



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

April 29, 2008

Bill 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:

I am writing to respond to your April 1, 2008 email response to my March 24, 2008 request for additional information in relation to your grievance on overtime pay for police officers. In your response, you explained that "police officers have to put on their uniforms, go to the armory and draw their weapon sidearm, and otherwise prepare for duty before they actually begin their tour...without being paid to do so at any facility in the VA." You further explained that the amount of time spent is in excess of 15 minutes "for virtually every police officer, for both donning and doffing the uniform and accoutrement."

I will address each issue separately.

UNIFORMS:

Police officers in the VA are permitted to wear their uniforms to and from work.¹ Police officers are therefore not required to work overtime for the purpose of changing into or out of their uniforms and cannot be compensated for those activities.

The Fair Labor Standards Act (FLSA) provides that "activities which are preliminary to or postliminary to" an employee's "principal activity" are not compensable. 29 U.S.C. § 254(a). The OPM regulations that implement the FLSA provide that "[a] preparatory or concluding activity that is not closely related to the performance of the principal activities is considered a preliminary or

¹ VA Handbook 0730, Security and Law Enforcement, paragraph 12(a) (3) provides that "[a]ll items of uniform, except weapons, may be worn by VA police officers enroute between home and facility."

postliminary activity. Time spent in preliminary or postliminary 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). More specifically, the FLRA has held that where employees are not required to change clothes at their place of work, that activity is preliminary/postliminary and is not compensable as a matter of law. *DVA, Medical Center, Huntington, WV and AFGE, Local 2344*, 56 FLRA No. 170 (2000).

VA policy does not obligate police officers to “return to civilian dress after their tour has ended” as stated in your latest communication. If a police officer decides not to take his/her uniform home, that personal decision does not create a requirement for overtime compensation per FLSA. We therefore deny this part of the grievance.

WEAPONS:

As stated in VA Handbook 0730, police officers are not authorized to take their assigned weapons home. The signing in and out of weapons for police officers may constitute a compensable preparatory and concluding activity.

However, we need additional information to be able to determine which officers are entitled to compensation and the amount of such compensation payable to each officer.

Specifically, please provide the following information:

- Identify the facilities that have allegedly been requiring police officers to “report before their scheduled tours, and to stay after their scheduled tours.”
- Name the affected police officers; and
- The amount of time that police officers have been “required” to report before and after their tour.

With respect to your request that police officers receive overtime pay going back six years, compensation for past overtime service is governed by the FLSA, not the Back Pay Act. Claims for back pay under the FLSA are subject to either a two-year or three-year statute of limitations, depending on whether a particular FLSA violation is deemed willful. 29 U.S.C. § 255(a); 29 C.F.R. § 790.21; *cf. AFGE, Local 1741 and U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution Milan, MI*, 62 FLRA 113, 62 FLRA No. 31 (2007).

Finally, as mentioned in my memorandum dated March 17, 2008, we are requesting that all pending local grievances be consolidated with the national grievance to avoid inconsistent outcomes and to facilitate discussion of

settlement options at the national level. However, any local settlement that has already been executed will be honored.

We request a meeting to discuss the issue of consolidation and settlement options for the overtime allegedly worked by VA police officers for returning their weapons before and after their scheduled tours.

Sincerely yours,



Meghan Flanz
Deputy Assistant Secretary
For Labor-Management Relations