

IN THE MATTER OF ARBITRATION BETWEEN:

NATIONAL COUNCIL OF HUD)	
LOCALS 222, AFGE, AFL-CIO, and)	
NFFE LOCAL 1450, AFL-CIO,)	
)	
Union,)	Issue: FLSA Overtime
)	FLSA Exemptions
v.)	
)	
U.S. DEPARTMENT OF HOUSING)	
AND URBAN DEVELOPMENT,)	
)	
Agency.)	
_____)	

Union’s Motion for Sanctions for Agency’s Failure to Comply with Arbitrator’s Order Regarding Scheduling of Hearings

The Agency has failed to comply with the Arbitrator’s Order regarding scheduling of hearings. Instead, it has brazenly filed a Motion for Withdrawal of the Arbitrator. The Union has requested a minimum of 45 days to respond to the Agency’s Motion, but since we had already prepared most of the instant Motion prior to receipt of the Agency’s Motion, we file it now.

Background, Facts and Argument

The Parties and this case have had a long (and some might say, tortured) history of delay and intransigence on behalf of the Agency. The Union filed the Travel Grievance in June 2003 and the FLSA Grievance in December 2003, pursued the case and in exasperation requested arbitration in the summer of 2005. After some hearings, in the Spring of 2006, the Agency hired outside counsel, which delayed processing of the case for months. In the Fall of 2006, the Agency attempted to unilaterally cancel hearings due to an alleged inability to proceed due to a Continuing Resolution. Despite the

ending of the CR in February 2007, no hearings have been scheduled since that time and the Agency has refused to even offer or discuss dates.

It must be noted at this juncture that the Parties have agreed on the following order to be followed in scheduling future hearing dates: 1) GS-10 and below damages; 2) GS-950-11/12 damages; 3) GS-904 liability.

The Union attempted on a number of occasions in Spring and Summer 2007 to raise the issue with the Agency, orally and in writing. Seeing no success, the Union filed a Motion with the Arbitrator to move the case along to have more hearing dates. The Arbitrator ruled, in an Order dated 8/27/07:

III. ORDER

The Parties are **ORDERED** to adhere to the following procedures regarding scheduling:

1. The next steps in the resolution of the two Grievance of Parties which are the basis of this dispute is to complete the hearings in the Series 950, Legal Interns proceedings and the GS-10 and below damage proceedings. Following the completion of these hearings, the Parties will be offered the opportunity to agree to the next group of employee-grievants to schedule for dispute resolution hearing. Absent agreement on the next group of employee-grievants for hearing, the Arbitrator will immediately identify and define the group. The Parties are encouraged to develop a comprehensive schedule for the resolution of this dispute.

The Arbitrator also ordered the Parties to meet and confer, which the Union attempted in good faith to do (and the Agency totally failed to do):

2. The Parties' counsels must immediately review the Arbitrator's offer of available 2007 dates below. The Parties' counsels must confer and discuss scheduling hearings to complete the record in the 950 and GS-10 and below Damages cases in light of these dates.

The Agency failed to confer with the Union about its Motion for Recusal/Withdrawal, and failed to respond to the Union's attempts at meeting and conferring about the 8/27/07 Order.

The Arbitrator ordered (there is no Par. 3 in the Order):

4. The Parties' counsels must confer and attempt in good faith to agree on hearing dates by close of business September 4, 2007. Absent agreement, the Parties' counsels must provide the Arbitrator with their available dates from September, 2007 through February 2008. Thereafter, the Arbitrator will conduct a conference call September 10, 2007 at 10:00 a.m. to set hearing dates.²

The Agency, as noted, has failed to meet and confer, and has failed to respond to the Union's good faith efforts to meet and confer. The Agency is 99% likely to not submit this information to the Union and Arbitrator today, as ordered. The Union is available on September 10, 2007 for the conference call.

The Arbitrator further ordered:

5. The Parties' counsels must confer and attempt in good faith to agree on the order of presentation and number of days for completing the Series 950, Legal Intern and GS-10 and below Damages hearings. Absent agreement, the Parties' counsels must provide the Arbitrator with their proposed order of presentation and number of days for completing the hearings. Thereafter, the Arbitrator will set the order of presentation and number of days for the hearings, subject to motions at the hearings for reasonable extensions of time to present a Parties' case.

As noted, the Union has made a good faith effort to confer and agree on the order of presentation and number of days for completing the above hearings. The Agency has failed and refused to respond to the Union's written and oral good faith attempts. The

Agency is 99% likely to not submit this information to the Union and Arbitrator today, as ordered.

Finally, the Arbitrator ordered:

6. Absent agreement between the Parties on further dispute resolution procedures the Arbitrator will ORDER procedures from time to time as the Arbitrators deems necessary to conduct the arbitration. It bears repeating that the Parties are encouraged to develop a comprehensive schedule for the resolution of this dispute.

It is clear that the Agency has no intention of complying with the Arbitrator's Order. In fact, it is clear that the Agency has not complied with the Arbitrator's Order to reclassify the GS-360-11 through 15 employees either. The Agency's outright chutzpah is deserving, at this stage, of serious sanctions.

The Agency's actions are, however, symptomatic of a far more serious and insidious pattern of delay, postponement and obfuscation.

Conclusion

The Union seeks a declaratory judgment finding noncompliance with the Arbitrator's Order(s), an Order that the Agency cease and desist from failing to comply with the Order(s), that the hearings proceed forthwith and that the Agency pay reasonable fees, costs and expenses for this action.

Respectfully Submitted,

_____/s/_____
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_____/s/_____
Carolyn Federoff
President, AFGE Council 222

Certificate of Service

I certify that a copy of the foregoing was served upon the Agency via email.

Date: September 4, 2007

_____/s/_____
Michael J. Snider, Esq.