

MEMORANDUM

8/3/07

To: PASS Executive Board

From: Allyn Van Vechten, Labor Relations Specialist 

Re: **Arbitrator's Decision, Grievance #: 14562 – Violation of Article 3, Section 9, Article 63, Section 3, and 5 USC 7116(a)(1) re: Agency's Refusal to Allow PASS to Participate in New Hire Orientation Meetings Held at the FAA Academy in OKC**

Attached is a copy of the Arbitrator Vaughn's decision on the above referenced grievance. The arbitrator sustained the grievance and found that the Agency violated the PASS/AF collective bargaining agreement AND committed an unfair labor practice by refusing to allow PASS to participate in the New Hire orientation meetings held at the FAA Academy in OKC as part of the Technical Operations Hiring, Training and Certification (TOHTC) program.

The Agency implemented the TOHTC program in early 2004. Initially, the TOHTC involved a 2-day new hire orientation session, followed by nine and a half weeks of training. The Agency originally claimed that the TOHTC was implemented solely for the purpose of complying with their obligation to staff up to 6,100 per the CBA. However, as noted in Arbitrator's Vaughn's decision, during the arbitration, it became clear that the implementation of the TOHTC occurred prior to the staffing mandate and was not directly related to the Agency's obligation to comply with that mandate.

PASS began participating in the new hire orientation sessions at the FAA Academy in early 2005, and continued to participate until late 2006. In July 2006, the Agency notified PASS that it would not allow PASS to participate any longer. At that time, the Agency claimed that, based on the language of Article 3, Section 9, and Article 63, Section 3, PASS was only allowed to hold the two-hour meetings with individual employees at their local sites. During the grievance process, and even during the hearing, the Agency changed its reasoning several times. Arbitrator Vaughn, however, was not persuaded by the Agency's claims and found that language in the CBA clearly allowed PASS's participation in the group new-hire orientation meetings held at the Academy.

To summarize, as remedy, Arbitrator Vaughn ordered:

1. The Agency to cease and desist from refusing to allow PASS to make its private presentation during new hire orientation sessions.
2. The Agency to post an appropriate notice acknowledging that it will not further interfere with employees and/or the Union in the exercise of protected rights. (The language and posting provisions are to be mutually determined by the Agency and PASS).
3. If the Agency conducts its new hire orientation at the Academy, in connection with TOHTC or otherwise, that PASS is allowed to participate and the Agency shall make appropriate adjustments to ensure the provision of the required time, as well as the presence, in duty status, of all new hire employees participating in the class.
4. If the Agency ceases to conduct its new hire orientation at the Academy, then the Union shall be entitled to conduct its presentation wherever the new hire orientation is conducted.
5. If the Agency divides its new hire orientation between two or more facilities, PASS shall be allowed to make its presentation in conjunction with and at the same location as the substantive portion of the Agency's orientation. If it cannot be determined where the substantive portion is conducted, then PASS shall be entitled to make its presentation in conjunction with the earlier of the Agency's presentations.
6. PASS shall be given the opportunity to make its presentation to every new hire employee given Agency orientation, but not the PASS presentation, since the Agency's unilateral change of policy in July 2006.

The detail that the Arbitrator put into his order seems to infer that he has attempted to anticipate the numerous ways the Agency might try to avoid their obligation in the future.

I have asked the Agency's advocate if it intends to appeal this decision to the Federal Labor Relations Authority. I have not yet received a response. If an appeal is filed and the FLRA follows its long-established practice of deferring to the arbitrator's interpretation of the Parties' CBA, the Agency will have little chance of prevailing in an appeal. However, as we have seen far too often, the current FLRA is now a results-oriented, politically driven body that does not hesitate to disregard even its own long-established practices and precedents.

If the Agency does not appeal, I will be working with it over the next 30 days to implement the Arbitrator's award. If anyone has any questions, please feel free to contact me.

Encl.

**Cc: Mike Derby, PASS Counsel
Dennie Rose, PASS Assistant Counsel
All National Assistants
All Regional Assistants**