



# AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

**John Gage**  
National President

**J. David Cox, Sr.**  
National Secretary-Treasurer

**Andrea E. Brooks**  
National Vice President for  
Women and Fair Practices

June 8, 2007

**By Facsimile and Regular Mail**

Meghan Serwin Flanz  
Associate Deputy Assistant Secretary  
for Labor-Management Relations  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

Re: **National Grievance**

This is a National Grievance filed by the American Federation of Government Employees (AFGE) in accordance with Article 42, Section 11 of the Master Agreement between the Department of Veterans Affairs (VA) and AFGE signed March 21, 1997 (hereinafter, "Master Agreement"). This National Grievance is filed against VA and any and all other associated VA officials regarding violations of the Master Agreement Article 20, "Hours of Work and Overtime", Section 4, "General Overtime Provisions", and any and all other relevant governing laws and regulations and Master Agreement provisions.

In this regard, AFGE notes that it has recently come to its attention that Veterans Service Representatives (VSRs) at Veterans Benefits Administration (VBA) offices nationwide have been performing overtime work for the VBA that VA managers either ordered or that they "suffered or permitted" VSRs to work without being compensated. AFGE contends that VA had actual and/or constructive knowledge that the overtime was being worked by the VSRs and that the non-paid overtime work was being done for the benefit of the Agency.

The Union points out that pursuant to Article 20, Section 4, "General Overtime Provisions", "[w]hen an employee works overtime, whether covered by the Fair Labor Standards Act or Exempt, such overtime will be paid in increments of fifteen (15) minutes. AFGE has been informed that overtime pay for VSRs is covered by the Fair Labor Standards Act (FLSA). Federal employees who are covered by the FLSA are considered "nonexempt" and must be compensated for overtime work in accordance with the FLSA. The FLSA is found at 29 USC chapter 8 (sections 201-219). Overtime occurs whenever a full-time, part-time or intermittent work schedule federal employee performs hours of work in excess of eight hours in a daily tour of duty or in excess of 40 hours in the weekly tour of duty. For employees on tours of duty under a flexible or compressed work schedule, overtime consists of those hours of work performed in excess of their scheduled daily or weekly basic work requirement, as ordered and approved in advance as overtime work.

When overtime is earned both FLSA-exempt and nonexempt employees receive overtime premium pay of time and a half of their hourly rate of pay (subject to conditions and restrictions for the FLSA-exempt), or compensatory time on a straight hour-for-hour basis.

Further, under 29 U.S.C. § 207(a) these employees are entitled to backpay because their overtime work was "suffered or permitted" within the meaning of 5 C.F.R. § 551.102(e). The Union notes that, based on witness statements, the evidence is clear and convincing that VSRs worked for the benefit of the Agency "substantial overtime, without compensation, [and that] managers knew or had reason to know that [such employees] had done so. See 53 FLRA 1469 (1998). Further, based on this information, these employees are also clearly entitled to backpay for the overtime work that they had performed. ("the appropriate period for computation of back pay for uncompensated FLSA overtime is that provided by Congress ... in 31 U.S.C. § 3702(b)(1), is six years.")

In light of the above, it is AFGE's position that VA management officials should: (1) immediately cease and desist from violating Article 20, "Hours of Work and Overtime", Section 4, "General Overtime Provisions" of the Master Agreement, and any and all relevant laws and regulations regarding the payment and/or compensation for VSRs who have in the past or continue to work overtime (2) apply any and all appropriate procedures and elements of remedial relief, including but not limited to, back pay, interest, liquidated damages and attorney fees, for those VSRs determined to have been erroneously excluded from receiving pay and/or compensation for work which may have been "suffered or permitted" (i.e., overtime work for the benefit of the [A]gency, without compensation.

This is a National Grievance and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions regarding this National Grievance, please feel free to contact me at 202-639-6525.

Sincerely,



Jacqueline M. Sims

Assistant General Counsel, AFGE-NVAC

cc: John Gage, National President, AFGE  
Mark Roth, General Counsel, AFGE  
Alma L. Lee, President, AFGE-NVAC  
William Wetmore, Chairman, Grievance Committee, AFGE-NVAC