



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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January 5, 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 for continuing violations of Article 28, Section 25 of the Master Agreement, VA Handbook 5007, Part 5, Chapter 7, Section 1, 5 C.F.R. § 550.901 to 550.906, and any other related laws and regulations or relevant Articles of the Master Agreement with respect to a continuing violation regarding nonpayment of hazardous duty pay and environmental pay for VA police officers and/or other VA employees who performed duties at or were detailed to the VA Medical Center in New Orleans in response to Hurricane Katrina in 2005.

On September 21, 2005, the former VA Under Secretary for Health, Jonathan B. Perlin, MD, PhD, MSHA, FACP, *approved a September 16, 2005 request from the VA Chief Management Support Officer, Nevin M. Weaver, FACHE to provide hazardous duty pay to the police and engineering staff members who were securing and evaluating the VA Medical Center in New Orleans, Louisiana.* (Emphasis added). Mr. Weaver noted that "Hurricane Katrina left in its wake unknown levels of environmental hazards at the VAMC and *the working conditions are difficult with no air conditioning and limited utilities.*" (Emphasis added). He also stated that "[t]he hazardous duty pay would be provided until the medical center is ready for re-occupancy." (Emphasis added).

A Fact Sheet, dated September 16, 2005, referred to "Pay for Duty Involving Physical Hardship or Hazard and Environmental differential Pay in Areas

Affected by Hurricane Katrina" and provided the authorization for hazardous duty pay. The fact sheet also revealed that "*[i]nformation obtained from the Environmental Protection Agency (EPA) indicates that some storm ravaged areas of Louisiana, Mississippi and Alabama may pose potential hazards for individuals based on exposure to standing flood waters, storm debris, unknown airborne agents, toxic chemicals, etc.*" (Emphasis added).

The Fact Sheet further disclosed that "[a]n employee is entitled [to] receive hazardous pay (for General Schedule (GS) employees) . . . if the employee is assigned to perform duty for which a differential is authorized." Additionally, it indicated that "*[i]n view of the exposure possibilities in the storm damaged areas, and based on the hazards identified by the EPA, GS employees assigned to perform duty in a location deemed by their Administration to be hazardous due to the exposure or close proximity to toxic materials or virulent biologicals are entitled to receive 25 percent hazardous duty pay regardless of the nature of the work they are performing.*" (Emphasis added).

On September 26, 2005, Dennis M. Lewis, FACHE, VA Deputy Under Secretary for Health for Operations and Management sent Network Directors (10N1-23) a memorandum regarding "Hazard Pay – VAMC New Orleans". In his memorandum, Mr. Lewis referenced the approval from the Under Secretary for Health "*to authorize hazard pay for the police, engineering staff and other staff who were required to perform service in a hazardous pay area.*" (Emphasis added).

Mr. Lewis noted that "[t]he Network Director (10N16) or his designee will determine coverage of any group of employees who performed service at or were detailed to NOLA and whose official duties placed them in a hazardous environment as defined in 5 CFR Part 550, Subpart I, Appendix A." He related that "*[i]t is assumed the authority for hazard pay began with the first staff remaining at the site after evacuation of all patients and staff.*" (Emphasis added). Mr. Lewis stated that "[f]acilities must properly annotate Time and Attendance records to ensure the correct computation of hazard pay.

On December 21, 2005, a bulletin referred to as "Hazardous Pay Differential and Environmental Differential Pay (EDP) for the VA Medical Center, New Orleans (OF Bulletin 06GA2.04)" was issued by Romano Mascetti, III, Associate Deputy Assistant Secretary of Financial Policy. It authorized hazard pay differential for certain GS employees who performed duties at (or detailed to) the VA Medical Center in New Orleans, Louisiana. The bulletin noted that "*[f]or exposure to toxic agents, GS employees are entitled to receive hazard pay differential for pay at 25 percent of the employee's rate of basic pay" and that "[h]azard pay differential is paid for all hours in a pay status on the day on which exposure occurs.*" (Emphasis added).

Thereafter, on January 19, 2006, a memorandum regarding "Hazardous and Environmental Duty Pay" was sent from the Network Director, SCVAHCN (10N16) to the Deputy Under Secretary for Health For Operations and Management (10N). The Network Director stated the following (in relevant part):

1. As directed by your memorandum dated September 26, 2005, this correspondence outlines eligibility criteria for differential pay that I have determined relevant to VHA staff that were detailed to VAMC New Orleans. This "pay differential applies to GS employees as hazard pay differential (HPD) . . ."

2. The criteria that qualify employees for pay differential is the performance of duties in a location deemed to be "hazardous due to the exposure or close proximity to toxic materials or virulent biologicals". Further, this pay may be authorized for only as long as the hazardous condition(s) exist. *While there is no quantitative data available to characterize existing hazardous conditions, empirical evidence indicate the hazardous conditions at VAMC New Orleans were abated by October 27, 2005, the date of an assessment team's inspection of the facility.* (Emphasis added).

3. I have authorized hazard pay differential for GS employees . . . who were assigned temporary duty status at the VAMC New Orleans from August 31, 2005 through October 27, 2005.

AFGE has been informed that many VA police officers (GS employees) were detailed and/or reported for duty, including temporary duty at the VAMC New Orleans from August 31, 2005 through October 27, 2005 and beyond that period and believe that they are entitled to hazardous duty pay and/or other environmental pay; however, they have never received that pay and have never been given any explanation as to why they did not receive or may not have been entitled to hazard duty pay and/or other environmental pay. Moreover, AFGE and the VA police officers have been given conflicting responses as to when payment of hazard duty pay and/or other environmental pay should have been discontinued and the exact bases for its discontinuance.

In light of the aforementioned, specifically the Under Secretary of Health's authorization for hazardous duty pay to be provided "until the medical center is ready for re-occupancy"; the Network Director's determination (based upon only *empirical evidence*) that the hazardous conditions at VAMC New Orleans were abated by October 27, 2005; the date of the assessment team's inspection of the facility, and in light of the fact that VA has not provided any evidence from EPA, the Occupational Safety and Health Administration (OSHA), the Department of Labor (DOL) or any other Federal or state entity responsible for determining when or whether the hazardous conditions at or near the VAMC New Orleans may have abated, AFGE contends that qualified VA police officers may have been improperly excluded from eligibility for hazardous duty pay and/or other environmental pay in violation of Article 28, Section 25 of the Master Agreement, VA Handbook 5007, Part 5, Chapter 7, Section 1, 5 C.F.R. § 550. 901 to

550.906, and any other related laws and regulations or relevant Articles of the Master Agreement.

In this regard, AFGE points out that pursuant to 5 C.F.R. § 550.906, "Termination of hazard pay differential":

An agency shall discontinue payment of hazard pay differential to an employee when-

-(a) One or more of the conditions requisite for such payment ceases to exist;

(b) Safety precautions have reduced the element of hazard to a less than significant

level of risk, *consistent with generally accepted standards that may be applicable,*

such as those published by the Occupational Safety and Health Administration,

Department of Labor, or c) Protective or mechanical devices have adequately alleviated physical discomfort or distress. (Emphasis added).

Additionally, AFGE notes that, on March 31, 2006, it made a good faith effort to ascertain to status of the matter discussed above and submitted a "Request for Information Regarding Hazardous Duty Pay and Environmental Pay for VA Employees Who Responded to Hurricane Katrina" under 5 U.S.C. § 7116(b)(4) and Article 46, Sections 5 of the Master Agreement between VA and AFGE, signed March 21, 1997 to Ron Cowles, former VA Deputy Assistant Secretary for Labor-Management Relations. In that request, AFGE provided the information set forth above and requested the following information:

1) VA provide AFGE with the "empirical evidence", including the inspection report(s)/finding(s) from the assessment team that it relied on in determining that the hazardous conditions at the VAMC New Orleans abated on October 27, 2005; 2) VA request any and all reports/findings, etc., from EPA, OSHA, DOL or other Federal or state entities disclosing when, if at all, the hazardous conditions abated or discontinued at the VAMC New Orleans and make a determination as to the exact date of the discontinuance of the hazardous conditions at the VAMC New Orleans and provide that information to AFGE; 3) VA provide AFGE with a list of all VA police officers who were detailed and/or other reported for duty, including temporary duty, at the VAMC New Orleans from August 31, 2005 through October 27, 2005 and to the present; and 4) VA provide AFGE with a status report indicating the names of the VA police officers who received hazardous pay differential (including the time periods for said payments) and the names of those officers who did not receive hazardous pay differential for the time periods indicated and to the present.

Additionally, based on the aforementioned, AFGE requested that: 1) VA provide AFGE with the "empirical evidence", including the inspection report(s)/finding(s)

from the assessment team that it relied on in determining that the hazardous conditions at the VAMC New Orleans abated on October 27, 2005; 2) VA request any and all reports/findings, etc., from EPA, OSHA, DOL or other Federal or state entities disclosing when, if at all, the hazardous conditions abated or discontinued at the VAMC New Orleans and make a determination as to the exact date of the discontinuance of the hazardous conditions at the VAMC New Orleans and provide that information to AFGE; 3) VA provide AFGE with a list of all VA employees who were detailed and/or other reported for duty, including temporary duty, at the VAMC New Orleans from August 31, 2005 through October 27, 2005 and to the present; and 4) VA provide AFGE with a status report indicating the names of the VA employees who received hazardous duty pay and environmental differential (including the time periods for said payments) and the names of those officers who did not receive hazardous duty pay and environmental differential for the time periods indicated and to the present.

Further, AFGE requested that VA provide it with any current, information and/or any other documentation related to the discontinuance or continuance of hazardous conditions at the VAMC New Orleans and/or other current information or documentation related to the status of the payment of hazardous duty and/or other environmental differential pay for VA employees.

In its request, AFGE stated that it needed the information to develop evidence for a grievance. It related that it would be helped by this information because it would tend to show that employees were exposed to hazardous conditions. Additionally, AFGE maintained that it would be harmed by not having this evidence because not knowing the nature and extent of the hazardous conditions; it would be placed in a relatively more difficult position of proving that the New Orleans area was in fact a hazardous area.

AFGE requested that VA provide it with all the information that is normally maintained, reasonably available and necessary for the local to effectively fulfill its representational functions and responsibilities. Additionally, it requested that the above-noted information should be provided by April 14, 2006.

On April 14, 2006, Mr. Cowles responded to AFGE's March 31, 2006 information request "concerning hazardous duty pay and environmental differential pay, for VA employees who responded to Hurricane Katrina. Mr. Cowles related that additional time beyond the requested reply date of April 14, 2006 was necessary to provide the information requested by AFGE. He stated that *"[w]e have already started collecting the information but will need another two to three weeks to complete that process.* (Emphasis added).

AFGE notes that while it has made several inquiries regarding the status of the information that it requested on March 31, 2006, and while Mr. Cowles stated on April 14, 2006 that VA had "already started collecting the information" and "two to three weeks was needed to *complete that process*, to date, none of that

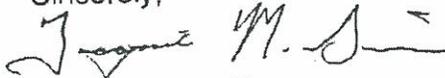
information has been received. Moreover, AFGE notes that payment of hazardous duty pay and environmental pay for many VA police officers and/other VA employees who performed duties at or were detailed to the VA Medical Center in New Orleans in response to Hurricane Katrina has still not been made.

To remedy this matter, AFGE demands retroactive payment of hazardous duty pay and/other environmental pay for all eligible VA police officers and/other VA employees who performed duties at or were detailed to the VA Medical Center in New Orleans in response to Hurricane Katrina.

Further, if based on its review of the information cited above, VA officials and/or other non-VA officials determine that hazardous conditions at the VAMC New Orleans continued following October 27, 2005, and that previously excluded VA police officers and/other VA employees should have received hazardous duty pay and/other environmental pay for any of the time periods determined, AFGE requests that all of the those VA police officers and/other VA employees who are found to be eligible for hazardous duty pay and/other environmental pay should also be appropriately compensated.

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: Alma L. Lee, President, AFGE-NVAC
William Wetmore, Chairperson, Grievance
and Arbitration Committee, AFGE-NVAC