them was "Official Time". As a result, they requested assistance from the FSIP to resolve them, and on May 28, 1996, their Chief Negotiators sent a letter to the FSIP Executive Director outlining the subjects they addressed in continued bargaining to resolve these issues, after receiving interest-based training.

The memory of Panzera, who was then the Agency Chief Negotiator, was somewhat dim concerning the contents of this letter with regard to the matters the parties "clarified and resolved" on "Official Time". So was that of Inman, who also participated in these negotiations on the Union side. Also, there is no documentary evidence revealing the proposals on "Official Time" that were at impasse. This notwithstanding, the Arbitrator is persuaded from Inman's testimony that the Agency unsuccessfully sought to have the Union Stewards and officers provide more specific information on their representational activities in the "Purpose of Contact" section of the official time reporting form.

The Representational Time Form was one of the matters set out in the letter on which the parties indicated agreement. It reads in part:

> Copies of completed form will be provided to the Guild. The Library and the Guild will jointly prepare a memo from the Guild to Mr. Yee identifying

> the type of activity to be included on the form and work out any related issues or problems in the labor-management cooperation meetings. The Library and the Guild will also cooperate on steward and supervisor training regarding use of the form.

The letter also sets out examples of the type of activity identified. They are brief general descriptions of such representational functions.

For some unexplained reason, afterwards, none of this apparently occurred. It seems no such memo was completed. In addition, after adopting the August 1997 CBA, more than a year later, the parties continued to use the 1/92 form. Likewise, there is no evidence that the parties met to discuss the type of activity to be included on the form, or that there was any training of stewards and supervisors in using it.

Even so, the fact that the Agency was unable to obtain more detailed information on the type of representational activity to be included on the form, together with the parties' indication of agreement in the letter to FSIP that this consisted of brief general descriptions, undermines the Agency position that Article 6 requires more than this.

After the 1997 Agreement became effective, the only evidence on how Union Stewards and officers completed the Representational Activities Time form up to January 2005, consists of those forms Inman submitted in 1998 and 1999, when he was either a Union Steward, Steward Director, or the Chief Steward. In its post-hearing brief, the Agency notes this, and that he also was on the Union negotiating team for the 1997 Agreement. The Agency

then asserts that “Inman’s own official time reports following the conclusion of those negotiations ... satisfy the Agency’s need for specificity.”

One difficulty with this argument is that the Agency case is grounded on what specificity is required by Article 6 from Union Stewards and officials on the form 468; not necessarily on the Agency’s view of its needs. Consequently, the validity of Agency grievance, depends upon the Arbitrator’s reading of Article 6. In doing that, the Arbitrator seeks to determine the parties’ intent on how the official time form should be completed, when they first agreed to adopt one, by considering its purpose, as expressed in those negotiations, any consistent practice thereafter in filling it out, as well as the contractual context in which the parties agreed to use it.

Thus, while Inman’s official time reports in 1998 and 1999 provide some evidence of how Union Stewards and the Chief Steward completed these forms, they hardly are enough to establish a consistent practice on this over the years since 1978. This is particularly so, since the record shows that, as Chief Steward, Inman always completed the “Purpose of Contact” section of the form with the words “Chief Steward”.

Also, Schniderman, as Union President, did not fill out an official time report form from 1998 up to January 2005. Neither did Friend, as Chief Steward, from May 2003 up to January 2005. Then, from January 2005 up to October 10, 2006, Schniderman put

in the “Purpose of Contact” section “Presidents Duties” or left it blank, while Friend wrote “Chief Stewards Duties”.[16]

However, when the parties met on October 16, 2006, in an attempt to agree on whether the 468s which Schniderman and Friend completed for the week of October 10-13 complied with the requirements in Article 6, the Union officers acknowledged that more specific information on their representational activity was necessary.

Aside from this, the Arbitrator finds the Agency’s willingness to accept Inman’s official time reports somewhat incongruous. To be sure, as the Agency notes, in some instances, he “wrote on these forms the specific topics of his time spent on ‘bargaining preparation’ and ‘bargaining,’ as well as specific subjects of consultative meetings.” Nevertheless, in others, Inman used general descriptions, such as “ Complaint disc; Bargaining prep”, “Consult prep; w mgmt.”, and “Dispute prep”.

The important point, though, is that there is no evidence of a consistent practice to assist the Arbitrator in interpreting the provisions in Article 6. This is borne out by the remaining evidence on the 468s which the Union Stewards submitted in Pay Periods 17-20 (August 20-October 14, 2006) prior to the Agency filing its grievance. As the Agency points out, some of

[16]At the same time, in January 2005, Friend gave the Union Stewards a sheet setting out the kind of information they should include on Form 468 in general categories, such as “Discuss complaint”, “Discuss grievance”, “Appeal presentation”, “Meeting with Management”, “Bargaining preparation”.

them, like those of Dunlap, “provided topics for bargaining and bargaining preparation, the description of [an FLRA] case, and the topics of consultative meetings...” By the same token, others wrote general descriptions of their representational activity.

In view of all the above, the Arbitrator finds, as the Union suggests, that when the parties initially adopted an official time report form, they did so with the expectation that the information to be included on it concerning the “Purpose of Contact”, would be described in line with the general categories of representational activities which they set out in Article 6, Sections 2.A and B of the CBA.[17] This does not mean that the Union officers and Stewards may not provide more details than Article 6 requires, as they did in some instances.

The Agency claim, in reliance on the November 2004 I.G. Report, “that this level of reporting is insufficient for the Agency to determine whether official time is being used for *appropriate purposes* under the Collective Bargaining Agreement and applicable federal law”, is mistaken. The I.G. Report recommended:

> Once union officers and stewards begin fully reporting their time spent on representational activities ..., then the Office of [WFM] needs to monitor this time to ensure compliance with the appropriate collective bargaining agreement.

[17]It also is significant that the 1992 form contains references to these provisions, as they appeared in the 1990 CBA in the “Purpose of Contact” section, and Form 468 references Article 6 in that section.

The I.G. Report found that "Union officers and stewards from Locals 2910 2477 are not fully accounting for their representational time on the "Time for Representational Activities Form." As the Union argues, the I.G. Report "says nothing about the categories of activities used by the Guild to report official time." The parties have agreed that those set out in Article 6, Section 2.A. and B. are appropriate. They likewise are consistent with those for which "Official Time" is sanctioned in 5. U.S.C. 7131.

The Agency also argues that "without the specificity on Form 468 sought by the Agency, it is unable to determine whether the time spent is *reasonable.*" In addition, the Agency asserts that 5 U.S.C 7131, requires official time to be "reasonable, necessary, and in the public interest." The Agency further maintains that Article 6, Section 3.B. "also requires that such use be reasonable and within the specified caps." Giving an example of Union representational activity spent on "grievance preparation" which it might challenge as unreasonable, the Agency concludes that "all Union representatives must describe their representational activities with sufficient specificity to enable [it] to determine the reasonableness of their use of official time.

None of these contentions have merit, under the parties' Agreement or the law. 5 U.S.C. 7131 leaves it to the parties to decide on the amount of official time "to be reasonable, necessary, and in the public interest." Here, they have agreed that

this would be up to 20 hours per month for Union Stewards, and up to 1560 hours annually for the Union President and Chief Steward. They also have decided that meetings with management will not be charged against that official time.

Assuming, without deciding, that the Agency could challenge a particular use of representational time as unreasonable, under some provision in Article 6, it must do so within the categories which the Arbitrator has found the parties agreed. Of course, the "grievance preparation" example the Agency used falls within those general categories.

The Agency expresses concern that the Union Chief Steward may have conducted Union business in the Union office during time that was reported as official time. Clearly, this would be unlawful under 5 U.S.C. 7131 (b). However, there is no obligation in Article 6 for Union officers or Stewards to report their internal Union business activities on Form 468. Consequently, the Agency must rely on other means to satisfy this concern.

In conclusion, the Arbitrator finds that the official time reports which the Union President and Chief Steward filed for the October 10-13 work week in Pay Period 20, and thereafter meet the requirements of Article 6 in the "purpose of Contact" section. However, unlike the 468s which Friend submitted in the following Pay Periods, for Pay Period 20, she did not put the time attributable to meetings with Management on a separate line in the "Library column from that attributable to her representational duties chargeable under Article VI, Section 3.B. in the

“Labor Organization” column. Therefore, it does not accurately indicate which of the duties listed in the “Purpose of Contact” section fall within each. To that extent, this 468 does not comply with the manifest requirements on the from and Article 6.

Schniderman’s 468 for Pay Period 20, and those afterwards, are deficient because they do not include the “Room No.” where the representational activities occurred. This also applies to those 468s of Friend submitted in Pay Periods 21-26.

The official time reports of all the Union Stewards for Pay Periods 17-26 meet the requirements of Article 6 in the “Purpose of Contact” Section. However, in one respect, the 468s of Union Stewards Gogolin, Mate, and Toohey, are deficient because they do not include a “Room No.” where their representational activities were carried out or a “Phone No.”, if applicable.

The Union officers and Stewards are directed to correct these deficiencies.

Turning next to the Union grievance, it requires no extended discussion. This is so, because the Arbitrator has not upheld the Union claim that in the parties’ meeting on September 26, 2006, the WFM Director threatened to place the Union officers on LWOP. It is true that following this meeting, the WFM Team Leader instructed the supervisors of the Union officers not to initial their 468s, if they did not contain the information the Agency believed was required. Despite this, he informed the Chief Steward of this the next day, explaining the Agency had done so to prevent the Union form later claiming the supervisors

had accepted the information as sufficient. While the Agency could have reserved its position by informing the Union in writing that the supervisors initials should not be regarded as accepting the information in 468s as sufficient, the Arbitrator does not believe the Agency's actions did not violate the Union officers right to serve as Union representatives "without penalty or fear of reprisal" in violation of Article 3, Section 2, or rise to the level of an unfair labor practice within the meaning of 5 U.S.C. 7116 (a)(1).

Within a few days, the parties agreed that the supervisors's initials on the 468s would not jeopardize the Agency position. The Arbitrator does not agree with the Union that in reaching this accommodation, the Agency coerced the Chief Steward.

Decision

To the limited extent indicated above, Agency Grievance 2007-1 is sustained. The Union officers and Stewards must correct the deficiencies found in filling out their official time reports within 10 days after receipt of this Award.

Union Grievance 2007-4 is denied.

Because the Arbitrator did not accept the Agency position concerning the requirements of Article 6 and the Statute, the Agency is assessed 90% of the Arbitrator's fee for Grievance 2007-1, and the Union 10%. The Union, as the losing party in Grievance 2007-4, shall pay the full amount of the Arbitrator's fee for that case.

_____

James M. Harkless
Arbitrator

July 16, 2007