



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-156287 (CFR)

JUN 15 1981

Mr. Morris A. Simms
Director of Personnel
United States Department of
the Interior
Washington, D.C. 20240

Dear Mr. Simms:

This is in response to your letter of October 21, 1980, in which you express concern about the erroneous interpretation of Comptroller General decisions by the Federal Labor Relations Authority (FLRA) in NFFE, Local 951 and Department of the Interior, Bureau of Reclamation, Mid-Pacific Regional Office, 3 FLRA No. 128 (July 31, 1980).

The FLRA decision held that a union proposal to allow each employee in a bargaining unit 8 hours per year as official time for union sponsored training was within the agency's duty to bargain, or, in other words, was negotiable. You state your understanding that decisions of this Office prohibit agencies from granting official time for union sponsored training to employees who are not representatives of employee organizations. Specifically, you refer to our decisions B-156287, July 12, 1966, September 15, 1976, February 28, 1977, and March 23, 1977, which granted to agencies the discretion to allow administrative leave to representatives of labor organizations for certain purposes. You request that we inform the FLRA that their decision in NFFE, Local 951 conflicts with existing decisions of this Office on the use of official time.

[Administrative Leave for Union Sponsored Training]

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Because there was then no statute covering the use of official time for representatives of employee organizations, our decisions in this area interpreted the provisions of the various Executive orders promulgated in the Federal labor relations area. See B-156287, February 23, 1976, page 6. The two decisions that you quote from in your letter interpreted the provisions of Executive Order 10988, 27 Fed. Reg. 551 (1962) and section 20, "Use of official time" of Executive Order 11491, 34 Fed. Reg. 17605 (1969), which superseded Executive Order 10988. In this regard, 5 U.S.C. 7135(b) (Supp. III, 1979), provides, in part, that policies and decisions under Executive Order 11491 and any other Executive order shall remain in full force and effect unless superseded by specific provisions of chapter 71 of title 5, United States Code, or by regulations or decisions issued thereunder.

The enactment of chapter 71, Title 5, as Title VII of the Civil Service Reform Act of 1978, Pub. Law No. 95-454, October 13, 1978 (92 Stat. 1111, 1192), provided a specific statutory provision--5 U.S.C. 7131--for the use of official time in the labor-management area. This provision is more comprehensive and specific than the preexisting provisions of section 20 of Executive Order 11491, *supra*. In view of section 7135(b), providing for supersession of inconsistent provisions of the various Executive orders dealing with labor-management relations, we view section 20 of Executive Order 11491 as having been superseded by the specific provisions of section 7131 of title 5, United States Code. It follows, therefore, that our decisions interpreting the official time provisions of prior Executive orders have also been superseded by section 7131, to the extent of any conflict.

In view of the above discussion, we do not believe that the FLRA decision is wrong. In fact, section 7131(d) of title 5 would appear to offer further support for the Authority's conclusion that the proposal of NFFE, Local 951, is negotiable. Section 7131(d) provides:

"Except as provided in the preceding subsections of this section--

"(1) any employee representing an exclusive representative, or

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

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

It appears that the words "any employee" in subsection (2) would serve to allow the parties to negotiate official time for training unit employees who are not labor organization representatives.

We trust that the above discussion will be of assistance to you.

Sincerely yours,

Harry R. Van Cleve

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Acting General Counsel

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