

IN THE MATTER OF ARBITRATION BETWEEN:

NATIONAL COUNCIL OF HUD
LOCALS 222, AFGE, AFL-CIO,

Union,

v.

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,

Agency

Declaration of Barbara J. Edwards

I, Barbara J. Edwards, do hereby state as follows:

1. I am the Deputy Assistant Secretary for Human Resource Management at the U.S. Department of Housing and Urban Development (“HUD” or “Department”). In that capacity, my responsibilities include the Office of Human Resources. I am considered to be the primary leader in Human Capital matters for the Department.

2. Prior to my current position, I served as Deputy Assistant Secretary for Resource Management, where I was responsible for administering a \$142 million budget. My responsibilities included delivery of support for national initiatives, providing policies and guidelines, and strategic planning for the Office of Administration's services, including but not limited to human resources, to include staffing and classification and human resources related services.

3. I have also held positions in HUD as Deputy Assistant Secretary for Technical Services, Director and Deputy Director of Human Resources, and Director of Labor and Employee Relations.

4. As part of my official duties, I and my staff have been personally involved in formulating the Department's positions and actions in response to the grievances filed by the Union on June 18, 2003 and December 24, 2003.

5. In particular, I am aware that the Department performed what the Union refers to in its Motion for Summary Judgment as the "HUD FLSA Evaluation." However, the Union appears to misunderstand both the purpose and the procedure of that evaluation.

6. Specifically, the Union states on page 3 of its Motion that HUD classification experts evaluated each HUD employee position description ("PD") at the levels of GS-11 and higher and made "a decision as to whether HUD now considers the position, and all incumbent employees in the position, to be FLSA exempt or FLSA non-exempt." This is incorrect for several reasons.

7. First, it is important to understand that the classifiers did not review the actual job duties of each incumbent employee. Rather, they reviewed only written PDs. Some of those PDs are 10 or more years old and do not necessarily reflect the actual job duties of some or all of the incumbents. Furthermore, even if the PDs were more current, the applicable Office of Personnel Management ("OPM") regulations state that the designation of an employee as FLSA exempt or non-exempt ultimately rests on the duties actually performed by the employee. Thus, under no circumstances could a final decision as to the status of an individual employee have resulted from the so-called HUD FLSA Evaluation.

8. Furthermore, the classifiers did not "make a decision as to whether HUD now considers the position, and all incumbent employees in the position, to be FLSA

exempt or FLSA non-exempt.” As just explained, the classifiers did not look at “all incumbent employees.” Also, the classifiers’ work was undertaken at short notice and in an expedited manner in order to evaluate HUD’s litigation position and minimize the costs to taxpayers in the event HUD is ultimately found by the arbitrator to be classifying employees incorrectly. Consistent with OPM’s regulations, which state that, in cases of reasonable doubt, an employee should be treated as non-exempt, HUD has begun treating all questionable cases as non-exempt on a going-forward basis. However, HUD never intended this as an “admission” for purposes of the arbitration that any position is non-exempt, nor do I believe that HUD is precluded from revisiting the classification as applied to a particular employee.

9. Similarly, with regards to GS-10s and below, HUD did not intend the Partial Settlement Agreement between HUD and the Union dated September 28, 2005 to be an admission that any individual employee is non-exempt. In paragraph 1 of that agreement, the Department agreed to identify by October 21, 2005 any employees at GS-10 or below that the Department considered to be exempt. HUD further agreed that—

If the Agency does not identify an employee as described in paragraph 1 and provide the information described in paragraph 2 for an employee/position, that employee/position will be reclassified to FLSA non-exempt status effective the beginning of the first full pay period after October 21, 2005.

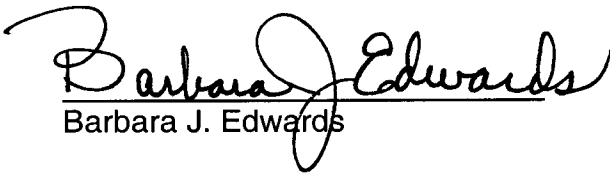
10. This provision gave HUD 15 working days to review more than 20 job classifications consisting of approximately 250 individual employees. Again, consistent with OPM’s rule that cases of reasonable doubt should be resolved in favor of finding the employee non-exempt, HUD decided to treat all GS-10s and below as non-exempt on a prospective basis.

11. HUD never intended the above statement to be an admission that any individual employee is non-exempt or was non-exempt in the past. To the contrary, the Partial Settlement Agreement states—

The parties agree that the issue of damages (including retroactive date of reclassification) . . . has not been resolved, and will be addressed by the parties separately.

12. As a further indication that HUD never intended to admit that any positions were improperly classified, the Partial Settlement Agreement clearly states that reclassifications will be effective October 21, 2005.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 29, 2006.


Barbara J. Edwards