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DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20542**

FILE: B-136287

DATE:

SEP 28 1977

**MATTER OF: National Federation of Federal Employees -
Administrative Leave for Union-Sponsored Training
Program**

- DIGEST:**
1. The National Federation of Federal Employees questions whether, under authority contained in our decision B-136287, July 12, 1966, an agency may grant administrative leave only to employee representatives, who are members of the union with exclusive recognition, to attend union-sponsored training programs. Unlike Executive Order 10988, now superseded, the current Executive Order 11491, permits an agency to recognize and negotiate only with one union on an exclusive basis. Thus only representatives of the union with exclusive recognition may be granted such leave.
 2. The National Federation of Federal Employees questions whether it is proper for various agencies to have different interpretations of the guidance contained in our decision B-136287, July 12, 1966, concerning restrictions on the amount of administrative leave that may be granted to employee representatives to attend union-sponsored training. We deliberately provided broad guidelines on leave restrictions to afford agencies reasonable flexibility to accommodate their particular circumstances; however, most agencies would not be justified in granting more than 8 hours administrative leave per employee representative each year for such training.

This action involves a July 7, 1975, letter request from Mr. M. T. Welkair, then President of the National Federation of Federal Employees (NFFE), for a ruling concerning the amount of administrative leave or excused absence an agency may grant its employee-union officials to attend union-sponsored training courses.

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This matter is currently governed by our decision B-156207 dated July 12, 1966, which has been incorporated in the Federal Personnel Manual Supplement 990-2, Chapter 630, subchapter B-11-5F. Our decision reads in part as follows:

"* * * that an agency properly may grant administrative leave only for such short periods of time--ordinarily not to exceed 8 hours--that are reasonable under the circumstances. We believe that statutory authority would be necessary to enable agencies to grant administrative leave for extended periods during which employees representatives receive organization sponsored instruction or briefing."

The decision also contains the restriction that material presented at these training courses must relate to matters within the scope of the applicable Executive order, currently Executive Order 11491, as amended, and be of mutual concern to the Federal agency and the employee in his capacity as a union representative.

The NFFE indicates that it has experienced problems in interpreting certain provisions of our decision and requests that we clarify the following two issues.

First, it pointed out that our July 1966 decision, cited above, was issued when Executive Order 10948 was in effect. This order was revoked by the present Executive Order 11491, in January 1970. The earlier order provided for various types of non-exclusive recognition so that two or more unions could be recognized for an identifiable group of employees. However, the new Executive order restricted recognition to only exclusive recognition, whereby only one union could be recognized for each bargaining unit. Because our 1966 decision was issued when various types of recognition could be obtained, NFFE questions whether it is proper to now construe that decision as being applicable only to employees who are members of the union with exclusive recognition?

This question must be answered in the affirmative. Our decision was concerned with the amount of administrative leave an employee representative could be granted for purposes of union-sponsored training. Therefore the holding of the decision remains valid so

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long as the individual qualifies as an employee representative under the current Executive order governing the Federal Labor Management Relations Program. For example, under Executive Order 10988 and subsequently under Executive Order 11491, to qualify as an employee representative, an employee was required to be a member of a union that has obtained recognition under the applicable order. Should an individual fail to qualify as an employee representative under the current order, he may not under our decision be granted administrative leave to attend union-sponsored training courses. In this connection we note that sections 7(f) and 10(a) of Executive Order 11491 would preclude an agency from negotiating such matters with unions that do not have exclusive recognition.

Second, NFFE states that various agencies have conflicting interpretations of the time limit expressed in our decision as " * * * ordinarily not to exceed 8 hours * * *." The union indicates that some agencies permit 8 hours of administrative leave every 6 months while other agencies permit 8 hours of administrative leave each year. Still other agencies permit 24 hours of administrative leave each year. On the other hand NFFE has construed our decision to mean that any leave an agency grants may not be for more than 8 hours at any one time. Presumably, NFFE does not feel there should be any restrictions on the frequency with which such administrative leave may be granted. These conflicting interpretations have created problems for the union in negotiating agreement provisions covering this subject. For this reason NFFE requests this Office to rule with more specificity as to the amount of administrative leave an agency may authorize employee representatives to attend union-sponsored training courses.

(Our decision B-156287, July 12, 1966, should not be considered in a vacuum but, must be considered in conjunction with our decision in the Matter of Official Time for Employee Representational Functions, B-156278, September 15, 1976, 55 Comp. Gen. _____. This later decision held that agencies could grant their employee representatives official time for representational purposes pursuant to guidelines contained in Federal Personnel Manual (FPM) Letter 711-120, October 14, 1976, "Guidance and Advice on the Use of Official Time for Employee Representational Functions," promulgated by the Civil Service Commission. The guidelines contained in the FPM letter defined with specificity the term "representational functions," which theretofore had been subject to a wide range of interpretations among agency and

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union officials. Under our decision and the aforementioned FPM letter, the amount of official time permitted is to be determined by balancing the impact on employee performance and efficiency, effective conduct of the Government's business; and the rights of employees to be represented. Under these guidelines agencies may authorize reasonable amounts of official time for employee representatives to engage in joint union-management endeavors of mutual benefit and concern including joint union-management sponsored training programs. The new agency authority to use official time for employee representative training should serve to reduce the requirement for agencies to authorize administrative leave for employee representatives to attend union-sponsored training programs.

Viewed from this perspective, we are of the opinion that we should not modify the guidance expressed in our decision of July 12, 1966, concerning administrative leave for union-sponsored training to the effect that, " * * * an agency properly may grant administrative leave only for such short periods of time—ordinarily not to exceed 8 hours—that are reasonable under the circumstances."

The guidance in our 1966 decision was deliberately stated in nonfinite terms so as to provide agencies with flexibility to accommodate the myriad situations they face as a result of their individual circumstances and particular requirements. While the majority of agencies would not be justified in granting more than 8 hours of administrative leave per year for employee representatives to attend union-sponsored training, we recognize that some agencies must have limited authority to exceed this guideline by reasonable amounts of time.

Accordingly, we hereby affirm the time limits on administrative leave for employee representatives to attend union-sponsored training programs set forth in our decision B-156287, July 12, 1966.

R.F.KELLER

Acting Comptroller General
 of the United States