



DEPARTMENT OF VETERANS AFFAIRS  
DEPUTY ASSISTANT SECRETARY FOR  
HUMAN RESOURCES MANAGEMENT AND LABOR RELATIONS  
WASHINGTON DC 20420

SEP 21 2009

Mr. Bill H. Wetmore  
Third Executive Vice President  
National Veterans Affairs Council (NVAC)  
American Federation of Government Employees (AFGE)  
Board of Veterans Appeals  
VA Central Office  
810 Vermont Avenue, NW  
Washington, DC 20420

Dear Mr. Wetmore:

This is in response to your grievance dated, June 27, 2009, regarding VA's interpretation that Article 20 – Hours of Duty and Overtime Section 3 – Tour of Duty/Scheduling, paragraph K of the VA/AFGE Master Agreement, which provides 10 minutes at the beginning and end of an employee's tour to change clothes, did not apply when the employee is not required to change clothes at work.<sup>1</sup>

Your grievance alleges that VA violated the Master Agreement by determining that "where employees are not required to change clothes at their place of work, that activity is preliminary/post-liminary and is not compensable as a matter of law."

You allege that VA's interpretation of 5 C.F.R. § 551.412(b)<sup>2</sup> as it applies to Article 20, § 3K is incorrect. Specifically you state that VA ignores the interpretation that changing clothes occurs at the beginning and the end of the tour rather than as a preliminary and post-liminary activity. You included a copy of a May 19, 2009, e-mail from Ms. Bonnie Kerber that communicated this determination to various VA HR personnel. We deny any violation of the Master Agreement.

We find that Ms. Kerber's assessment of the activities is supported by the plain meaning of 5 C.F.R. § 551.412(b) and federal case law. In those instances in which the employee is allowed to wear the required work clothing to and from work, changing clothes is not a preparatory or concluding activity closely related to the performance of the principal activities and is not indispensable to the performance of the activities. Accordingly, under § 551.412(b), time spent changing clothes is not compensable. See

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<sup>1</sup> "When change of uniform is required or permitted, the Department will provide ten (10) minutes at the beginning and ending of the tour for the employees to change clothes." Art. 20, § 3K, VA/AFGE Master Agreement.

<sup>2</sup> "A preparatory or concluding activity that is not closely related to the performance of the principal activities is considered a preliminary or post-liminary activity. Time spent in preliminary or post-liminary activities is excluded from hours of work and is not compensable, even if it occurs between periods of activity that are compensable as hours of work." 5 C.F.R. § 551.412(b).

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DVA, Medical Center, Huntington, WV and AFGE, Local 2344, 56 FLRA No.170 (2000). In barring compensation for preliminary and post-liminary activities under § 551.412(b), OPM ruled out bargaining over contract terms that provide payment for these activities. See Dep't of the Air Force v. FLRA, 952 F. 2d 446, 451-52 (D.C. Cir. Dec. 27, 1991); Dep't of Veterans Affairs and AFGE Local 2344, 56 FLRA 990 (Dec. 2000). Because section 551.412(b) is a mandatory provision, Air Force v. FLRA, 952 F.2d at 452, VA may terminate any practice contrary to that provision.

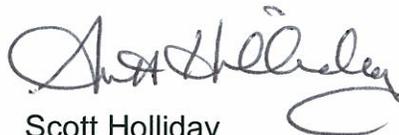
You assert that "VA has often directed employees to change at work and to do so before the tour starts." However, Ms. Kerber made clear that "if management requires the employee to change at the facility, the employee can be provided ten minutes at the beginning and end of the tour to change clothes."

You imply that § 551.412(b) was not in effect prior to the Master Agreement. Even if that were true, it would not be relevant to this issue. Nonetheless, we note that § 551.412(b) became part of the Code of Federal Regulations on August 15, 1983, approximately 14 years prior to the Master Agreement. In any event, it is a government-wide regulation which would override any contrary contract provision.

In September 2008, an arbitrator determined that a similar grievance regarding VA Police was "without merit." FMCS Case No. 08-52667 at 18. The arbitrator determined that in accordance with "56 FLRA 990 and based on the evidence herein, the time spent by VA police officers changing into and out of their uniforms at the beginning and ending of shifts is not compensable." *Id.* at 15, n.17.

The Department cannot be held to a contract provision or a grievance resolution that is contrary to law or government-wide regulation. Accordingly, the Department denies the grievance.

Sincerely yours,



Scott Holliday  
Acting Deputy Assistant Secretary  
for Labor Management Relations