

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF THE AIR FORCE, TRAVIS  
AIR FORCE BASE

And

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1764, AFL-CIO

Case No. 20 FSIP 044

**DECISION AND ORDER**

This case, filed jointly by the United States Department of the Air Force, Travis Air Force Base in Sacramento, California (Agency or Travis Air Force Base) and the American Federation of Government Employees, Local 1764, AFL-CIO (Union) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, concerns one article in the parties' successor collective bargaining agreement (CBA) over official time. Travis Air Force Base is a mobility operation base responsible for meeting the logistical needs of the Air Force and sister services around the world. The Union represents five separate bargaining units at the Air Force Base. The bargaining unit that is subject to this dispute is comprised of 951 appropriated fund employees, which consist of Firefighters, Police Officers, Truck Drivers, and Administrative personnel. The parties' CBA went into effect in September 2001, for a three-year duration. Since that time, the agreement has been subject to one-year rollovers and remains in effect until the parties reach a new agreement.

**BARGAINING AND PROCEDURAL HISTORY**

In July 2014, the Agency reopened the parties' CBA and proposed to negotiate ground rules for successor CBA bargaining with the Union. Those negotiations did not begin until January 2015, due to various conflicts in the parties' schedules. The parties signed a ground rules agreement in June 2015, and exchanged proposals for a successor CBA in August 2015. The parties negotiated on December 1 and 10, 2015; January 5, 12, 23, and 26, 2016; February 2, 2016; August 30, 2016; September 1 and 6, 2016; October 18 and 21, 2016; November 29, 2016; December 22, 2016; January 10, 12, 24, 31, 2017; April 18, 2017; October 24, 2017; February 27, 2018; July 3, 12, 17, 24, 26, 30, and 31, 2018; August 9, 14, 15, 21, and 30, 2018; September 20, 2018; October 15, 16, 18, and 23, 2018; November 15 and 29, 2018; December 12, 15, and 18, 2018; January 10 and 22, 2019; February 5 and 19, 2019; March 5, 6, 18, 19, and 26, 2019; April 2, 4, 9, 16, and 30, 2019; May 2, 2019; August 16, 2019; September 4, 24, and 30, 2019;

October 4, 10, 16, 18, 20, 22, and 24, 2019; November 15, 2019; January 16 and 30, 2020; and February 4 and 25, 2020.

The parties received mediation assistance from two Federal Mediation and Conciliation Service (FMCS) Mediator's, Lydia Baca and Cathy Stevens on February 16 and 23, 2016; June 14, 2016; October 4 and 6, 2016; and March 3 and 25, 2020. During the parties negotiations and mediation sessions they reached agreement on 42 out of 43 articles in their successor CBA. The parties, however, could not reach agreement over their Official Time Article. Therefore, on March 25, 2020, Mediator Stevens released the parties from mediation. On April 29, 2020, the parties filed a joint request for Panel assistance over the one article in dispute related to official time.

During the Panel's investigation, the parties reached agreement over several proposals within the Official Time Article. As a result of those agreements, there were four issues left for the Panel to decide. On July 21, 2020, the Panel asserted jurisdiction over the four issues and ordered the parties to a Written Submissions procedure, with an opportunity to submit rebuttal statements. The parties timely provided their statements of position. The Agency, however, submitted its rebuttal statement 24 minutes after it was due, while the Union did not provide a statement.<sup>1</sup> The Union did not argue against the Panel considering the Agency's rebuttal. Further, the Union was not prejudiced by the Agency's late reply. Therefore, the Panel will consider the Agency's rebuttal statement.

## **PARTIES' PROPOSALS AND ARGUMENTS**

### **I. Agency's Proposals and Position**

The Agency proposes in section 2A that the "use of official time shall not cause the Union time rate for this bargaining unit to exceed one hour per bargaining unit employee for any fiscal year." The Agency proposes in section 2C that the Union's representatives spend at least three-quarters of their paid time performing Agency business or attending necessary training to ensure that they develop the skills to perform their Agency duties efficiently and effectively. In section 3A, the Agency proposes that when Union representatives request official time they will obtain written or email permission from their supervisor and the request will be accomplished by completing a form (Appendix B).<sup>2</sup> Finally, in section 4, the Agency proposes that no Union representative will exceed one-quarter of their paid duty time while on official time and the cumulative total of official time used by the representatives will not exceed the one hour per bargaining unit employee rate.

The Agency states that it seeks to bring official time usage into compliance with the President's May 2018 Executive Order (EO) 13837, Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use. As of July 1, 2020, the Agency asserts that there are 951 employees in the bargaining unit, which would equate to a Union time rate of 951 hours per fiscal year under the Agency's proposal. The Agency states that its proposed language

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<sup>1</sup> The Panel's July 22, 2020, procedural letter directed the parties to submit their rebuttal documents by 5:00 PM EST on August 10. The Agency provided the statement at 5:24 PM EST on August 10.

<sup>2</sup> Agency Ex. Appendix B.

will ensure that the Union is able to meet its representational responsibilities and is consistent with EO 13837. Conversely, the Agency argues that the Union's proposal will result in a significant increase in official time over what was used in FY 2019.

In FY 2019, the Agency states that the Union used 1731 hours of official time.<sup>3</sup> However, the Agency states that the Union only filed one grievance in FY 2019, and the remainder of its official time was spent negotiating over the parties' new contract. The Agency further asserts that the Union's argument that it was unable to file additional grievances because the Agency reduced the Union President's official time from 100 percent to 50 percent after she was elected in January 2019, is without merit. The Agency states that while it did reduce the President's official time, it did not reduce the amount of official time available to the Union's other officers, such as the Vice President, Chief Steward, and Secretary. The Agency contends that if the Union needed to use additional official time beyond the 50 percent permitted to the President, its other officers could have elected to use the official time available to them to file grievances.

The Agency further states that since February 2020, it has proposed approximately 50 changes or updates to employees' conditions of employment; however, the Union has neither proposed to negotiate, nor offered an appropriate arrangement proposal.<sup>4</sup> Given the limited labor-relations activities at the Agency, the Agency asserts that a Union time rate of one hour per bargaining unit employee should sufficiently allow the Union to perform its representational responsibilities. The Agency states that if the Union somehow exhausts its bank of official time hours, then the Union may use the official time allocated to it for the next year.

The Agency contends that the use of the Appendix B form that it proposes to request official time in section 3 will enable supervisors to evaluate and document official time properly. The Agency also states that this form will allow it to easily track the Union's official time use. As such, the Agency asserts that this form is consistent with the EO.

Finally, to the Union's argument that the parties reached tentative agreements in 2016 over official time, the Agency states that the parties agreed that any agreements reached were subject to change until the parties executed the entire CBA. The Agency asserts that both parties exercised this option during the negotiations by modifying tentative agreements made. Thus, the Agency states that it negotiated in good faith during the parties' successor CBA negotiations.

## **II. Union's Proposals and Position**

The Union proposes in section 2A that the Local President will receive 80 percent official time or may designate another officer to receive 50 percent official time. In section 2C, the Union proposes that it will limit its Union stewards to 10, who can use official time as needed under the Statute. In section 3A, the Union proposes that its representatives who request official time will obtain written or email permission from their immediate supervisor before performing representational duties and the request for official time will be accomplished via email. Finally,

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<sup>3</sup> This number includes the appropriated fund employees in the bargaining unit, as well as 310 non-appropriated fund employees in a different bargaining unit not subject to this request for assistance.

<sup>4</sup> Agency Ex. 4.

the Union requests in section 4A that official time will be approved without charge to leave or loss of pay when it is determined to be reasonable, necessary, and in the public interest.

The Union argues that limiting its official time as the Agency proposes will inhibit the Union's ability to act as a partner in labor-relations with the Agency. The Union asserts that its representational work is most often performed in response to a management right. As such, the Union states that it has no way of knowing if the response will require the Union to engage in more or less time than the Agency is currently proposing to allocate to the Union. The Union states that due to the number of employees on the base, it often takes days to speak to the employees to gather enough information necessary to determine the Union's bargaining position. The Union is concerned that once it exhausts the official time amount permitted under the Agency's proposal, it will be unable to represent the bargaining unit.

The Union states that the Agency bargained in bad faith during the negotiations in violation of the Statute when it relied on the EOs to formulate its proposals. In this respect, the Union argues that during the negotiations, the parties initially agreed that the Local President would receive 100 percent official time and may designate another officer to the 100 percent official time position; the Union would be permitted 15 stewards that could use official time; and the representatives were not limited to a rate or percentage of official time during each fiscal year. The Union asserts that the Agency changed its position in September 2019, in order to comply with the President's EO 13837 and limit the Union's official time consistent with the EO. The Union contends that after the Agency took this position, it reduced the Union President's official time.

The Union argues that the reduced amount of official time has caused a burden and hardship on the Union's ability to properly represent the bargaining. In support of this argument, the Union contends that it has not been able to pursue as many grievances due to the limited amount of official time. The Union states that it has several obligations as the employees' representative, some of which include term and midterm negotiations; representing and counseling employees; and initiating and responding to grievances. However, the Union asserts that it will not be able to perform these functions if the Agency's proposal is adopted by the Panel.

### III. Conclusion

**The Panel will adopt the Agency's proposal with modification.** First, the Union argues that the Agency bargained in bad faith. The Union's bad faith bargaining argument is not advanced in the proper forum. The Panel's role is to resolve disputes over the parties' bargaining impasse, which encompasses the current language that the parties could not reach agreement over during their negotiations.<sup>5</sup>

Turning to the language in dispute, the Agency proposes that the Union will receive an official time amount equivalent to a rate of one hour per bargaining unit employee and the cumulative total of official time used by the representatives will not exceed the one hour per

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<sup>5</sup> Additionally, the Union did not offer a rebuttal to the Agency's argument that both parties agreed during the negotiations that tentative agreements made were subject to further modification until the CBA was executed.

bargaining unit employee rate; that each employee-Union representative spend at least three-quarters of their paid time performing Agency work; and that the Union representatives utilize a form (Appendix B) to request official time. The Union is opposed to the Agency's offer and proposes that the President receive 80 percent official time, which may be designated to another officer at a rate of 50 percent official time; that it will limit its stewards to 10, who will be permitted reasonable official time under the Statute; that the Union will request official time via email; and that official time shall be approved when it is determined to be reasonable, necessary, and in the public interest.

The Agency tried to support its proposal by providing the Union's official time use for FY 2019; however, the data provided does not parse out the amount of official time that the Union used to represent the bargaining unit employees with the amount of official time that the Union used to represent a different bargaining unit at the Agency. The Union similarly did not provide support for its proposal that would require the Panel to order an amount of official time that is "reasonable, necessary, and in the public interest" consistent with section 7131(d) of the Statute. The Union asserts that the Agency is the party most often proposing the change in conditions of employment, which necessitates the Union's use of official time; therefore, it has no way to determine if the amount of official time that the Agency is proposing is sufficient. While the Agency may be the party proposing changes to conditions of employment more often than the Union, not every change requires the parties to negotiate. See, US Department of Education and US Department of Agriculture, 71 FLRA No. 190 (2020). Further, the Union did not provide any data to indicate the amount of official time it has used over the course of the parties' CBA that has necessitated the Union's official time use.

The Panel has consistently written that the President's May 2018 EOs on federal-sector collective bargaining and labor relations provide important public policy guidance that informs its resolution of official time disputes. Where neither party has provided evidence compelling the adoption of their proposal the Panel has consulted relevant Executive Orders for guidance. Specifically, section 3(a) of the EO 13837 indicates that the total number of hours that an employee engages in official time shall not exceed one hour per bargaining unit employee. In accordance with that guidance, an official time amount in excess of one hour per bargaining unit employee should not ordinarily "be considered reasonable, necessary, and in the public interest." Section 4(a)(ii) indicates that "[e]mployees shall spend at least three-quarters of their paid time, each fiscal year, performing agency business or attending necessary training." When reviewing official time disputes, the Panel has stated that it expects the parties to provide sufficient argument and evidence to support their positions. When a party has been unable to prove that their offer is consistent with the Statute, the Panel has adopted the limitations set forth in EO 13837.

As a result of neither party demonstrating support for their proposal, the Panel will require the Union's official time use to not exceed one hour per bargaining unit employee to engage in section 7131(a), (c), and (d) activities under the Statute. The Union shall be permitted to utilize official time for (a) and (c) activities under the Statute if it exhausts the bank, and will be permitted to use the subsequent years' bank of hours for 7131(d) activities. This should satisfy the Union's concern over fully consuming the bank of official time hours during a fiscal

year and not being able to represent the bargaining unit. Further, the Panel will require the employee-Union representatives to spend at least three-quarters of their paid time each fiscal year performing Agency business or attending necessary training. Thus, the Panel will impose the following modifying language:

“The Union’s official time shall not exceed one hour per bargaining unit employee to engage in section 7131(a), (c), and (d) activities under the Statute. The Union shall be permitted to utilize official time for (a) and (c) activities under the Statute if it exhausts the bank, and will be permitted to use the subsequent years’ bank of hours for 7131(d) activities. Union representatives shall spend at least three-quarters of their paid time, each fiscal year performing Agency business or attending necessary training.”

The Agency did demonstrate support for its Appendix B form. That form indicates that employees must receive written authorization prior to engaging in official time, except where approval is not possible. The form also requires the representative to document the type of official time that he or she will engage in during the requested official time, as well as the amount of time requested. This form will allow the parties to track and record the Union’s official time use. Therefore, the Panel will require the parties to implement the Agency’s Appendix B form in their successor CBA.

### **ORDER**

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above.



Mark A. Carter  
FSIP Chairman

October 1, 2020  
Washington, D.C.

### **ATTACHMENTS**

- Parties’ Proposals

Section/Paragraph	Management Last/Best Offer	Union Last/Best Offer	Summary of Dispute
<b>Section 1. Recognition</b>	The Employer agrees to recognize the authorized officers and designated stewards of this bargaining unit of Local 1764 and National or District representatives of AFGE.	The Employer agrees to recognize the authorized officers and designated stewards of this bargaining unit of Local 1764 and National or District representatives of AFGE.	Parties reached agreement over this section 6-16-20
<b>Section 2. Representational Functions</b>	<p>A. Elected or appointed Union representatives who are covered by this agreement may use official time for representational purposes as provided by 5 U.S.C. 7131.</p> <p>The use of official time shall not cause the Union time rate for this bargaining unit to exceed one hour per bargaining unit employee for any fiscal year.</p>	<p>A. Elected or appointed Union representatives who are covered by this agreement may use official time for representational purposes as provided by 5 U.S.C. 7131.</p> <p>Local President will receive 80% official time or may designate another officer to 50% time for not less than six months with 30 day notice to the agency.</p>	
	<p><del>B. Taxpayer funded union time/official time for representational functions will be conducted during duty hours when approved by management. Union representatives may only use approved taxpayer-funded union time/official time to represent members of their specific bargaining unit.</del></p> <p>Taxpayer-funded union time/official time for representational functions will</p>	<p>B. Representational functions will only be performed when the Union representative is on approved official time.</p>	<p>Parties reached agreement over this section, agreeing to management's language 5-18-20.</p>

	<p>be conducted during duty hours when approved by management. Union representatives may only use approved taxpayer-funded union time/official time to represent members of their specific bargaining unit. <b>However, Union representatives may elect to perform representational duties when on approved annual leave, leave without pay, or otherwise in a non-duty status.</b></p>		
	<p>C. Elected or appointed Union representatives shall spend at least three-quarters (75%) of their paid duty time, measured each fiscal year, performing agency business or attending necessary training (as required by the Agency), to ensure that they develop and maintain the skills necessary to perform their Agency duties efficiently and effectively.</p>	<p>C. The Union will limit its steward list to 10 stewards but will continue to use official time as needed per the statute.</p>	
	<p>D. <b>The use of official time for lobbying purposes is prohibited.</b></p>	<p>D. The use of official time for <b>lobbying purposes is prohibited.</b></p>	<p><b>Parties reached agreement 6-16-20.</b></p>
	<p>E. <b>The use of official time is also prohibited for any activities performed by any employee relating to the internal business</b></p>	<p>F. <b>The use of official time is also prohibited for any activities performed by any employee relating to the internal business</b></p>	<p><b>Parties reached agreement 6-18-20</b></p>

	<p>of the Union including the solicitation of membership, elections of Union officials, and collection of dues. This does not include reports required under the Civil Service Reform Act of 1978.</p>	<p>of the Union including the solicitation of membership, elections of Union officials, and collection of dues. This does not include reports required under the Civil Service Reform Act of 1978.</p>	
<p><b>Section 3. Release Procedures for the Use of Taxpayer-Funded Union Time/ Official Time.</b></p> <p>Or</p> <p><b>Release Procedures for the Use of Official Time.</b></p>	<p>A. Union representatives who request to use official time as authorized under 5 USC 7131 and this agreement will obtain the written or email permission of the immediate supervisor or designated management official before performing representational duties. This will be accomplished by completing the request form at Appendix B of this agreement or an email version thereof. The supervisor or designee will usually approve the request unless the Steward's absence would cause a substantial disruption at that time. If the supervisor is unable to grant the request, the parties will arrive at a mutually agreeable time for departure, normally within 24 hours, but if not possible then as soon as possible. The Union representative will be given a brief amount of time to inform any bargaining unit employees involved in the delay.</p>	<p>A. Union representatives who request to use official time as authorized under 5 USC 7131 and this agreement will obtain the written or email permission of the immediate supervisor or designated management official before performing representational duties. This will be accomplished by an email version thereof. The supervisor or designee will usually approve the request unless the Steward's absence would cause a substantial disruption at that time. If the supervisor is unable to grant the request, the parties will arrive at a mutually agreeable time for departure, normally within 24 hours, but if not possible then as soon as possible. The Union representative will be given a brief amount of time to inform any bargaining unit employees involved in the delay.</p>	

	<p>B. Upon return to duty, the Union representative will annotate the official time recording system, currently ATAAPS. The codes to be used are:</p> <p>BA = Term Negotiations BB = Mid-Term Negotiations BD = Labor-Management Relations BK = Grievances and Appeals</p>	<p>B. Upon return to duty, the Union representative will annotate the official time used in ATAAPS. The codes to be used are:</p> <p>BA = Term Negotiations BB = Mid-Term Negotiations BD = Labor-Management Relations BK = Grievances and Appeals</p>	<p>Parties reached agreement 6-16-20.</p>
	<p>C. Upon entering a work area other than his or her own to meet with an employee, the Union representative will advise the immediate supervisor or designated management official of his or her presence, the employee to be contacted, and the estimated duration of the meeting.</p>	<p>C. Upon entering a work area other than his or her own to meet with an employee, the union representative will advise the immediate supervisor or designated management official of his or her presence, the employee to be contacted, and the estimated duration of the meeting.</p>	<p>Parties reached agreement 6-16-20.</p>
	<p>D. Employees will be given time to meet with their Union representative to discuss matters covered by law, rule, regulation, or Agency policies related to conditions of employment. The employee will obtain the approval of his or her supervisor or designee before meeting with a Union</p>	<p>D. Employees will be given a reasonable amount of time to meet with their Union Steward to discuss matters covered by law, rule, regulation, or Agency policies related to working conditions, or this Agreement. The employee will obtain the approval of his or her supervisor or designee before meeting with a Union Steward during duty hours.</p>	<p>Parties reached agreement 6-16-20.</p>

	representative during duty hours.		
<p><b>Section 4. Allocation of Taxpayer-Funded Union Time/Official Time.</b></p> <p>Or</p> <p><b>Allocation of Official Time.</b></p>	<p>Official time will be approved without charge to leave or loss of pay when it is determined to be reasonable, necessary, and in the public interest. No Union representative will exceed one-quarter (25%) of their paid duty time for taxpayer-funded union time/official time and the cumulative total of taxpayer-funded union time/official time used by representatives of the bargaining unit will not exceed the Union time rate of one hour per member of the bargaining unit.</p> <p>The union time rate for this bargaining unit will vary based on annual manning levels for bargaining unit positions.</p>	<p>Effective labor-management relations promote efficient mission accomplishment and are in the best interests of both the Union and the Employer. Official time will be approved without charge to leave or loss of pay when it is determined to be reasonable, necessary, and in the public interest.</p>	
<p><b>Section 5. Accounting for Official Time.</b></p>		<p>In addition to completing the request form for approval of official time, Union representatives will account for their official time use by entering the appropriate code for the official time in the electronic timekeeping system, currently ATAAPS.</p>	<p>Union agreed on 6-16-20 to remove language</p>
<p><b>Section 5/6. Allegations of Abuse</b></p>	<p>Alleged abuses of official time shall be brought to the attention of an appropriate management official designated by the Agency who will</p>	<p>Alleged abuses of official time shall be brought to the attention of an appropriate management official designated by the Agency who will</p>	<p>Parties reached agreement 6-16-20.</p>

18 May 2020

Travis AFB/AFGE Local 1764  
20 FSIP 044

	then discuss the matter with AFGE Local 1764 President.	then discuss the matter with AFGE Local 1764 President.	
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