

November 1, 2006

Lewis D. Andrews
US Small Business Administration
409 3rd street S.W.
Washington, DC 20416

Re: FLSA Overtime Grievance – Request for Information Pursuant to 7114(b) of the Statute

Council 228 filed a Grievance on behalf of all bargaining unit employees represented by AFGE Council 228. This is a description of that Grievance and a RFI under §7114(b) of the Statute.

The Union alleges that the Agency violated the Fair Labor Standards Act, 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
3. Improperly offered bargaining unit employees compensatory time in lieu of overtime
4. Failed to pay suffered and permitted overtime to employees

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.
2. Back pay under the collective bargaining agreement 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.

3. Payment for suffered and permitted overtime retroactive at least three years.
4. Liquidated damages in an amount equal to the unpaid or underpaid overtime.
5. Interest, if greater or equal to liquidated damages.
6. Payment for overtime (minus the employee's hourly rate of pay) for any compensatory time worked since six years prior to the filing of this Grievance and the employee's overtime rate of pay, for comp time wrongfully given in lieu of overtime.
7. Reasonable attorney fees, costs and expenses.

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:

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

Request for Information Pursuant to §7114(b)

Please provide the following information to the Council no later than fifteen (15) calendar days from the date this Grievance is filed:

1. A list of all BUEs represented by the Union since 11/1/03, including first and last name, position title, Agency position number, job series, grade and step, FLSA exempt or non-exempt status, email address, business phone number and business address (in hard copy **and electronic format**)
2. A copy of each employee's position description.
3. A copy of one SF-50 for each employee since 11/1/03.
4. A copy of all information relied upon to classify each employee as "exempt" from the FLSA, who is or was "exempt" from the FLSA at any time since 11/1/03 BUE.
5. A copy of any FLSA worksheets for each employee since 11/1/03.
6. The name of the individual(s) who made the determination to exempt each FLSA exempt employee, the date the decision was made, and a copy of all information relied upon to make the determination. (You may exclude internal management correspondence)
7. A copy of any Agency FLSA consistency review since 2000.
8. A list of all overtime worked by each BUE since 11/1/03, by employee, grade and office location.
9. A list of all comp time worked by each BUE since 11/1/03.
10. A list of all credit hours worked by each BUE since 11/1/03.
11. A copy of all sign in/out sheets maintained for any BUE since 11/1/03.
12. A copy of all scan in/out records maintained for any SBA office since 11/1/03.
13. Identification of the precise exemption (ie professional, administrative, executive) relied upon to exempt each "exempt" employee from the FLSA.

The Union further requests that the above specified information be furnished within a reasonable time not to exceed fifteen (15) calendar days. If this request is denied, in whole or in part, please state in writing the name, position title, and grade of the official making the decision, and the statutory, regulatory or contractual citation it is based upon.

Particularized need: The Union believes that the Agency has violated the Fair Labor Standards Act, the Collective Bargaining Agreement, and other rules, law and regulations in regard to the Grievants. The Union needs the requested information to prove the underlying facts and contentions in its Grievance. In particular, the Union needs the information to show that the Agency improperly exempted many bargaining unit employees under the FLSA, underpaid or failed to pay proper overtime to those employees, and illegally offered comp time in lieu of overtime. The position descriptions are needed to show the critical, essential and grade-controlling duties of the positions, to show that the job duties have not changed and to show that the Grievants are and were improperly exempted. The Union needs a list of the individuals who denied the overtime to call them as witnesses and a list of employees to call them as witnesses.

The SF-50's will show that the Grievants are improperly exempted and the Agency's exemption pattern was arbitrary, capricious and/or violative of the Agreement. Finally, the Union needs the rosters, overtime rosters and printouts of overtime worked to show damages to the Grievants. The requested information will further enable the Union to fulfill its representational duties to represent employees under the statute. If the Agency is unable to fulfill any request in full, please fulfill it in any non-objectionable part, and explain any denial in detail.

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mike@sniderlaw.com email

As a courtesy, please send me a copy of all correspondence with the Union's attorneys.

Sincerely,

Elaine Powell-Belnavis

Elaine Powell-Belnavis, President
SBA AFGE Council 228