

Heitzman

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Comptroller General
of the United States

22749

Washington, D.C. 20548

Decision

Matter of: Union Training - FLSA Overtime Pay for Travel
File: B-256485
Date: August 5, 1994

DIGEST

Employees who, under the provisions of 5 U.S.C. § 7131(d) (2) (1988) and the terms of a collective bargaining agreement, were granted official time to participate in a union-sponsored training seminar are not entitled to overtime pay under the Fair Labor Standards Act (FLSA) for return travel outside their normal duty hours. The travel was not directed by the agency nor primarily for its benefit so as to constitute "hours of work" under FLSA. However, the employees may be entitled to official time for the travel at straight-time rates under the collective bargaining agreement.

DECISION

The Director of Personnel Management, Forest Service, U.S. Department of Agriculture, (Reference: 6150-3-5), requests a decision on whether return traveltime from a union-sponsored training seminar after official duty hours is deemed "hours of work" and thus compensable as overtime under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. (1988). For the reasons that follow, the traveltime is not compensable as FLSA overtime. However, the matter is remanded to the agency for a determination as to whether the employees are entitled to official time under 5 U.S.C. § 7131(d) (2) for the traveltime.

The question presented arises from a collective bargaining agreement between the Forest Service and the National Federation of Federal Employees (NFFE) providing that a bank of hours of official time will be made available to each local unit to enable union officials to attend union

training.¹ Depending on the size of the unit, a total of 120 to 200 hours is to be set aside each year, with additional hours allowed for locals with more than 300 bargaining unit employees. Master Agreement, Art. 29, § 3.²

Under that authority, the NFFE sponsored a 3-day training seminar in Marquette, Michigan, which was held Wednesday, Thursday, and Friday (June 2-4, 1993) from 8 a.m. to 5 p.m. for its local officers and stewards. Three Forest Service employees from Madison, Wisconsin, attended and were given official time to travel on Tuesday, and 3 days' official time for attending the session. The employees' return travel to Madison on Friday was after official duty hours, and the employees have asked for overtime compensation.

The NFFE states that the employees are entitled to FLSA overtime pay since NFFE is not a government organization and the event could not be scheduled or controlled by the government. NFFE also asserts that the training was not exclusively for government employees since its membership is also open to government retirees and ex-employees. The agency denied the request for overtime on the basis that the training was solely for the benefit of the government employees, and was administratively controllable since the return travel should have been scheduled during normal duty hours.

Under the provisions of 5 C.F.R. § 551.401(a) (1994), for purposes of the FLSA, all time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is considered "hours of work." Thus, "work" means time spent performing an activity primarily for the benefit of the agency. Government Printing Office, 60 Comp. Gen. 431 (1981). See 5 C.F.R. § 551.423(b)(1) (1994).

The Federal Labor Relations Authority (FLRA) has long held that employees performing representational duties or

¹5 U.S.C. § 7131(d)(2) allows an employee in a bargaining unit to be granted official time in connection with a labor-management matter in any amount agreed to by the agency and the union.

²Although in Cecil E. Riggs, et al., 71 Comp. Gen. 374 (1992), we stated we will no longer take jurisdiction of federal employee claims on matters which are subject to negotiated grievance procedures under collective bargaining agreements, we retained jurisdiction to accept requests for decisions from federal agency officials on matters of general application. See, e.g., B-252405, Oct. 14, 1993.

attending an arbitration hearing as union witnesses on nonduty time outside regular working hours are not engaged in the performance of "hours of work" for which overtime pay or compensatory time off could be granted, See Warner Robins Air Logistics Center and AFGE, Local 987, 23 FLRA 270 (1986); Wright-Patterson Air Force Base Ohio and AFGE, Local 1138, 23 FLRA 390 (1986); AFGE Local 900 and U.S. Department of the Army, 46 FLRA 1494, 1505-1510 (1993). The only exception to this rule is if the union official was already in an overtime duty status at the direction of the agency at the time an event arises which calls for the performance of representational functions. Warner Robins Air Logistics Center and AFGE, Local 987, supra, citing to NTEU v. Gregg, No. 83-546 (D.D.C. Sept. 28, 1983). See 5 C.F.R. § 551.424(b) (1994).

We believe that the FLRA rule is equally applicable to employees traveling outside regular working hours following a union-sponsored training seminar. The three employees here were not performing an activity primarily for the benefit of the agency. The employees' return travel on nonduty time was personal to the employees and did not constitute a benefit to the agency so as to be considered as "hours of work" under the provisions of 5 C.F.R. § 551.401(a). Accordingly, the employees are not entitled to additional pay, and their claim is denied.

However, we note that the collective bargaining agreement in Article 29, section 3(d) provides that traveltime is included in allowed official time. As stated above, the Forest Service authorized official time for the travel to attend the training seminar. Because the issue of whether the three employees may be entitled to official time for their return travel involves an interpretation of the parties' agreement, we remand the matter to the Forest Service for its determination as to their entitlement to official time for the travel at straight-time rates. See U.S. Department of Commerce, NOAA, National Weather Service and National Weather Service Employees Organization, 36 FLRA 352, 357-359 (1990); Local 1164, AFGE and Social Security Administration Boston Region, 19 FLRA 936 (1985).

Seymour Efron

 Robert P. Murphy
Acting General Counsel