

FEDERAL MEDIATION AND CONCILIATION SERVICE

ARBITRATOR VICKI PETERSON COHEN

In the matter of:

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 3828

Union,

and

DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
FCI BASTROP TX

Agency.

FMCS Case No.:14-55959-3

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution Bastrop, Texas (“FCI Bastrop” or “Agency”) and the American Federation of Government Employees (“AFGE”) Local 3828 (“Grievant” or “Union”) in resolution of the grievance filed by the Union on February 26, 2014 concerning the Agency’s alleged failure to pay overtime compensation pursuant to the Fair Labor Standards Act (“FLSA”) for time spent performing work when traveling between shifts at the institution and shifts at local hospitals, and the failure to pay mileage reimbursements for the travel between the two shifts. In full and complete settlement of the above-referenced case (FMCS No. 14-55959-3), the parties by and through their undersigned representatives, freely and voluntarily agree to the terms outlined in this Agreement.

1. **Coverage**

The Grievant is AFGE Local 3828. The Union is the certified representative of all bargaining unit employees represented by Local 3828. The Grievant warrants and represents that no other action or suit with respect to the claims that are set forth in the grievance covered by this Agreement will be filed in, or submitted to, any court or any administrative forum including, but not limited to, the General Accounting Office or the Office of Personnel Management for the time period that this grievance covers (for the time period from February 26, 2011 through the date that this agreement is fully executed). By agreeing to accept payment under this Agreement, the Grievant agrees to waive any right or entitlement to pursue or collect payment for any current or former bargaining unit member for any overtime or FLSA claim asserted in this grievance for the time period from February 26, 2011 through the date that this agreement is fully executed. This agreement resolves the FLSA claims asserted in the grievance from February 26, 2011 through the date that this agreement is fully executed for all bargaining unit employees assigned to FCI Bastrop from February 26, 2011 through the date that this agreement is fully executed. This Agreement is fully executed on the date of the last signature.

2. **Backpay.**

Without constituting an admission of liability or any wrongdoing upon the part of either the Agency or the Union, the Agency agrees to pay backpay in the gross amount of Forty-Three Thousand, Nine Hundred Thirty-Three dollars and Forty-Nine cents (**\$43,933.49**) to the Backpay Participants (*i.e.*, current and former bargaining unit employees who timely completed the Union's paperwork claiming a possible entitlement to damages).

Within sixty (60) days of the execution of this Agreement, the Union shall provide the Agency with a list of Backpay Participants and the backpay amounts owing to each of them. This

list will include the Backpay Participant's social security number and a breakdown of backpay by fiscal year. The total gross amount of the backpay for all Backpay Participants shall be **\$43,933.49**. It is the Union's sole responsibility to determine the backpay amounts owing to each of the Backpay Participants.

Within 30 days of the date that the Agency receives the listing of Backpay Participants from the Union setting forth the amounts owed to each of them, the National Finance Center ("NFC") will distribute to each Backpay Participant the backpay amount owed as identified by the Union. The Agency will use a spreadsheet provided by NFC to ensure smooth processing of the backpay payments. The Union agrees to assist NFC by providing information necessary to complete the spreadsheet, including providing information regarding the amount of the backpay payment. In addition, the Union and its counsel agree to protect all confidential information set forth in the spreadsheet including bargaining unit employee social security numbers.

For any Backpay Participant who is a current employee of the Bureau of Prisons, the NFC will disburse the backpay directly to the Backpay Participant within 30 days of the date that the Agency receives the listing from the Union. On or before the date that the NFC disburses the backpay to the Backpay Participants, it shall provide Woodley & McGillivray LLP with a listing of the net amounts paid to each Backpay Participant and the date that the monies were or will be disbursed to the Backpay Participants.

The NFC will mail the backpay checks for all former employees who are Backpay Participants, (made payable *solely* to the Backpay Participant), to Woodley & McGillivray LLP, 1101 Vermont Avenue, NW, Suite 1000, Washington, DC, 20005 within 30 days of the date that the Agency receives the listing from the Union of Backpay Participants setting forth the backpay amount each is owed. The Agency or NFC will also send Woodley & McGillivray LLP a list of

the former employee Backpay Participants along with the net amount of each of the checks that it is sending to Woodley & McGillivray LLP for distribution to the separated Backpay Participants.

NFC shall issue IRS Form W-2 Wage and Tax Statements to all Backpay Participants for the backpay amounts paid to them. The Agency and/or NFC shall be responsible for making all necessary withholdings from, and all matching employer tax payments related to, the backpay amounts paid to the Backpay Participants.

3. Liquidated Damages, Mileage Reimbursement, Interest, and Attorneys' Fees and Expenses

In addition to the backpay described in paragraph 2 above, the Agency shall make a lump sum payment of One Hundred Thirty-Six Thousand, Sixty-Six dollars and Fifty-One cents (**\$136,066.51**), which includes liquidated damages, mileage reimbursement, interest, and attorneys' fees and expenses, to the law firm of Woodley & McGillivray LLP, 1101 Vermont Avenue, N.W., Suite 1000, Washington, D.C. 20005, by an electronic funds transfer or a single check made payable to "Woodley & McGillivray, LLP" on or before September 1, 2016.

Woodley & McGillivray, LLP will provide within three days of the execution of this Agreement, the bank account and routing data for the electronic transfer.

The breakdown of the **\$136,066.51** is as follows:

- Liquidated Damages: **\$43,933.49**
- Mileage: **\$24,757.26**
- Interest on Mileage: **\$1,495.31**
- Attorneys' Fees: **\$56,605.52**
- Expenses: **\$9,274.93**

Woodley & McGillivary LLP on behalf of the Grievant will be responsible for distributing to each Backpay Participant his/her respective share of the liquidated damages, mileage, and interest lump sum amount. Recipients are solely responsible for any current or future tax liabilities incurred as a result receiving liquidated damages. The parties agree that this Agreement does not determine the amount of any income tax or any other taxes for which the Grievant, Backpay Participants, or beneficiaries may be liable now or in the future as a result of this Agreement. After making any distribution to the Grievant, Backpay Participants, or other beneficiaries pursuant to this paragraph, all required forms will be submitted by Woodley & McGillivary, LLP on behalf of the Union to the Internal Revenue Service and to each Backpay Participant, or beneficiary, for the liquidated damages paid under this Agreement.

4. Interest

In the event that the Agency fails to pay the amount of One Hundred Thirty-Six Thousand, Sixty-Six dollars and Fifty-One cents (\$136,066.51), on or before September 1, 2016 to Woodley & McGillivary, LLP, interest shall begin to accrue on the amount owed beginning on September 2, 2016. Interest will accrue in accordance with the formula prescribed under the Back Pay Act, 5 U.S.C. §5596(b)(2)(A), and by the Office of Personnel Management in FPM Letter 550-78. The interest shall be computed at the rate or rates in effect under Section 6621(a)(1) of the Internal Revenue Code of 1986 and shall continue to accrue until the Agency transmits the lump sum amount to Woodley & McGillivary LLP in accordance with paragraph 3 above.

Similarly, in the event that NFC fails to disburse the backpay payments to the Backpay Participants within 30 days of the date that the Agency receives the listing from the Union, interest shall begin to accrue on the amounts owed beginning on 31st day following the date that

the Agreement is executed. Interest will accrue in accordance with the formula prescribed under the Back Pay Act, 5 U.S.C. §5596(b)(2)(A), and by the Office of Personnel Management in FPM Letter 550-78. The interest shall be computed at the rate or rates in effect under Section 6621(a)(1) of the Internal Revenue Code of 1986 and shall continue to accrue until NFC disperses the backpay amounts to the Backpay Participants.

5. Release From Claims Related to This Agreement

The Union and the Agency understand and agree that in consideration for the payment made by the Agency and the Agency's compliance with the terms of this Agreement, the Grievant remises, releases and forever irrevocably discharges the United States Government, the Federal Bureau of Prisons, the Agency and their officers, agents and employees, each of them, separately and collectively, from the claims asserted in this case covered by this Agreement for the time period from February 26, 2011 up through the date that this agreement is fully executed.

6. Waiver

In consideration for the payments made and the promises provided herein, the Grievant will not sponsor any arbitration or individual grievances seeking overtime or FLSA compensation for the specific claims asserted in this case covered by this Agreement for the time period from February 26, 2011 through the date that this agreement is fully executed.

7. Extensions

Any of the deadlines set forth in this Agreement may be extended by mutual agreement of the Union and the Agency.

8. Precedent

This Agreement is made solely for the purpose of settling and permitting entry of final resolution of this case (FMCS Case No.:14-55959-3) that covers the time period from February

26, 2011 through the date that this agreement is fully executed. The parties agree that this Agreement shall not be cited as precedent, and may not be cited, published, or referenced by either party as justification for their respective positions or referred to in any other proceeding, whether judicial or administrative, for any purpose other than to enforce the terms of this Agreement. The parties recognize that it is in their respective interests to resolve this dispute through this Agreement.

9. Completeness of Agreement

This document constitutes the complete terms of the Agreement and supersedes any and all prior oral or written representations, understanding, or agreements between the parties to this Agreement.

10. Authority of the Parties

The parties agree that they have full authority to enter this Agreement and to make the promises, obligations and considerations contained herein. The Grievant's representative of record represents that he is authorized to enter into this Agreement on behalf of AFGE Local 3828, which has full authority to enter into this Agreement and to make the promises, obligations and considerations contained herein. The Agency's representative of record represents that he is authorized to enter into this Agreement on behalf of the U.S. Department of Justice, Federal Bureau of Prisons, FCI Bastrop, which has full authority to enter into this Agreement and to make the promises, obligations and considerations contained herein.



Jeff Ormsky
President, AFGE Local 3828

Cheron Nash
Warden, FCI Bastrop

Date: 7/5/16

Date: