

Before The Impartial Arbitrator Robert J. Callaway

In the matter of:	:	
	:	
AMERICAN FEDERATION OF	:	
GOVERNMENT EMPLOYEES,	:	
AFL-CIO, LOCAL 3844, TALLADEGA,	:	
ALABAMA,	:	
	:	
Union,	:	FMCS Case No. 12-1025-00046-3
	:	
and	:	
	:	
UNITED STATES DEPARTMENT	:	
OF JUSTICE, FEDERAL BUREAU OF	:	
PRISONS, FEDERAL CORRECTIONAL	:	
INSTITUTION, TALLADEGA,	:	
ALABAMA.	:	
	:	
<u>Agency.</u>		

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution (FCI), Talladega, (“Agency”) and the American Federation of Government Employees Local 3844 (“Union”) in resolution of the grievance (FMCS Nos. 12-1025-00046-3), filed on August 19, 2011 alleging the Agency’s failure to pay overtime compensation pursuant to the Fair Labor Standards Act (“FLSA”) for time spent by bargaining unit staff performing work before and/or after scheduled shift start and stop times. In full and complete settlement of the above-referenced grievance, the parties by and through their undersigned representatives, freely and voluntarily agree to the terms outlined in this Agreement.

1. Coverage

The Grievants are past and present employees represented by the Local Union with a duty station at the Federal Correctional Institution, Talladega, Alabama. The Union warrants and represents that no other action or suit with respect to the claims that are set forth in the grievance covered by this settlement agreement will be filed in or submitted to any court or any administrative forum including but not limited to, the Court of Federal Claims, any federal district court, the Federal Labor Relations Authority (FLRA), the General Accounting Office or the Office of Personnel Management for the time period beginning June 19, 2011, through the date the settlement is fully executed. The Grievant agrees to immediately withdraw any complaints, charges, or claims, filed by Grievant or its legal counsel which are related in any way to the issues in the grievance being settled. By agreeing to accept payment under this settlement, 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 portal-to-portal claims made in the grievance for the time of June 19, 2011 through the date this Agreement is fully executed. This agreement is fully executed on the date of the last signature.

2. Grievant Payment

Without constituting an admission of liability or any wrongdoing upon the part of either the Agency or the Grievant, the Agency agrees to pay the bargaining unit correctional officers to resolve all claims for FLSA overtime pre-shift and post-shift work claimed in the grievance for bargaining unit correctional officers at the Federal Correctional Institution from June 19, 2011, through the date the settlement is fully executed. This payment covers all back pay, interest, and liquidated damages which may have been claimed by all Grievants on behalf of present and

former bargaining unit staff of the Bureau of Prisons with a duty station at FCI Talladega during the relevant period of time.

3. Payment Distribution

The Agency and local Union will work together to jointly create a list of all bargaining unit correctional officers who worked 24-hour posts on the Morning Watch shift at FCI Talladega during the relevant period of time. The list will include retirees and those employees who are still employed with the Federal Bureau of Prisons, their current duty location, and the number of pay periods that they worked 24-hour Morning Watch posts at the FCI Talladega between June 19, 2011 and the execution date of this agreement. It will include their names, social security numbers, their last known addresses, (if this does not violate their privacy under the Privacy Act and is available) and the number of pay periods that they worked 24-hour Morning Watch posts at the FCI Talladega.

Once the list is completed, the Agency and the Union will meet to determine the amount to be paid to each grievant.

The US Department of Agriculture's National Finance Center (NFC) will make the payout through the payroll system. The NFC will make all necessary payroll deductions. For tax reporting purposes, this amount will be included and reported on a W-2 tax form. Employees currently paid by the NFC will receive payment through direct deposit. For those not in the NFC, such as retirees and the families of deceased eligible employees, checks will be issued. The identified employees will be paid as soon as possible, but no later than 60 days following the completion of the joint list of payees described above.

Payments made via the NFC which cannot be made or checks which are returned for any

reason, or are for identified employees with unknown addresses, will not be subject to the deadlines as stated in this agreement. For payments which are returned or were not sent due to the inability to locate the individual, the Agency and the Union will both attempt to locate these individuals through resources to which they have access. Once these individuals are located and verified, payment will be mailed to the identified individual's current address, unless payment can be made through the payroll system. For identified individuals who cannot be located by the Agency and the Union after 180 days from the date the joint list of payees described above is completed, no payment will be made.

4. Attorney's Fees

The Agency agrees to pay attorney's fees and costs (collectively referred to as Attorney's Fees) incurred by Local 3844 in pursuing the instant case. The Attorney's Fees shall be \$30,401.28, as detailed in Exhibit A, Attorney's Affidavit and Timeslips. The Agency agrees to render payment of said attorney fees within ninety (90) days of execution of this agreement by electronic transfer to the checking account of: American Federation of Government Employees-Legal Representation Fund, 80 F Street, NW, Washington, DC 20001.

The fees shall be deposited into:

Account number 4380248986
Bank routing transfer number 054001220
Wells Fargo
1753 Pinnacle Drive, McLean, VA 22102
Tax ID Number is 53-0025740
LRF CAGE Code: 490Z5.

5. Penalty

In the event that the Agency fails to begin processing the payments within 60 days after the Agency and Union have completed their joint list of payees, described in section 3 of this

agreement, interest shall begin to accrue on the amount owed after this date. 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. 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 final payment.

6. Release From Claims Related to Settlement

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, all Grievant remises, releases and forever irrevocably discharges the United States government, the United States Department of Justice, the Federal Bureau of Prisons, the Agency and their officers, agents and employees, and each of them, separately and collectively, from the claims asserted in the captioned grievance arbitration (FMCS 12-1025-00046-3) covered by this Settlement Agreement.

7. Waiver

In consideration for the payments made and the promises provided herein all parties to this agreement understand and agree that this settlement releases and forever irrevocably discharges the United States government, the Bureau of Prisons, the agency and their officers, agents, employees, and each of them, separately and collectively, from all claims cited in the grievance which pertain to the Fair Labor Standards Act (FLSA), 29 U.S.C. section 201, et. seq; the Back Pay Act of 1966, as amended (BPA), 5 U.S.C. sections 5596, et seq; and/or, any other pay acts. The parties agree that any and all statutes of limitations pertaining to FLSA, FEPA

and/or other pay acts are met and resolved by this agreement. The grievant agrees not to sponsor any arbitration or individual grievances seeking overtime or FLSA overtime compensation for the claims asserted in the captioned case (FMCS 12-1025-00046-3) or as covered by this Agreement for the time periods covered in the grievance, through the date the Agreement is fully executed. The union agrees to provide notice as an agenda item, of any future portal to portal issues at the local Labor Management Relations (LMR) meetings. This notification will occur as the union becomes aware of such issues.

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 grievance (FMCS No. 12-1025-00046-3). The parties agree that this Agreement shall not be cited as precedent, and may not be cited 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 settlement.

9. Completeness of Agreement

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

Agreement.

10. Antideficiency Act Provision

Nothing contained herein shall be construed to obligate the U.S. Department of Justice, Federal Bureau of Prisons to any expenditure or obligation of funds in excess or in advance of appropriations in accordance with the Antideficiency Act, 31 U.S.C. § 1341.

11. 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 Union's representative of record represents that he is authorized to enter into this Agreement on behalf of AFGE Local 3844, 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, Bureau of Prisons, Federal Correctional Institution Talladega which has full authority to enter into this Agreement and to make the promises, obligations and considerations contained herein.

FOR THE AGENCY:

John T. Rathman, Warden
Agency Representative

Date

FOR THE UNION:

Wendell Scott

Date

Union President
AFGE Local 3844

UNION'S REPRESENTATIVE:

Akua LaPlanche
Attorney
AFGE

Date