

IN THE MATTER OF ARBITRATION BETWEEN:

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

**Union's Motion to Enforce Compliance
with GS-10 and Below Settlement Agreement**

The Agency has failed to comply with the Settlement Agreement regarding GS-10s and below. It has had over 5 months to reclassify 203 employees, but has failed to do so. Worse, it continues to post positions on the Internet at the GS-10 and below level as FLSA Exempt. The employees who are still Exempt are still being shorted on any overtime they work, and deserve an immediate remedy.

Background, Facts and Argument

The Parties entered into a Settlement Agreement on 9/28/05. The Parties agreed that Arbitrator Rogers would retain jurisdiction over compliance with the Agreement. On October 24, 2005, the Agency emailed the Union and Arbitrator that:

The Department has concluded its review of positions at the GS-10 level and below with respect to FLSA status pursuant to the subject settlement. agreement dated September 28, 2005.

As a result of that review, and in accordance with the settlement agreement, all positions at the GS-10 level and below with an exempt FLSA status will be

changed to a non-exempt status effective the first full pay period after October 21, 2005.

This email was later appended to the Settlement Agreement and made part thereof in an arbitration meeting. At the time the Agency and Union entered into the Settlement Agreement, there were around 203 employees listed at the GS-10 and below level on the September 2005 Employee List. That did not include many employees who the Agency had agreed to reclassify (ie those on the employee lists at the GS-10 and below level between June 2000 and September 2005).

On 2/26/06 and again on 3/23/06, the Union asked for an updated Employee List, to evaluate the Agency's compliance with the Settlement Agreement.

On April 6, 2006, the Union was finally provided with an Employee List, although this one differed in significant aspects from those previously provided. Nevertheless, the document shows significant failures on the part of the Agency to comply with the Settlement Agreement.

At least 53 of the 203 GS-10 and below individuals listed on the 2005 employee list have not been reclassified to FLSA non-exempt status (see **Exhibit A**). A large number of the 203 employees have likely been promoted to GS-11 or above positions and do not appear on the 3/18/06 Employee List. In short, the Agency has failed to comply with the Settlement Agreement and **at least 26%** of the covered employees are still Exempt. That means they are, and have been, paid overtime at the "capped" level under Title V and other damages have continued to accrue.

The Union believes that the Agency has had over 5 months to reclassify a mere 203 employees. It has failed to do so, and its failure is a material breach of the Settlement Agreement.

Further, the Agency has continued to post numerous jobs at the GS-10 and below level on the Internet as FLSA Exempt (**see attached**). The Agency stated at the April 6, 2006 meeting, without any factual basis whatsoever, that although this is true, those positions are actually being filled as non-exempt.

Apologetics aside (including any alleged difficulty the Agency may have in posting jobs to usajobs.opm.gov and changing the postings), the fact remains that the Agency has not reclassified dozens of employees yet, and continues to post such positions as Exempt.

The Union seeks a declaratory judgment finding noncompliance, an Order that the Agency immediately comply with the Settlement Agreement by a date certain, that the Agency cease and desist from failing to comply with the Settlement Agreement, that the Agency pay certain damages to the affected employees, and that reasonable fees, costs and expenses be awarded 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: April 9, 2006

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