

<b>In the Matter Between:</b>	)	<b>Before:</b>
	)	
<b>NATIONAL FEDERATION OF</b>	)	
<b>FEDERAL EMPLOYEES-Local 273</b>	)	<b>FREDERICK P. AHRENS</b>
<b>Fort Sill, Oklahoma,</b>	)	
<b>Union</b>	)	<b>ARBITRATOR</b>
	)	
<b>v.</b>	)	
	)	<b>FMCS Case No. 08-51132</b>
<b>DEPARTMENT OF THE ARMY, US</b>	)	
<b>ARMY FIELD ARTILLERY SCHOOL</b>	)	<b>Motions and Non-Stipulated Issues</b>
<b>Fort Sill, Oklahoma</b>	)	
<b>Agency</b>	)	

**INTRODUCTION**

The Parties have participated in three Pre-Hearing Conferences regarding various issues and questions surrounding a grievance filed by the Union regarding alleged Agency FLSA violations involving Bargaining Unit Member Employees. During this period several Motions have been filed, discussed and briefed by the Parties. Oral arguments were made on motions and a number of non-stipulated issues.

This document covers all such motions and non-stipulated issues discussed except for the Union’s Motion to Compel Responses to a Request for Information under 5 USC 7114(b) (4) or in the Alternative for an Adverse Inference. This latter motion will be ruled on promptly after the Arbitrator’ return to his office on December 5, 2008.

The rulings on the motions and non stipulated issues were made after the Arbitrator reviewed all submitted briefs, papers, and all oral discussions in pre hearing conferences.

**RULINGS ON MOTIONS AND NON STIPULATED ISSUES**

The rulings on motions and non stipulated issues are as follows;

## **MOTIONS**

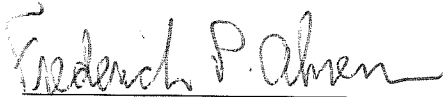
1. The motion as it relates to Bifurcate Liability and Damages is denied. The Arbitrator believes both parties must agree to bifurcation.  
  
The motion as it relates to Representative Testimony is granted. It appears this grievance will be presented in arbitration by classification. Representative testimony will be allowed for each classification. Testimony that is relative to more than one classification will be allowed for each classification for which it is relative.
2. Motion to Include Prior Bargaining Unit Employees is granted. The inclusion of past employees may be inferred from the refilling of the grievance on December 3, 2007. In that refilling the Union included the September 26, 2007 grievance which it was refilling. In the September dated grievance the Union clearly referred to unit employees, retirees and past employees.

## **NON STIPULATED ISSUES**

- a. Burden of Proof Under the FLSA for proper Exempt Classification by Agency. The Arbitrator will follow the regulations as stated in 5 USC 201 et seq.
- b. The Arbitrator will use his discretion in allowing or denying any liquidated damages where the Agency has proven it acted in good faith to comply with the FLSA.
- c. Does the 38-day time limit apply to this case? The Arbitrator accepts the position that FLSA time limits and not CBA time limits apply to a FLSA case after it is filed under the CBA.

- d. The Arbitrator determines this grievance is a continuing grievance and as such the violations continue from day to day. Therefore the grievance dated December 3, 2007 is timely and laches does not apply.
- e. The information in the grievance filed was sufficient to state a claim for relief.
- f. The grievance involves a continuing violation.

Respectfully submitted this 22<sup>nd</sup> day of November 2008.



Frederick P. Ahrens  
Frederick P. Ahrens  
Arbitrator, FMCS

**CERTIFICATE OF SERVICE**

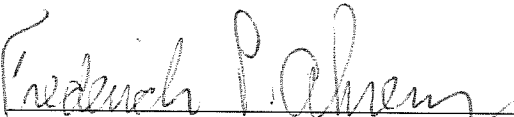
I hereby certify that the Arbitrator's Rulings on Motions and Non Stipulated Issues was served on the following individuals in the method indicated below.

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