



# Memorandum

## U.S. Department of Transportation

Office of the Secretary  
Of Transportation

Office of Inspector General

Subject: ACTION: Air Traffic Services' Policy of Granting  
Time Off Work to Settle Grievances and Other  
Complaints

Date: December 14, 2001

From: David A. Dobbs   
Deputy Assistant Inspector General  
for Aviation

Reply to  
Attn of: JA-10:X60500

To: Steven J. Brown  
Associate Administrator for Air Traffic Services

The purpose of this memorandum is to inform you of the results of our review of several Hotline allegations concerning how Air Traffic Services settles grievances and other complaints filed by members of the National Air Traffic Controllers Association (NATCA). We have received Hotline complaints alleging Federal Aviation Administration (FAA) managers were giving credit hours and excused absences to NATCA bargaining unit members to settle grievances and other complaints. To evaluate these allegations, we visited FAA Headquarters, the Southern Region Headquarters, and the Jacksonville and Memphis Air Route Traffic Control Centers (ARTCC).

## RESULTS

We found that Air Traffic managers routinely gave away credit hours and excused absences to settle grievances and other complaints submitted by air traffic controllers. This practice is a violation of the 1998 National Agreement between FAA and NATCA. The 1998 National Agreement between FAA and NATCA defines credit hours as “...*non-overtime hours worked under an AWS [alternate work schedule] which are in excess of an employee’s basic work requirement and which are worked at the election of the employee after approval by the Employer.*”

In 1999, Air Traffic Service’s Labor Management Relations Division determined that the practice of giving away credit hours without the employee having performed work was a violation of the National Agreement. The judgment stated that employees must actually perform work in excess of their basic work requirement to earn credit hours,

and that approval of credit hours in any other situation would constitute an increased entitlement, and is therefore prohibited by the Agreement.

During our review, we requested the Office of Inspector General's Office of Legal Counsel to review FAA's procedure for giving away credit hours to settle grievances and Unfair Labor Practices (ULP) and determine whether it violated the 1998 National Agreement. On August 2, 2001, we received a determination stating FAA may not issue credit hours to settle disputes. This determination was based on the definition of credit hours in the 1998 National Agreement along with the past practices of the Office of Personnel Management (OPM). Counsel stated that under the OPM guidance, an agency is prohibited from issuing credit hours in advance of the work performed. Likewise, an agency would not be allowed to issue credit hours for work that will never be performed. This would cover the situation in which an agency issues credit hours as a bonus or a means to settle a dispute. The Office of Legal Counsel determined that even though OPM guidance does not directly apply to FAA, it is likely that the past practices of OPM would be considered an implicit understanding between the parties in the absence of any union agreement.

Congress has also questioned the appropriateness of FAA's policy on giving away credit hours to settle grievances. The Fiscal Year (FY) 2002 Department of Transportation and Related Agencies Conference Report, dated November 30, 2001, directed FAA to discontinue the granting of credit hours, or related benefits, in the settlement of union grievances until the Office of the Secretary of Transportation's (OST) general counsel, working with legal counsel of FAA and the OIG, determines in writing that such practice is consistent with the 1998 collective bargaining agreement with NATCA. In our opinion, this practice is clearly inconsistent with the NATCA Agreement. Accordingly, Air Traffic Services must discontinue granting credit hours or time off to settle union grievances or other complaints.

## **Impact of Unearned Credit Hours**

Air Traffic Management contends that credit hours contain no cash value to employees and, therefore, giving away credit hours does not have an impact on the cost of operations. We disagree with Air Traffic's position. Under the approved procedures for earning credit hours, Air Traffic receives an hour of work above the individual's normal work schedule; therefore, the individual is entitled to take an hour off at some future date. However, by giving away credit hours to settle grievances, Air Traffic receives no work, and the individual receives an unearned benefit of an hour off on some future date. This unearned benefit may negatively impact facility staffing on the day the individual decides to use the unearned credit hours by necessitating overtime or the allowance of additional credit hours to cover the person's shift.

Following are several examples where large amounts of credit hours or excused absences were given by Air Traffic managers to settle grievances.

- In December 2000, a Southern Region Air Traffic Facility manager gave 16 hours of excused absences to each of 306 bargaining unit members (approximately 5,000 hours) to settle approximately 17,000 grievances filed by NATCA in a 2-day period.
- In August 2000, the Southern Region Air Traffic Division gave 12 credit hours to 40 bargaining unit employees (approximately 500 hours) to settle a grievance stating that controller-in-charge duties were not equitably distributed to all eligible controllers.

In addition to settling grievances, we also found that large numbers of credit hours were given by a Headquarters Program Director to settle a ULP. NATCA filed an unfair labor practice against FAA stating that management did not fulfill commitments made in several Memorandums of Understanding (MOU) pertaining to the Anchorage ARTCC. In December 2000, to obtain union agreement on additional MOUs for Anchorage, and to settle the unfair labor practice, the Program Director:

- Gave 113 bargaining unit employees from the Anchorage ARTCC 60 credit hours each (6,780 hours) to settle the ULP.
- Signed an MOU on the Implementation of the Capstone Project at the Anchorage ARTCC stating that if any of 4 project commitments made in the MOU were not met, each bargaining unit member in the Anchorage ARTCC would receive 16 credit hours for each commitment not met (a potential of 7,230 hours).

In addition to the determination that giving away credit hours to settle grievances violates the National Agreement, this practice could also negatively impact air traffic operations, especially if facilities are already operating under constrained resources.

Although our review was performed at FAA Headquarters and the Southern Region, we were notified that another large credit hour settlement took place in the Western Pacific Region. In September 2000, a manager from the Western Pacific Air Traffic Division agreed to settle grievances and ULP complaints concerning the consolidation of the Honolulu Center Enroute Radar Approach (CERAP) and the Honolulu Air Traffic Control Tower/Traffic Approach Control (ATCT/TRACON) Facility. A ULP was filed stating that FAA failed to negotiate in good faith an FAA decision that the CERAP and the ATCT/TRACON would be collocated. On September 29, 2000, in order to settle grievances and the ULP, FAA agreed that the two facilities would be consolidated instead of collocated. FAA further agreed that the agency would compensate all affected bargaining unit members with 4 credit hours for each pay

period served in the NATCA bargaining unit at the two facilities from October 1999 until October 2000. *As a result, 112 bargaining unit members received approximately 104 credit hours each for a total of 11,648 credit hours.* This example also violates the 1998 National Agreement by providing an increased entitlement of credit hours even though no work was performed.

On August 15, 2001, FAA's Assistant Administrator for Human Resource Management issued a memorandum to FAA's Management Board stating that employees were being awarded credit hours, compensatory time, or other forms of paid time off "inappropriately" as part of negotiated settlement agreements with FAA's labor unions. The memorandum concluded that this action was not an appropriate resolution and should be avoided if at all possible. As of December 2001, Air Traffic Services has not taken action to ensure that the practice of granting credit hours and other time off work to settle grievances has been stopped.

In conclusion, based on the decisions from your Labor Management Relations Division, the OIG Legal Counsel, and the Assistant Administrator for Human Resource Management, it is clear that granting credit hours and other time off to settle grievances is not an appropriate use of resources. Therefore, Air Traffic Services must ensure that its managers discontinue granting credit hours to settle union grievances and other complaints.

We appreciate the cooperation and assistance provided by you and your staff during the review. If you have any questions or need further information, please contact me at (202) 366-0500.

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cc: FAA Administrator, AOA-1  
FAA Chief of Staff, AOA-2  
Assistant Administrator for Human Resource Management, AHR-1