



NATIONAL FEDERATION OF FEDERAL EMPLOYEES

NFFE-IAM VA Council of Consolidated Locals
2101 N. Elm Street / Room 3070 / Fargo ND 58102
Office (701) 239-3700, 3615 Fax (701) 237-2617



**NFFE-IAM
VA Council**

President January 29, 2009
Robert
Redding

**Secretary-
Treasurer** Eric Shinseki, Secretary
US Department of Veterans Affairs (00)
810 Vermont Avenue NW
Jeffrey Washington, DC 20420
Shapiro

**Vice
Presidents** RE: FSLA Grievance

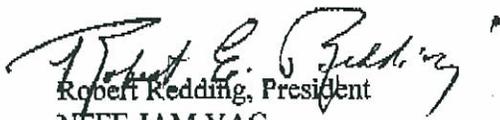
1st VP
Richard
Thomesen Dear Mr. Secretary:

2nd VP Regrettably, the National Federation of Federal Employees, VA Council of Consolidated
Nokita Locals has found it necessary to grieve the attached matter pursuant to our collective
Jones Bargaining Agreement.

3rd VP Please note the attached DATA Request .
Janice

4th VP Please contact Ms. Susan Grundmann, Esq. at (202) 216-4457 should you have any
George questions or concerns regarding this matter.
Adams

5th VP Sincerely,
Don Ingle


Robert Redding, President
NFFE-IAM VAC
AFL-CIO

cc: Grundmann, Susan, Esq. NFFE Fd-1
Michael J. Snider

Re: FLSA Overtime Grievance

This Grievance is filed on behalf of **all** bargaining unit employees at the Agency represented by the Union, including past employees who were in the bargaining unit at any time during the three (3) year period prior to the filing of the Grievance. The Union waives the time frames associated with the Grievance, until a mutually agreeable time subsequent to the gathering and providing of the information requested below in the Union's 7114 RFI and after a Grievance meeting in this matter. This extension of time on the Agency's Grievance Response may be revoked at any time in writing by the Union, with reasonable advance notice to the Agency.

The Union alleges that the Agency violated the Fair Labor Standards Act, Title V, OPM and DOL Regulations, the collective bargaining agreement and all other relevant and applicable law, rule and regulation when it:

1. Failed to properly classify bargaining unit employees as FLSA non-exempt;
2. Failed to pay proper compensation for overtime worked to bargaining unit employees (exempt, nonexempt and wrongfully exempt);
3. Improperly failed to allow bargaining unit employees a choice of compensatory time or overtime (nonexempt and wrongfully exempt); and
4. Failed to pay suffer or permit overtime to employees (nonexempt and wrongfully exempt).

As relief, the Union requests the following:

1. Reclassify all improperly classified bargaining unit employees, retirees and past employees as FLSA non-exempt, retroactive three (3) years from the date of filing of this Grievance, or three (3) years prior to the date when the Agency knew or should have known that these employees were improperly classified, whichever is earlier.
2. FLSA OVERTIME. Backpay under the collective bargaining agreement, Back Pay Act and FLSA for the difference in pay for any overtime paid for overtime worked by wrongfully classified bargaining unit employees under Title 5 or other pay schedule, and the true time and one-half to which the employee(s) were entitled. The Agency will pay each employee switched from Exempt to Nonexempt backpay for a period from three years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to the difference in pay between what the employee received in "capped" overtime pay and true time and one-half for all

- overtime worked during the relevant time period;
3. Payment for suffer or permit overtime retroactive at least three years.
 4. Liquidated damages in an amount equal to the unpaid or underpaid overtime, or interest, if greater than liquidated damages.
 5. COMPENSATORY TIME - used. The Agency will pay each employee switched from Exempt to Nonexempt backpay for a period from three years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to 2 the employee=s regular hourly rate of pay (at the time the Comp Time was earned) times the number of compensatory time hours earned and used;
 6. COMPENSATORY TIME – unused. The Agency will pay each employee switched from Exempt to Nonexempt backpay for a period from three years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to 12 the employee=s regular hourly rate of pay (at the time the Comp Time was earned) times the number of compensatory time hours earned and not used, which “fell off the books” or was otherwise deleted or lost from the Employee's Comp Time balance with the Agency;
 7. COMPENSATORY TIME – Nonexempt Employees – The Agency will pay each already nonexempt employee backpay for a period from three years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to 2 the employee=s regular hourly rate of pay (at the time the Comp Time was earned) times the number of compensatory time hours earned and used, for Comp Time the employee earned and was not given a choice of overtime pay versus Comp Time;
 8. COMPENSATORY TIME – Properly Exempt Employees - The Agency will pay each properly exempt employee at or below the pay rate of a GS-10 Step 10, backpay for a period from six years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to 2 the employee=s regular hourly rate of pay (at the time the Comp Time was earned) times the number of compensatory time hours earned and used, for Comp Time the employee earned and was not given a choice of overtime pay versus Comp Time;
 9. Standby pay or on-call pay, as appropriate;
 10. Liquidated damages in an amount equal to the unpaid or underpaid comp time damages;

11. Interest, if greater or equal to liquidated damages;
12. **Title V Overtime** -- Properly Exempt Employees - The Agency will pay each properly exempt employee backpay for a period from six years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to the employee's overtime rate of pay as reflected at www.opm.gov, for time the employee worked that was "ordered and approved" but for which the employee was not paid or otherwise compensated; and
13. Reasonable attorney fees, costs and expenses.

By way of explanation, the Union is seeking to reclassify all FLSA Exempt employees/positions as FLSA Nonexempt, and seeks damages on behalf of:

- 1) employees wrongfully classified as FLSA exempt;
- 2) employees always classified as FLSA nonexempt;
- 3) employees properly classified as FLSA Exempt, who are paid at or below the pay rate of a GS-10, Step 10; and
- 4) employees properly classified as FLSA Exempt.

There are at least five types of damages that the Union seeks on behalf of all or some of the above groups of people:

- 1) capped overtime damages (for group #1);
- 2) ordered and approved overtime damages (for group #4)
- 3) comp time damages (for groups #1, 2, 3);
- 4) suffer or permit damages (for groups #1 and 2);
- 5) Standby pay or on-call pay (for groups #1, 2, 3, 4);
- 6) liquidated damages (for groups #1, 2, 3);
- 7) interest, if larger than liquidated damages or if liquidated damages are not awarded or available (for groups #1, 2, 3, 4); and
- 8) attorney fees (for groups #1, 2, 3, 4);

Further information can be provided in the Grievance meeting, upon request.

The Union hereby appoints the following individuals to be the points of contact for, and agents of, the Union in all matters touching upon or concerning this Grievance and the associated Request for Information:

Susan Tsui Grundmann, Esq.
General Counsel, NFFE
805 15th Street, NW, Suite 500
Washington, DC 20005
(Direct) 202 216-4457
(Fax) 202 898-1867
sgrundmann@nffe.org email

Michael J. Snider, Esq.
Snider & Associates, LLC
104 Church Lane, Suite 100
Baltimore, MD 21208
410-653-9060 phone
410-653-9061 fax
mike@sniderlaw.com email

As a courtesy, please send me a copy of any correspondence with the Union's attorneys as listed above.

Sincerely,


Robert Redding, President
NFFE-IAM VA Council of Consolidated Locals
AFL-CIO

cc: VAC Grievance Chair, Shapiro, Jeff

Attachments: Data Request (Snider)