



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
Field Programs

APR 28 2003

Regina Andrew, President
AFGE Local 3614
Baltimore District Office
10 South Howard Street, 3rd Floor
Baltimore, Maryland 21201

Dear Ms. Andrew:

This decision is issued in response to the step 2 grievance the Union filed on behalf of all bargaining unit employees in the Washington Field Office. The grievance was filed pursuant to Article 41, Negotiated Grievance Procedures, Section 41.07, Regular Grievance Procedures, of the Collective Bargaining Agreement (CBA), between the Equal Employment Opportunity Commission (EEOC or Agency) and the National Council of EEOC Locals No. 216, American Federation of Government Employees, AFL-CIO.

The Union claims that the Agency violated the Fair Labor Standards Act, the Collective Bargaining Agreement, and all other relevant and applicable law, rules, and regulations when it:

1. failed to properly classify (unidentified) bargaining unit employees as FLSA non-exempt;
2. failed to pay (unidentified) bargaining unit employees the proper amount of overtime, by failing to pay the proper overtime rate and by failing to pay for all overtime hours worked, including suffered and permitted overtime;
3. failed to offer (unidentified) employees their right to choose between compensatory time and overtime.

In the step 2 grievance the Union also claims that the Agency violated the Federal Employees Pay Act (FEPA) when it:

4. failed to pay FEPA/Title 5 overtime pay to (unidentified) exempt employees, pursuant to 5 USC 5542; and
5. required (unidentified) exempt employees, whose rate of basic pay is less than the maximum rate of GS10-Step10, to accept compensatory time off in lieu of overtime pay.

As relief, the Union requests the following:

1. reclassify all improperly classified bargaining unit employees as FLSA non-exempt;
2. pay back to all improperly classified employees the difference between the amount of capped overtime paid to the employees in question and the amount of overtime mandated under the FLSA for the past three (3) years;

3. pay full compensation for all suffered and permitted overtime worked;
4. pay liquidated damages or interest, whichever is greater;
5. pay any and all emoluments, including, but not limited to, Thrift Savings Program contributions;
6. reasonable attorney fees, costs, and expenses;
7. that the EEOC cease and desist from failing to offer employees a choice between compensatory time and overtime;
8. back pay to all employees who were not given a choice between compensatory time and overtime, in the amount of the difference between the employees' hourly rate they were paid for compensatory time and the rate at which the employees should have been paid under the FLSA; and
9. any other relief deemed necessary and proper.

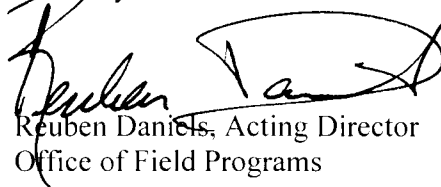
The Agency denies it violated the Fair Labor Standards Act, the Back Pay Act, the Collective Bargaining Agreement, Federal Employees Pay Act, or any other relevant and applicable law, rule, and regulation.

In item 1, the union alleges that the Agency failed to properly classify (unidentified) bargaining unit employees as FLSA non-exempt. A list of FLSA exempt and non-exempt employees attached to HRMS Memorandum No. 550.006-6 dated September 19, 1995, was negotiated with the Union at that time.

While we would like to address the substance of the allegations in items 2 through 5, the absence of specific information identifying the involved employees, and dates and times of alleged violations makes this impossible. The Agency is unaware of any instances of employees being suffered or permitted to work overtime or compensatory time. Nor is the Agency aware of any instances in which it failed to properly compensate employees for any properly ordered or approved overtime.

Therefore, the grievance and the requested remedies are denied. If you are not satisfied with this decision, you may appeal it in accordance with the CBA.

Sincerely,


Reuben Daniels, Acting Director
Office of Field Programs

cc: James Lee, Acting Director
Field Management Programs

Silvio Fernandez, Acting Director
Washington Field Office