

**66 FLRA No. 85**

UNITED STATES  
DEPARTMENT OF AGRICULTURE  
FARM SERVICE AGENCY  
ST. LOUIS, MISSOURI  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 3354  
(Union)

0-AR-4758

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DECISION

January 25, 2012

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Before the Authority: Carol Waller Pope, Chairman, and  
Thomas M. Beck and Ernest DuBester, Members

**I. Statement of the Case**

This matter is before the Authority on an exception to an award of Arbitrator Richard L. Horn filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exception.

The Arbitrator concluded that the Agency violated the parties' collective bargaining agreement (CBA) when it denied Union representatives' requests for official time to perform representational activities. For the reasons that follow, we deny the Agency's exception.

**II. Background and Arbitrator's Award**

The Agency denied requests for official time for Union representatives attending an event described as an "Expanded Membership Meeting" for which the Union had distributed "two flyers." Award at 3. One flyer stated "Don't delay sign up today!" and the other flyer stated "Food! Fun! Games! Prizes! All Bargaining Unit Employees Are Invited To Attend." *Id.* at 4. The Union filed a grievance claiming that the Union representatives

had engaged in representational activities for which they were entitled to official time under the CBA.\*

The Agency argued to the Arbitrator that it properly denied the requests for official time because the wording in the flyers indicated that the event was a membership meeting and that the Union solicited new members. *Id.* at 3-4, 8-9. But the Arbitrator rejected the Agency's reliance on the flyers' description of the event and agreed with the Union that activities must be considered based on their particular facts and circumstances and not on the label applied to the event. *Id.* at 10-11.

Assessing the meeting's actual activities, the Arbitrator concluded that they constituted representational activities for which the Union representatives should have been granted official time under the CBA. *Id.* at 9-11. The Arbitrator noted that staff from congressional offices attended the meeting and discussed issues affecting federal employees. The Arbitrator also noted that the Union representatives discussed issues concerning "grievances, working conditions, and proposed changes to the [CBA]," including issues of telework and equal employment opportunity. *Id.* at 9. The Arbitrator further noted that the local Union president discussed the importance of being active about legislation affecting federal employees and had multiple conversations with employees about work-related problems. *Id.* at 9-10.

The Arbitrator also rejected the Agency's reliance on the Union's solicitation of new members at the meeting as a basis for denying the requests. The Arbitrator noted undisputed testimony that only one representative solicited new members and that the solicitation occurred during his non-duty lunch break for which he did not request official time. And the Arbitrator agreed with the Union that such solicitation did not affect whether the other activities constituted representational activities. *Id.* at 10-11.

Accordingly, the Arbitrator sustained the grievance and awarded the Union representatives the requested official time that the Agency had denied. *Id.* at 11.

**III. Positions of the Parties****A. Agency's Exception**

The Agency contends that the award is contrary to § 7131(b) of the Statute because it grants official time for activities relating to internal union business. The

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\* The CBA provides that the Union "shall be granted a block of 250 hours of official time per calendar month for its representatives." Award at 6.

Agency concedes that, “[i]f the event was not advertised as a solicitation of membership event via Union flyer, the requests for official time would have been appropriate and would have been granted.” Exception at 6. But the Agency contends that it properly denied the requests for official time and that the award is deficient because, in the meeting flyers, the event “was clearly advertised . . . as a Union membership solicitation event.” *Id.*

#### B. Union’s Opposition

The Union contends that the award is not contrary to the Statute because the Arbitrator correctly determined that the disputed activities constituted representational activities for which the Union representatives were entitled to official time under the CBA. Opp’n at 4-5. The Union asserts that the Agency’s reliance on the wording in the flyers advertising the meeting is contrary to Authority precedent. *Id.* at 6 (citing *HHS, SSA, 46 FLRA 1118 (1993) (SSA)*).

#### IV. Analysis and Conclusions

The Authority reviews questions of law raised by exceptions to an arbitrator’s award de novo. *E.g., Cong. Research Emps. Ass’n, Int’l Fed’n of Prof’l & Technical Eng’rs, Local 75, 64 FLRA 486, 490 (2010) (Local 75)*. In applying a standard of de novo review, the Authority determines whether the arbitrator’s legal conclusions are consistent with the applicable standard of law. *Id.*

The Agency contends that the award is contrary to § 7131(b) of the Statute, which states that “[a]ny activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership . . .) shall be performed during the time the employee is in a nonduty status.” Exception at 4; 5 U.S.C. § 7131(b). However, § 7131(d) provides that union representatives in a bargaining unit “shall be granted official time in any amount the agency and the exclusive representative . . . agree to be reasonable, necessary, and in the public interest.” Here, consistent with § 7131(d), the parties have negotiated official time for Union representatives engaged in representational activities. *See supra* note \*. As such, this case presents the question of whether the disputed activities were representational activities under § 7131(d) and the CBA--and therefore eligible for official time--or whether they were related to internal union business under § 7131(b)--and therefore not eligible for official time.

In making this determination, the Authority considers the actual activities based on their facts and circumstances. *SSA, 46 FLRA at 1123*. In *SSA*, the Authority rejected the agency’s reliance on the disputed activities having been performed at the union’s convention as a basis for determining whether the

activities related to internal union business. Instead, the Authority examined the actual activities in dispute and agreed with the arbitrator’s assessment that portions of the union’s convention constituted representational activities for which official time is authorized under § 7131(d) and was warranted under the parties’ collective bargaining agreement. *Id.*

Consistent with *SSA*, as the meeting’s actual activities control whether official time was warranted under the CBA, we reject the Agency’s reliance on the wording in the flyers advertising the meeting. *Id.* Because, as previously indicated, the Agency concedes that the actual activities constituted representational activities under § 7131(d), Exception at 6, the Agency provides no basis for finding the award contrary to § 7131(b), *SSA, 46 FLRA at 1123*. Accordingly, we deny the Agency’s exception.

#### V. Decision

The Agency’s exception is denied.