IN THE MATTER OF ARBITRATION

UNITED STATES DEPARTMENT OF LABOR **AND** **NATIONAL COUNCIL OF FIELD LABOR LOCALS**	**FMCS CASE NO. 08-03059** **RONALD HOH, ARBITRATOR**

APPEARANCES

For U.S. Department of Labor:

Felicia Branch, Labor/Employee Relations Specialist

For National Council of Field Labor Locals:

Julie Lowrie, Vice President/Chief Steward

JURISDICTION

Pursuant to the provisions of their collective bargaining agreement, the above-named parties have submitted this case to the undersigned arbitrator for resolution. The arbitrator was selected by the parties from a list provided by the Federal Mediation and Conciliation Service. The hearing was held on December 11, 2008 in San Francisco, California and was completed on that same date. All parties appeared at the hearing and were provided full opportunity to present evidence and argument in support of their respective positions. There were no procedural issues, and the parties agreed that this case was properly before the arbitrator. Subsequent to completion of the hearing, the parties agreed to file written post-hearing briefs and argument with the arbitrator. The case was deemed under submission by the arbitrator upon receipt of the last of those briefs on January 6, 2009.

THE ISSUE

The parties agreed at the hearing to the following description of the issue:

1. Did management follow the provisions of the Collective Bargaining Agreement when denying the grievant's local travel reimbursement?

2. If not, what shall the remedy be?

RELEVANT CONTRACT FEDERAL TRAVEL REGULATIONS AND DEPARTMENT LABOR MANUAL SERIES PROVISIONS

CONTRACT

ARTICLE 2 - GOVERNING LAWS AND REGULATIONS

SECTION 3 - AGREEMENT GOVERNS

Where existing provisions of Department and/or Agency regulations are in conflict with this Agreement, the provisions of this Agreement shall govern.

ARTICLE 8 - OFFICIAL TIME AND TRAVEL EXPENSES FOR REPRESENTATIONAL ACTIVITY

SECTION 7 - TRAVEL EXPENSES

The Department and the NCFLL have a mutual commitment to contain travel expenses in connection with representation. Therefore, the parties agreed to the following provisions:

A. Union Representatives

1. The Department and the NCFLL agree that, ordinarily, representation of employees or the Union on official time will be performed by Union Representatives from within the commuting area and, to the extent practicable, from within the same DOL Agency or in accordance with the Steward designations pursuant to Article 6.

2. If there is no Union Representative in the commuting area, the Department will pay appropriate travel expenses of the nearest representative. This includes representation at Steps 1 and 2 of the grievance procedure and for institutional grievances.

3. If the Union designates a representative from outside the commuting area when one exists within, the Department will have no obligation for the representative's travel expenses. Where there is no representative in the commuting area and the Union does not designate the nearest representative, the Department will pay constructive or comparable cost travel expenses. This includes representation at Step 1 and 2 of the grievance procedure and for institutional purposes.

FEDERAL TRAVEL REGULATIONS

DEPARTMENT OF LABOR MANUAL SERIES, SECTION 7-1-2.3(a)(2)

Once an employee has commutingd to the official duty station and uses a POV to travel to an alternative work location(s), the employee may be reimbursed the full cost of mileage for the trip to the alternative work location, and return to the official duty station.

FACTUAL BACKGROUND

The United States Department of Labor (hereinafter Agency) is a federal government agency providing various labor-related services to employers and employees out of offices throughout the United States. The Agency's professional and non-professional employees at all offices outside of the headquarters in Washington D.C. are represented for collective bargaining and contract administration purposes by the National Council of Field Labor Locals (hereinafter Union). The parties are currently operating under and governed by a five year collective bargaining agreement (hereinafter contract), which became effective by its terms on October 1, 2006. The Agency employs approximately 8,000 employees nationwide.

The grievant, Norma Mosqueda (hereinafter grievant), has been employed as a Paralegal Specialist for the Agency's Office of the Solicitor since 1988 in the Agency's office located at 350 South Figueroa Street in Los Angeles, California – which is her official duty station. She has also served since the late 1980's as Executive Vice President and Steward for AFGE Local 2391, and as backup steward for bargaining unit employees in Agency offices in the Southern California cities of Pasadena, Ontario, West Covina, West Los Angeles, Long Beach and San Diego, as well as Orange County. Her duties as a steward include representing Agency bargaining unit employees in adverse actions, administrative investigations and Weingarten disciplinary investigation situations. She is a resident of Downey, California, and her regular commuting is between Downey and her Los Angeles office.

On October 15, 2007 grievant was asked in her capacity as a Union steward to cover a Weingarten meeting for a bargaining unit employee at the Agency's West Covina office, because normal West Covina Union steward Cortez was unable to make that meeting. Prior to grievant's departure from her Los Angeles office to West Covina, she asked her supervisor for official time to cover the meeting and was granted that official time. She then drove the 22.9 miles from her office to the West Covina office, met with the employee subject to the meeting, and then met with the supervisor and the employee. At the conclusion of these meetings, grievant drove from West Covina to her home in Downey, since the meetings in West Covina had concluded after her regular work hours.

She again went to the Agency's West Covina office from the Los Angeles office on the same matter at the request of the West Covina management official on November 8, 2007, using the same route from the Figueroa Street office to West Covina and back to her home in Downey. Grievant filed separate mileage claims of 32 miles for each of these trips, after subtracting the mileage from her home to work in accordance with her understanding of Agency travel regulations.

On October 17, 2007 grievant informed Agency Regional Labor Relations Officer Roz Itleson that she had gone to represent an employee in a meeting in West Covina two days earlier, and asked Itelson how to submit a claim for her travel expenses. On that same date, Itleson e-mailed grievant back, stating that the Agency was not obligated to pay grievant's travel expenses because "...the West Covina Office is within your commuting area."

When grievant informally protested that determination of what constituted a "commuting area," Itleson e-mailed grievant again on the next day. Itleson stated in that e-mail that neither the contract nor travel regulations defined "commuting area;" included references to the term "commuting area" in Agency and Federal Regulations; concluded again

that West Covina was in grievant's "commuting area;" and stated her view that grievant was properly denied compensation for her mileage in these activities. Grievant subsequently filed the instant grievance protesting that denial of mileage reimbursement on October 24, 2007.

Since the mid-1990's up through the 10/1/05 through 9/30/06 fiscal year, grievant had received each fiscal year from the Agency a blanket travel authorization allowing her to receive travel reimbursement whenever she needed to represent an employee within the region as a Union steward. Grievant did not receive such a blanket travel authorization for the fiscal year beginning October 1, 2007. She testified that prior to this incident, she had not been required to obtain any pre-authorization for any prior Union-representational related travel. Grievant was reimbursed for Union business travel similar to that at issue here under these travel authorizations through at least July 2006.

During negotiations for contracts on a national level between the parties reached in 1991, 1996 and 2002, there were no discussions concerning the definition of "commuting area" under Article 8, Section 7, or that the contract superseded Agency travel regulations in the area of travel claims. The parties did agree in the negotiations for the 1991 contract, however, to the language now contained in the current contract in Article 8, Section 7(A), (B) and (C) and set forth above. The parties' mutually-agreed bargaining history for Article 8 – "Official Time and Travel Expenses for Representational Activity" – included, inter alia, the following paragraph:

> The parties agreed that it was in their mutual interest to reduce Management travel expenses and take advantage of the increased technology pursuant to Article 9. It is in the interest of both the Department and the NCFLL that the Union build a strong Steward system to resolve problems at the work site at the lowest level without the need to travel Union representatives outside a commuting area. Thus the parties agreed in principle that, while representation should be provided from within a DOL Agency or other organizational entity to the extent practicable and in accordance with Steward designations of Article 6, it was more important to have Stewards and Union Officials equipped to represent employees across Agency or other organizational lines rather than incur travel expenses. In accordance with these

principles, it was understood that the Union is always free to designate representatives of its own choosing. What this Article points out, however, is that when the Union's designation of a representative is in conflict with the principle to minimize travel costs, the Department is generally not obligated to pay any travel expenses, or only constructive or comparable cost travel expenses, for employee representation. This was reflected in having one part of the Article deal with official time and another part deal with travel expenses.

During negotiations for the current contract in 2006, the parties engaged in an interest based style of bargaining. In the expression of "interests" of the parties in those negotiations, there was no mention of establishing a definition of "commuting area;" or that Article 8 was the sole area of recovery for travel expenses for Union representational activities. The parties ultimately agreed in those negotiations to no change in the pertinent contract provisions of Article 8 concerning payment of travel expenses.

POSITIONS OF THE PARTIES

THE UNION

The Union makes the following arguments in support of its contention that the Agency's failure to pay grievant's travel expenses in these circumstances was a violation of the parties' contract.

1. While the preamble of Article 8, Section 7 of the contract reflects a commitment between the parties to contain travel expenses in connection with Union representational duties, the language of Section 7(A)(1) provides that Union representatives, designated in accordance with Article 6 of the contract, would in most instances be from the "commuting area." The language of Section 7(A)(2) indicates that the Department will pay relevant travel expenses incurred to conduct such representational activities when the nearest representative is not in the "commuting area." The contract does not clarify or define what the parties intended to mean when they selected the words "commuting area." Even when such words are given their ordinary meaning, that meaning fails to clarify or

specify concerning the exact number of miles or city boundaries which would be used to calculate what is meant by the term "commuting area." Even Agency witnesses Lelchook and Itelson testified to conflicting and inconsistent definitions for what "commuting area" meant in the context of this contract. In such circumstances, it is clear that that contract language is vague and ambiguous, and that certain generally accepted contract construction principles such as examination of past practice and bargaining history should be used in an attempt to determine the meaning of that term.

2. The bargaining history evidence submitted by the parties makes clear that they knew how to assign a specific definition to the parts of the contract they thought might be problematic, such as the specific definitions of the terms "investigate" and "prepare" contained in Article 8. Nonetheless, neither party agreed to assign a specific definition to interpret the words "commuting area" during any set of negotiations. Over the sixteen years of various iterations of this contract, this issue was not raised by the Union, because grievant's travel vouchers for local travel were always approved and paid up until the incident giving rise to this case.

3. If either party had agreed to use the provisions of the contract to limit or exclude travel reimbursements pursuant to federal travel regulations or the Department Labor Manual Series (hereinafter DLMS), it should have clearly articulated so in either the contract or the DLMS. There is simply no documentary evidence to support Lelchook's claim that the contract was the exclusive remedy for such travel expenses. If both parties had such an intention, there would have been documented discussions about this issue in bargaining and notes concerning those discussions, specific language agreed upon by the parties, and concurrent changes to the relevant provisions of the DLMS. The record reflects no documentary evidence corroborating Lelchook's claim.

4. Grievant reasonably relied upon DLMS Section 7-1-2.3(A)(2), which in pertinent part provides that an employee who has commutingd to an official duty station and travels to an alternate work site may be reimbursed the full cost of the mileage for the trip to the alternate work location(s) and return to the official duty station. The evidence shows that grievant had received blanket travel authorizations from the Agency over the years, and that she had submitted and had paid numerous travel vouchers to the Agency over the last sixteen years seeking reimbursement for mileage she incurred using her personal vehicle from her duty station to another office of the Agency to perform Union representational duties. By its approval and payment of grievant's submitted travel vouchers for local travel as the nearest representative outside of the "commuting area," the Department clarified the ambiguity in Article 8, Section 7(A)(1) and (2) when it used federal travel regulations and the DLMS to reimburse grievant for her local travel expenses. By consistently and continually accepting, approving and reimbursing grievant in these circumstances, the Department reinforced this interpretation of the contract.

5. Federal Labor Relations Authority (hereinafter FLRA) case decisions require the Union, in order to show that the existence of a binding past practice, to show that the practice: 1) has existed for a reasonably long time; 2) occurs repeatedly; 3) is clear and consistent; and 4) is known and accepted by both Agency and the Union. The evidence shows that grievant was provided by the Agency with blanket authorizations for her Union representation work for years leading up to the case at issue here, that she routinely submitted travel vouchers to the Agency for mileage she incurred traveling from her duty station to various distinct cities in Southern California to perform representational duties, and that was reimbursed for that travel. By doing so, the Department was interpreting and clarifying Article 8, Section 7(A)(1) and (2) to approve and pay for local travel expenses incurred

by her as the Union's representative outside of her "commuting area."

THE AGENCY

The Agency makes the following arguments in support of its contentions that its actions in these circumstances were not violative of any provision of the parties' contract.

1. The contract language at issue here is clear and unambiguous. Article 8 clearly states the provisions and procedures for reimbursement of travel related to Union activity, and the clear purpose of that contract Article is to provide procedures for travel expenses related to Union activities and to also limit travel expenses for Union-related activity. The language is also clear in that if there is no Union representative in the commuting area, the Agency will pay appropriate travel expenses of the nearest representative.

2. The evidence shows that when the parties negotiated Article 8 in 1991, the term "commuting area" was not specifically defined because commuting areas differ in different parts of the country, and the commuting area would be determined by whatever the normal concept of the commuting area would be in the particular area. Furthermore, a review of Agency personnel regulations and the Code of Federal Regulations (hereinafter CFR), describing "commuting areas" in other contexts, is consistent in the meaning of "commuting area" suggested by the Agency, which is the area where people live and can be reasonably expected to travel back and forth daily to their place of employment. In such circumstances, it is clear that the language of Article 8 is clear and unambiguous.

3. Case decisions before the FLRA indicate that a past practice can alter the language in a collective bargaining agreement, but the threshold is extremely high. Those decisions clearly define a binding past practice as one that is "consistently exercised over an extended period of time and followed by both parties, known by management, continued for a significant period of time, and knowingly acquiesced in by management." The Union

has not reached this threshold in these circumstances. The Union's evidence shows only that grievant was reimbursed for travel within the commuting area on four occasions over a five month period in fiscal year 2006. Therefore, the practice of paying local travel for Union representational activities has not been consistently exercised in this region for an extended period of time.

4. The evidence further shows that a practice in order to be binding must have been accepted by the parties who have authority to bind the Agency and the Union at the national level, not merely at the local level. There are no regional practices in the Agency, and the authorization of such travel by Itelson was never sanctioned or approved by higher level management officials at the regional or national levels.

5. Federal travel regulations and DLMS provisions cited by the Union do not apply in this matter, since reimbursement under those regulations applies only to official Agency activities. The U.S., Supreme Court has held that "union negotiators engaged in collective bargaining are not considered in a duty status and thereby entitled to all of their normal forms of compensation." Subsequent case law of the FLRA holds that union representational duties do not constitute work for the Agency. In view of this case law precedent, Union representatives do not perform representational work in the interest of the Agency, and may not be reimbursed for their travel expenses in doing so.

6. Although the Union argued that the Travel Expense Act authorizes reimbursement for travel on official business and for employees on official time, the Supreme Court case cited above states that that statute does not entitle Union negotiators to cost reimbursement or travel per diem.

7. The parties negotiated in 1991 the type of travel that would be reimbursed, and this language and practice has not changed since the 1991 contract went into effect. Since

grievant was performing travel as a designated Union steward, the contract governs the grievant's entitlement to reimbursement of travel expenses. The federal regulations set forth in the DLMS do not apply in this case.

DISCUSSION

It is axiomatic in contract interpretation cases such as this that the Union as the moving party bears the burden of showing the existence of a contract violation. Arbitrators in such contract interpretation cases strive to interpret the contract in a manner which reflects the mutual intent of the parties. Where the mutual intent can be determined from the clear language of the contract itself, that intent must be controlling upon the outcome, and examination of such parole evidence elements as past practice or bargaining history is inappropriate. Arbitrators are required to give effect to the literal meaning of the contract language without consulting any other indices of intent or meaning, where the pertinent contract language is clear and unambiguous. On the other hand, where the mutual intent of the parties is not manifest upon review of the terms of the contract itself, arbitrators utilize certain generally accepted rules of contract construction, such as examination of past practice or bargaining history, as aids in attempting to determine that mutual intent.[1]

In reaching the proper interpretation of the disputed language contained in Article 8, Section 7(A)(1) and (2) of the contract, it is therefore initially necessary to determine whether that contract language is clear and unambiguous, or is ambiguous. Previous arbitration awards have defined ambiguous contract language as "language which could reasonably be given more than one meaning by reasonable men"[2] and as language over which

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[1] See, e.g., "Standards for Interpreting Contract Language" in Elkouri, How Arbitration Works (Fifth Edition, 1997), Chapter 9.

[2] See, e.g., American Oil Company 62-1 ARB No. 8073 (Boles, 1961).

"plausible contentions may be made for conflicting interpretations."[3] Contract language is not ambiguous if the arbitrator can determine its meaning without any other guide because the words of the contract are plain and clearly convey a distinct idea.[4] However, if the contract language relied upon by a union is ambiguous and each party has submitted equally convincing external evidence, arbitrators normally will hold that the union has not sustained its burden of proof in showing the existence of a contract violation.[5]

In this situation, it is apparent that the proper outcome determination of this matter rests largely upon the meaning to be given to the phrase "commuting area" contained in Article 8, Section 7(A)(1) and (2) of the contract. Under Article 8, Section 7(A)(2), if grievant's representation of the employee in West Covina did not occur within her "commuting area," she was the "nearest (Union) representative" since the normal representative for that was not available, and was entitled to receipt of appropriate travel expenses. It is additionally apparent under those provisions that if grievant was a Union representative available within the "commuting area," the Agency was under no obligation to pay grievant's travel expenses for that representational work.

In the arbitrator's judgment, a careful review of the evidence presented concerning that phrase makes clear that the term "commuting area" is not clear and unambiguous, but is instead ambiguous. The phrase "commuting area" is not defined anywhere in the contract, and constitutes language for which "plausible contentions may be made for conflicting interpretations." Indeed, the Agency in its arguments to the arbitrator that such language

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[3] See, e.g., Armstrong Rubber Company 17 LA 741, 744 (Gorder, 1952).

[4] See, e.g., Rockwell International Corporation 82 LA 42, 45 (Feldman, 1984); CBS, Inc. 98 LA 890, 893-4 (Christopher, 1992); GTE Products Corporation 85 LA 754 (Millious, 1985).

[5] See, e.g., Midland Brick & Tile Company 77 LA 41, 44 (Newmark, 1981).

is clear and unambiguous cited definitions of that term contained in the Code of Federal Regulations – a source exterior to the contract and the type of reference which is among the generally accepted principles of contract construction arbitrators might examine in attempting to determine the parties' mutual intent in negotiating ambiguous contract language. Additionally, Agency witnesses essentially admitted that this contract language is ambiguous, via their testimony to the effect that "commuting areas" differ in different parts of the country and would be determined by whatever the normal concept of commuting area would be in a particular area. It is thus apparent to the arbitrator that the pertinent contract language is ambiguous.

Turning then to the generally accepted contract principles utilized by arbitrators in construing ambiguous contract language, the Agency initially argues that the several definitions of the phrase "commuting area" found in provisions of the Code of Federal Regulations are supportive of the Agency's interpretation of that phrase here, and should be determinative of the meaning of that phrase in this case. The arbitrator cannot agree. Arbitration cases hold that manuals and handbooks unilaterally produced and distributed by the employer are generally not binding upon the union.[6] In addition, there is simply no evidence that the Union ever agreed, even tacitly, to any such definitions,[7] or indeed was ever apprised of them at any time prior to these circumstances. This element therefore provides no assistance to the arbitrator in attempting to determine the parties' intent in agreeing to that language.

Turning next to the generally accepted contract construction principles of

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[6] See, e.g., Hughes Airwest 71 LA 1123, 1125 (Roberts, 1987); Grier Steel Company 50 LA 340, 343 (McIntosh, 1968); Westinghouse Electric Corporation 45 LA 131, 140 (Herbert, 1965).

[7] See, e.g., Allegheny Ludlum Steel Corporation 85 LA 669, 673 (Duff, 1985).

examination of bargaining history and past practice in an attempt to determine the parties' intent, it is initially apparent that an examination of the parties' bargaining history provides virtually no indication of the parties' intent in negotiating the phrase "commuting area." During the 1991 negotiations in which the language of Article 8, Section 7(A) and (B) was added to the contract, there appears to have been absolutely no discussion between the parties of their intent in utilizing that phrase. In addition, while the parties' mutually agreed bargaining history for Article 8 in those negotiations generally expresses a "mutual interest" in reducing travel expenses, that history likewise providees no indication of the parties intent in utilizing the phrase "commuting area."

The Union next contends that there exists a binding past practice prior to the circumstances in dispute here of paying grievant her travel expenses for such representational work, largely by virtue of the blanket travel authorizaton grievant had received from the Agency in past years for use whenever she needed to represent an employee within the region as a Union steward.

In view of these elements, the issue in this area becomes whether such a "practice" is binding upon both parties. Past practice may generally be defined as a consistent prior course of conduct in a recurring situation that is regarded by the parties as the correct and required response under a particular set of circumstances.[8] In order for a past practice to have binding effect, however, arbitrators including this one have normally required that such practices be: 1) unequivocal; 2) clearly enunciated and acted upon; and 3) readily ascertainable

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[8] Mittenthal, "Past Practice and Administration of Agreements," Proceedings from the 14th Annual Meeting of the National Academy of Arbitrators 30, 31, 36 (1961).

over a reasonable period as a fixed and established practice accepted by both parties.[9] Federal sector case law similarly holds that in order to be binding, a past practice "...must be consistently exercised over an extended period of time and followed by both parties, or followed by one party and not challenged by the other over a substantially long duration,"[10] and the "...practice must be known to management, responsible management must knowingly acquiesce in the practice, and the practice must continue for a significant period of time."[11]

The evidence in this area shows that, since the mid-1990's through at least the fiscal year ending on September 30, 2006, grievant had received from the Agency a blanket travel authorization allowing her to receive travel reimbursement whenever she needed to represent an employee as a backup Union steward for Agency offices in the various Southern California cities for which she performed that backup function. For those limited locations in which she served as backup Union steward in locations where the local steward was not available during that time, she consistently submitted travel expense claims to Agency Regional Labor Relations Officer Itleson, and those expense claims were paid on each occasion under that blanket travel authorization.

That evidence further shows that via such blanket travel authorizations, that practice was "clearly enunciated and acted upon" by the Agency and accepted by the Union, was

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[9] See, e.g., City of Naperville 100 LA 754, 761 (Cohen, 1993); North Slope Borough School District 98 LA 697, 699-700 (Corbett, 1991); Tennessee Valley Authority 97 LA 73, 80 (Bankston, 1991); Town of Henrietta 95 LA 373, 375 (Pohl, 1990); City of Marion 91 LA 175, 179 (Bittel, 1988); Topps Chewing Gum Company 94 LA 356, 359 (DiLauro, 1990); Super Valu Stores 87 LA 453 (Goldman, 1996).

[10] Social Security Administration, Mid-America 9 FLRA 229, 82 FLRR1-1539 (1982).

[11] U.S. Department of Homeland Security, Bureau of Customs and Border Protection 59 FLRA 910 (2004).

"consistently exercised" and followed by both parties, was "unequivocal," and was "readily ascertainable" over that at minimum fourteen year time period as a "fixed and established practice accepted by both parties." That evidence further shows that until the incident at issue here, that practice was uniformly followed by the parties over a fourteen year time period – clearly a "significant" and "substantial" period of time under pertinent case law. Finally in this area, Itelson was at all times material here the Agency's point of contact concerning travel expenses, and as the Agency's labor relations representative for the Region appears to have had full authority in granting grievant the blanket travel authorizations. She was, therefore, "responsible management" for purposes of pertinent case law.

In the limited circumstances here relating to grievant, it is therefore apparent that the parties had a binding past practice of Agency payment of grievant's travel expenses when she served as the backup Union steward at the Southern California Agency office locations set forth above. In doing so, and without yet reaching the issue of the binding nature of a regional past practice, it is clear that the parties viewed grievant in the circumstances here as representing employees in circumstances where there was "no Union Representative in the commuting area" – a circumstance under which grievant was entitled to "appropriate travel expenses" under Article 8, Section 7(A)(2) of the contract.[12]

There remains then the issue of whether such a past practice limited at most to a regional Agency area may be found as binding upon those regional parties. The Agency

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[12] Although the Agency argues under pertinent case law both that there is no statutory right to payment of travel expenses for Union representatives on official time and that Union representation duties do not constitute work for the Agency, the pertinent case for the first of the above claims, Bureau of Alcohol, Tobacco and Firearms v. FLRA 464 U.S. 89 (1983) also holds that its ruling in that case did not prevent unions from negotiating to receive travel and per diem in such circumstances. That is exactly what happened here, in the parties' agreement to Article 8, Section 7(A)(1), (2) and (3) of the contract.

argues that in view of the national coverage of the parties' contract, there cannot be regional or local binding past practices, and that Itelson as the Regional Labor Relations Specialist did not have the authority to bind the Agency to a past practice. It cites as support of that argument a decision of Arbitrator Sass in Department of Veterans Affairs Medical Center, which held among other things that "One local supervisor and her employees clearly do not have the authority to bind the Agency and the Union (to a past practice), even at the local level, let along nationally."[13]

However, the FLRA itself has found in Social Security Administration, Department of Health and Human Services[14] that what was clearly a local past practice of providing the Local Union president in that case with two partitions and a self-correcting typewriter was binding upon the parties as a condition of employment that could not be unilaterally changed by the agency in that case.. It appears that the contract between that department and the union involved in that case was national in scope. It therefore is apparent under FLRA case law that established local or regional past practices may properly be held as binding upon those local or regional parties, even where the contract under which the parties operate is national in scope.

In view of the entire above, I therefore find that in the limited circumstances at issue here, management did not follow the provisions of the collective bargaining agreement when denying grievant's local travel reimbursement. Rather, the Agency violated Article 8, Section 7(A)(2) of the contract by refusing to pay the appropriate travel expenses to grievant in circumstances where her representational activities occurred because there was no available Union representative in the commuting area for the necessary representational

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[13] 90 FLRR 2-1813 (March 30, 1990).

[14] 38 FLRA 193 (1990).

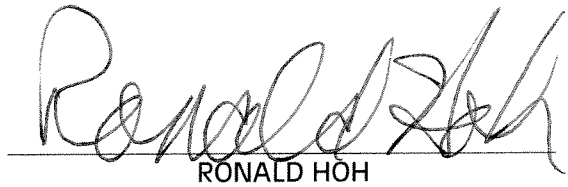
work at the Agency's West Covina office.

AWARD

1. The grievance is sustained. The Agency did not follow the provisions of the collective bargaining agreement when denying the grievant's local travel reimbursement.

2. As the remedy for the Agency's contract violation, grievant shall be reimbursed for her travel claims made for her Union representational work at the Agency's West Covina office on October 15 and November 8, 2007.

January 19, 2008



RONALD HOH
Arbitrator