UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS FALLS CHURCH, VIRGINIA Respondent	
and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. SF-CA-70728

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JUNE 29, 1998**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

GARVIN LEE OLIVER
Administrative Law Judge

Dated: May 29, 1998
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: May 29, 1998

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
FALLS CHURCH, VIRGINIA

Respondent

and Case No. SF-CA-70728

NATIONAL TREASURY EMPLOYEES UNION

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS FALLS CHURCH, VIRGINIA Respondent	
and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. SF-CA-70728

Wilson Schuerholz
Representative of the Respondent

Timothy J. Sheridan
Counsel for the Charging Party

Christopher Pirrone
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The issue in this unfair labor practice case is whether the Respondent (SSA) violated section 7116(a)(1) and (2) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1) and (2), by refusing to allow Joan Kirshner, an employee and Charging Party (Union or NTEU) representative, to use official time to perform Union representational duties while she was working at her home under SSA's pay for work-at-home policy.

Respondent contends that it did not violate the Statute as its action was based on a long-standing policy founded on Comptroller General decisions. Respondent claims that Ms. Kirshner was approved for the pay for work-at-home program during the period she was recovering from an injury so that she could perform her regularly assigned duties. She was not allowed to perform Union duties on official time at home because the Union work was not reviewable in terms

of quantity and quality as required. Respondent states that it has treated other activity which could not be reviewed and measured in a similar way and did not discriminate on the basis of protected Union activity.

For the reasons set out below, I find that SSA violated the Statute as alleged.

A hearing was held in Seattle, Washington. SSA, NTEU, and the General Counsel were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The General Counsel and the Respondent filed helpful briefs. Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The Parties

NTEU is the exclusive representative of a nationwide consolidated unit of professional employees of the SSA, Office of Hearings and Appeals (OHA), in certain offices, including such employees in the OHA Seattle office.

Joan Kirshner's Agency Work

Joan Kirshner is an employee, a senior attorney advisor, of OHA Seattle. She evaluates and develops social security disability cases on appeal and prepares and issues decisions in cases where benefits can be granted. Her decisions granting benefits without an Administrative Law Judge (ALJ) hearing are not reviewed by her supervisors as she is an independent adjudicator in such cases. In cases that cannot be granted on the existing record, and in which hearings must be held to further develop the record before ALJs, she prepares memoranda analyzing the reasons why a hearing must be held and drafts decisions as directed by the ALJs following such hearings. Her work in the latter category is reviewed.

Prior to July 19, 1997, Kirshner worked four ten-hour days and about ten hours overtime under an alternative work schedule. She worked three days in the office and one day at home under the negotiated flexiplace agreement.

Kirshner spent about 25% of her workdays on OHA work and received performance appraisals based on this work.

Kirshner's NTEU Activity and Official Time

Ms. Kirshner was one of the founding members of the bargaining unit in 1982 and is now Executive Vice President and Chief Steward of NTEU, Chapter 224, a national chapter representing approximately 600 employees in 130 OHA offices. In this capacity, she supervises stewards, prepares and monitors all grievances filed nationally, negotiates and administers collective bargaining agreements, and is in frequent and regular contact with SSA officials.

Kirshner spent about 75-85% of all of her workdays on official time, on Union duties. Article 40, Section l of the agreement between OHA and NTEU, provides that Union officers and stewards will be granted a reasonable amount of official time for some 23 different representational matters. Article 40, Section 2 provides the procedures for the use of such time. (Joint Exh. 6).

Kirshner accounted for her official time by filling out detailed official time reports. (GC. Ex. 3 (a)-(c)). The official time reports are daily logs in which Kirshner provides the date she is using official time, the amount of official time used, and the OHA office that the official time involves. OHA also requires Kirshner to fill out information under two additional categories which management created, a time category and a fund category. Under the time category, Kirshner describes how much time she spent in each specific activity, choosing from a list of six categories including bargaining, FLRA material, EEO material, management grievances, Union grievances, travel time and per diem matters. Under the fund category, Kirshner explains the type of Union activities she's participating in, such as represen-tation, negotiations or arbitrations. Kirshner gives these reports to her supervisor, Eileen Otti, on a monthly or quarterly basis, as required.

Prior to July 19, 1997, Kirshner's requests for official time were never denied. Kirshner's reports were used by the supervisor to complete a "supervisor's report on the use of official time for representational functions," which was forwarded to higher management to track official time use.

Kirshner's July 1997 Injury

On July 19, 1997, Kirshner fell off a ladder and broke her right leg. She was allowed to be on flexiplace work at times while in the hospital. Following her hospital stay, she was unable to commute to work and requested to work at home under the reasonable accommodation regulations. OHA Seattle replied that reasonable accommodation was not the

appropriate procedure in these circumstances and denied the request. However, OHA Seattle advised Kirshner that she should apply under SSA's pay for work-at-home by exception policy.

Kirshner Requests to Work at Home

Supervisor Otti, on Kirshner's behalf, completed Kirshner's pay for work-at-home by exception request and forwarded it to SSA on August 15, 1997. The request stated, in part, as follows (Joint Exh. 3):

> Joan Kirshner has been performing at or above the fully satisfactory level.
>
> . . . .
>
> Ms. Kirshner would like to do both union and office work. Union work would be reported through her official time reports. The quality and quantity of this work is not evaluated by me, but the amount of official time is recorded. Her office work will be done on computer and the case and disc will be turned into me. This is what she currently does when she works at home, and it allows me to observe both how many cases are getting done and the quality of this work.
>
> . . . .
>
> Ms. Kirshner currently works at home on Mondays through the negotiated agreement on Flexiplace . . . . and would like authority to work Tuesday through Thursday at home until transportation from her home can be arranged.
>
> Ms. Kirshner is the Executive Vice President and Chief Steward of NTEU chapter 224. She would like to do the work of this position while at home. In addition, Ms. Kirshner would like to do her work as a senior attorney advisor.

Pending approval of her request, Kirshner worked at home on her authorized flexiplace day and took sick leave for the remainder of the workdays.

SSA's Reply

By letter dated September 5, 1997, SSA Associate Commissioner Rita S. Geier responded to the request, stating, in part, as follows (Joint Exh. 5):

> We can and do approve Ms. Kirshner's request to work at home to perform the duties of her Senior Attorney position based on the information provided by Ms. Eilene [sic] Otti in her note of August 15, 1997. Based on the guidance received from the Office of Human Resources, we cannot authorize work at home under this program to perform union representational activities or other functions not assigned by the agency. The Pay for Work-at-Home by Exception policy is limited to duties within the employee's position or assigned by the agency, and requires that management be able to measure the quality and quantity of work performed by the employee at home and ensure that the work is being performed satisfactorily. While management may authorize official time to perform union related functions, it does not review or evaluate the quality of union representational activities.

Kirshner's Work-at-Home and Annual Leave

After this partial approval, and during the period September 10, 1997 to late November 1997, Kirshner participated in the pay for work-at-home by exception program. She was not allowed to perform Union representational activities on official time while in this program and, therefore, took 172 and 3/4 hours of annual leave (almost four weeks) to accomplish her Union representational duties during this period. She usually indicated on the annual leave slips that the leave requested was "Under protest. Performing statutory Union duties while confined to home," and the leave was approved (G.C. Exh. 4). The Respondent does not contend that it would not have approved official time for Kirshner under the provisions of the collective bargaining agreement for this period had she been working her normal schedule.

Kirshner continued to use one day a week at home as her flexiplace day, under her normal arrangement, and she continued to be granted official time to work on Union activities on this day.

Kirshner performed work assigned by OHA during the remainder of the time, which sometimes amounted to about ten

hours a week, and she was also granted overtime to work on her SSA duties. The OHA work completed by Kirshner while at home consisted of memoranda in about six cases analyzing why a case needed a hearing or a consultative examination, which work was reviewed, and about nine or ten decisions granting benefits in SSA cases without an ALJ hearing, which work was not, and could not be, reviewed. (G.C. Exh. 5).

Supervisor Otti recommended Kirshner for a performance award for the appraisal period from July 1, 1997, until September 30, 1997, based mainly on her overtime agency work.

Kirshner resumed her normal office and flexiplace schedule around Thanksgiving 1997 and is no longer participating in the pay for work-at-home by exception program.

The Pay for Work-At-Home by Exception Policy

The authority for the SSA's pay for work-at-home by exception policy evolved from Comptroller General decisions authorizing the payment of salaries for persons working at home under certain conditions. SSA provided five such decisions, covering from 1957 to 1986, for the record (Res. Exh. 1). The latest decision furnished, Matter of Work Performed at Home, 65 Comp. Gen. 826, 1986 WL 60545 (September 4, 1986), summarized the criteria for such compensation as follows:

> With regard to work-at-home programs, we have expressed the view that under most circumstances, Federal employees may not be compensated for work performed at home rather than at their duty stations. However, we have authorized exceptions to this general rule under limited circumstances. When actual work performance in the home can be measured against established quantity and quality norms so as to verify time and attendance reports, we have interposed no objection to payment of salaries. We have allowed Federal employees to be compensated for work performed at home in a variety of circumstances, provided the work was of a substantial nature, the employing agency was able to verify that the work had in fact been performed, and there appeared to be a reasonable basis to justify the use of the home as a workplace.

There is no specific mention of the pay for work-at-home policy in the national collective bargaining agreement. This program originally

applied to SSA through a policy issued in 1981 by the Department of Health and Human Services (HHS), as HHS was at one time the parent organization of SSA (Joint Exh. 1). Then, in 1993, SSA issued its own policy (Joint Exh. 2), which was essentially a restatement of the HHS policy. Neither policy specifically refers to performing union representational activity on official time.

The HHS policy provided that "management must have a means of measuring the quality and quantity of the work performed. Only in this manner can the Government be assured that it is receiving at least fully satisfactory work performance under such an arrangement." An annual report required a statement concerning "[h]ow work was checked for quality and quantity to assure at least fully satisfactory performance." (Joint Exh. 1, p.2).

The SSA policy also requires a written request including a "statement of how the quality and quantity of work performed will be measured" and a "statement of the duties of the employee's position to be performed at home." An annual report also requires a "brief explanation of the kind of work performed and how the work was checked for quality and quantity." (Joint Exh. 2, pp. 2-3).

SSA has rejected other employees for the pay for work-at-home by exception policy where it was determined that the quantity and quality of their work could not be measured. These instances involved proposed agency work and not union activity. These included (1) a receptionist, whose job it was to greet people in an office setting, (2) a messenger, or driver, who drove shuttles delivering material, (3) computer programmers, who could not access the system from home for security reasons, and (4) an employee, who was also an AFGE union representative, who could have performed agency work at home, but needed training to update his skills and could not attend a training class because of his injury.[1]

Positions of the Parties

The General Counsel

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[1] Counsel for the General Counsel's motion to strike the portion of Respondent's brief dealing with this denial of pay for work-at-home to an AFGE representative is denied. The evidence was elicited at the hearing without objection. Counsel for the General Counsel's objection to testimony about the AFGE representative only followed a question dealing with whether labor relations work would have been allowed under the AFGE contract dealing with flexiplace. The objection was sustained as this evidence would have been irrelevant.

The General Counsel contends that by refusing to permit Kirshner to use official time while she was working at home under the Respondent's pay for work-at-home policy, the Respondent violated section 7116(a)(1) and (2) of the Statute. The General Counsel claims that Kirshner's protected activity was the motivating factor in Respondent's decision to deny official time to Kirshner while she was on pay for work-at-home and, although the policy was not designed to discriminate against union officials, Respondent's narrow interpretation and its application to Kirshner's situation had an unfair and discriminatory result; specifically, Kirshner was prohibited from engaging in protected activities.

The General Counsel claims that Respondent's excuses for denying Kirshner official time under this program are not legitimately justifiable, as required under Letterkenny Army Depot, 35 FLRA 113 (1990) (Letterkenny); that there is no legitimate basis on which to distinguish flexiplace from work-at-home; that the myriad of information Kirshner normally provided concerning when, where, and what she was doing on her official time reports was enough for the supervisor to determine that Kirshner was performing adequately while at home on official time, i.e. that she was actually performing official time duties and not abusing the system, and these reports would have satisfied the pay for work-at-home policy's requirement that the supervisor *check* for quality and quantity. Counsel for the General Counsel notes that the supervisor does not review Kirshner's senior attorney work for quantity and quality, so how was Respondent able to approve this work for the pay for work-at-home but not union work.

The General Counsel contends that the Comptroller General decisions offered by the Respondent stand for the proposition that the Comptroller General will approve any reasonable request for work at home provided management has some way of monitoring the employee and ensuring satisfactory performance, something that the General Counsel claims could have easily been done in this case.

The Respondent

As noted, Respondent contends that it did not violate the Statute as its action was based on a long-standing policy founded on Comptroller General decisions. Respondent claims that Kirshner was approved for the pay for work-at-home program during the period she was recovering from an injury so that she could perform her regularly assigned duties. She was not allowed to perform Union duties on official time at home because the Union work is not agency

work and is not reviewable in terms of quantity and quality as required under the policy. Respondent states that it has treated other activity which could not be reviewed and measured in a similar way and did not discriminate on the basis of protected Union activity. The Respondent claims that Kirshner's official time log would not be an adequate measure of her performance as no measurement of performance can be gleaned from this document. The Respondent also argues that the fact that Kirshner was allowed to use official time on her flexiplace day at home is not dispositive since this was a different program, the result of an agreement with NTEU, and allowing Kirshner to do so may have been an error on the part of OHA Seattle.[2] The Respondent also submits that if it did allow Ms. Kirshner to perform her Union activities while on the pay for work-at-home by exception program, it would more appropriately be subject to a charge of discrimination for encouraging membership in a labor organization in connection with a condition of employment, rather than discouraging it. It claims the agency would be treating something it cannot appropriately measure (union activity) in a way different than it treats other non-union activity that it cannot measure.

Discussion and Conclusions

The Statute

Consistent with the findings and purpose of Congress as set forth in section 7101, section 7102 of the Statute sets forth certain employee rights including the right to form, join, or assist any labor organization freely and without fear of penalty or reprisal and that each employee shall be protected in the exercise of such right. Such right includes the right to act for a labor organization in the capacity of a representative. Section 7116(a)(1) of the Statute provides that it shall be an unfair labor practice for an agency to interfere with, restrain, or coerce any employee in the exercise of any right provided by the Statute. Section 7116(a)(2) of the Statute provides that it

[2] Merilee Davis, who works for the Center for Personnel Policy and Program Development in SSA headquarters, testified that OPM guidance for the flexiplace program also required a monitoring of quantity and quality which would make performing union activities on official time inappropriate. (Tr. 107-08). However, there is no dispute that Kirshner was authorized by OHA Seattle to perform Union representational activities on official time while on flexiplace at home, she regularly used such time, and it was always approved.

shall be an unfair labor practice for an agency to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment.

The Authority's Analytical Framework

Under the Authority's analytical framework for resolving complaints of alleged discrimination under section 7116(a)(2) of the Statute, the General Counsel has, at all times, the overall burden to establish by a preponderance of the evidence that: (1) the employee against whom the alleged discrimi-natory action was taken was engaged in protected activity; and (2) such activity was a motivating factor in the agency's treatment of the employee in connection with hiring, tenure, promotion, or other conditions of employment. As a threshold matter, the General Counsel must offer sufficient evidence on these two elements to withstand a motion to dismiss. However, satisfying this threshold burden also establishes a violation of the Statute only if the respondent offers no evidence that it took the disputed action for legitimate reasons. Where the respondent offers evidence that it took the disputed action for legitimate reasons, it has the burden to establish, by a preponderance of the evidence, as an affirmative defense that: (1) there was a legitimate justification for its action; and (2) the same action would have been taken even in the absence of protected activity. United States Air Force Academy, Colorado Springs, Colorado, 52 FLRA 874, 878-89 (1997); Federal Emergency Management Agency, 52 FLRA 486, 490 n.2 (1996); Letterkenny.

Protected Activity

There is no dispute that Kirshner was engaged in protected activity. Kirshner was one of the founding members of the bargaining unit in 1982 and has been Chief Steward and Executive Vice President for the past 10 years. She has spent 75% or more of her time on official time for Union representa-tional activities. She also often spent most, or all, of her flexiplace day at home on official time.

Condition of Employment

The Authority has held that the use of official time by Union officials for representational activities is a condition of employment. U.S. Patent and Trademark Office, 39 FLRA 1477, 1482 (1991). Thus, OHA's denial of official time to Kirshner under the terms of the collective

bargaining agreement as a result of the application of the pay for work-at-home policy involved a condition of employment.

Motivation

The General Counsel also satisfied the threshold burden of showing that consideration of Kirshner's protected activity was a motivating factor in SSA's decision to deny Kirshner official time while working at home under the pay for work-at-home policy. SSA did not authorize Kirshner to perform Union representational activities on official time during this period based on the fact that management could not measure the quality or quantity of such activities.

Affirmative Defense Not Established

As set forth in detail above, the Respondent defends on the basis that it could not approve official time for Kirshner while she was working at home because management could not review the work in terms of quantity and quality as required by the SSA policy. I agree with the General Counsel, although for different reasons, that the Respondent's defense does not present a legitimate reason for the Respondent's action in refusing to allow Kirshner the use of official time to perform Union representational duties while working at home under the Respondent's pay for work-at-home policy.

The Comptroller General decisions, the HHS policy, and the SSA policy, relied upon by the Respondent, concerning pay for work-at-home, all deal with authorizing pay for *agency* work at home and the requirement that *agency* work be reviewed in terms of quantity and quality. As the Associate Commissioner for OHA stated, "The Pay for Work-at-Home by Exception policy is limited to duties within the employee's position or assigned by the agency . . . ." The policy does not deal with official time or representational activity and simply was not applicable to Kirshner's separate request for official time or pay for official time. The Authority has specifically held that an employee's performance of representational activities under section 7131(d) of the Statute does not constitute the performance of the work of an agency. U.S. Department of Defense, Army and Air Force Exchange Service, Dallas, Texas and American Federation of Government Employees, 53 FLRA 20, 24-25 (1997). Thus, the Respondent was not placed in the position of having to deny Kirshner official time because it could not legitimately review Kirshner's representational activity in terms of quantity and quality under the pay for work-at-home policy.

Once Kirshner was assigned to work at home on agency work under the pay for work-at-home policy, the Respondent had to look no further than the Statute and the collective bargaining agreement to determine whether Kirshner was entitled to official time and the concomitant payment for official time when she otherwise would have been in a duty status. The phrase "official time" is "employed in the Statute to mean absence from duty without charge to leave or loss of pay for employees performing representational activities." American Federation of Government Employees, AFL-CIO, Local 3804 and Federal Deposit Insurance Corporation, Madison Region, 21 FLRA 870, 895 (1986). "The allotment of official time results in use of Federal funds to 'pay for' wages or salary." U.S. Department of the Army, Corps of Engineers, Memphis District, Memphis, Tennessee and National Federation of Federal Employees, Local 259, 52 FLRA 920, 930 (1997) (Army Corps). Section 7131(d) of the Statute expressly authorizes payment, through the grant of official time, for "any employee representing an exclusive representative ...in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest." Cf. Army Corps, 52 FLRA at 927-34 (Statute constitutes an express authorization by Congress for using Federal funds to grant official time to employees to lobby Congress on represen-tational matters in such amount as the employing Federal agency and the exclusive representative agree).

In Article 40, Section l of the agreement between OHA and NTEU, the parties have provided that Union officers and stewards will be granted a reasonable amount of official time for some 23 different representational matters. Article 40, Section 2 provides the procedures for the use of such time. The Respondent does not contend that Kirshner's requests for official time would not have been granted under these provisions but for the invoking of the pay for work-at-home
by exception program and its conclusion that Union representa-tional activity could not be permitted as it was not reviewable in terms of quantity and quality under that program. As noted, the program applies to pay for *agency* work at home and does not specifically exclude or otherwise refer to official time which is nonduty time.

When Kirshner was in a duty status, as determined by the Respondent's regulations, whether in the office, on flexiplace, or under the pay for work-at-home by exception program, she was entitled to apply for official time as determined by the Statute and the terms of the collective bargaining agreement. Kirshner had accounted for official time under the Respondent's procedures while using official time when she was otherwise on duty in the office, or on

flexiplace, and there is no contention that these procedures would not have been an acceptable method of accounting for official time (as opposed to its quality and quantity) while she was otherwise on the pay for work-at-home by exception program for agency work. In fact, Supervisor Otti testified that the official time reports would have been adequate, and she had originally planned to follow these same procedures until higher management ruled that Kirshner could not use official time while under the pay for work-at-home policy. (Tr. 81-83).

It is concluded that Respondent's action, refusing to allow Kirshner to use official time while she was working at home under the Respondent's pay for work-at-home by exception policy, interfered with, and had a discriminatory effect on, Kirshner's protected activities and violated section 7116(a)(1) and (2) of the Statute, as alleged. Department of Health and Human Services, Regional Personnel Office, Seattle, Washington, 47 FLRA 1338 (1993) (citing cases) (agency violated section 7116(a)(1) and (2) of the Statute by refusing to credit union experience in the same manner as other outside experience in determining qualifications for a position; Authority rejected agency defense that its policy was necessary to ensure that union duties were not evaluated, as such evaluation was not shown to be necessary); 162nd Tactical Fighter Group, Arizona Air National Guard, Tucson, Arizona, 21 FLRA 714 (1986) (imposition of the condition that employees had to wear military uniforms to receive official time violated section 7116(a)(1)).

Counsel for the General Counsel requests that Respondent be ordered to restore Kirshner's annual leave taken under protest from September to November 1997 regardless of the current "use or lose" status of Kirshner's annual leave. In addition, Counsel for the General Counsel requests that Respondent be ordered to post an appropriate notice throughout the NTEU, Chapter 224 national bargaining unit, signed by the Associate Commissioner of OHA, inasmuch as the denial of official time occurred at the national level and has nationwide ramifications on the bargaining unit. The requested remedy is appropriate in this instance. U.S. Department of Justice, Office of the Inspector General, Washington, D.C., 47 FLRA 1254 (1993).

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that Social Security Administration, Office of Hearings and Appeals, Falls Church, Virginia shall:

1. Cease and Desist from:

(a) Discriminating against union officials, such as NTEU Executive Vice President Joan Kirshner, by denying requests for official time while the union official is on duty status under the pay for work-at-home policy.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Restore to Joan Kirshner all annual leave taken under protest from September to November 1997. Such leave shall be restored so as to allow the use of leave regardless of the current "use or lose" status on Kirshner's current balance of annual leave.

(b) Post throughout the NTEU, Chapter 224 national bargaining unit copies of the attached notice on forms to be furnished by the Authority. Upon receipt of such forms, they shall be signed by the SSA Associate Commissioner for OHA and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, San Francisco Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, May 29, 1998

GARVIN LEE OLIVER
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that Social Security Administration, Office of Hearings and Appeals, Falls Church, Virginia violated the Federal Service Labor-Management Relations Statute (Statute) and has ordered us to post and abide by this notice.

We hereby notify our employees that:

WE WILL NOT discriminate against union officials, such as NTEU Executive Vice President Joan Kirshner, by denying requests for official time while the union official is on duty status under the pay for work-at-home policy.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured them by the Statute.

WE WILL restore to Joan Kirshner all annual leave taken under protest from September to November 1997. Such leave shall be restored so as to allow the use of leave regardless of the current "use or lose" status on Kirshner's current balance of annual leave.

(Activity)

Date: By:

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, San Francisco Region, Federal Labor Relations Authority, whose address and telephone number is 901 Market Street, Suite 220, San Francisco, California 94103, (415) 356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. SF-CA-70728, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Christopher Pirrone, Esq.
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Dated: May 29, 1998
Washington, DC