

IN THE MATTER OF GRIEVANCES BETWEEN:

AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES)
(AFGE), LOCAL 3313)
Union,)
v.)
UNITED STATES DEPARTMENT)
OF TRANSPORTATION)
Agency)

FLSA OVERTIME GRIEVANCES

FINAL SETTLEMENT AGREEMENT

This Final Settlement Agreement is entered into by and between the United States Department of Transportation, Office of the Secretary (OST), Federal Motor Carrier Safety Administration (FMCSA), Pipeline and Hazardous Materials Safety Administration (PHMSA), National Highway Traffic Safety Administration (NHTSA), and Federal Transit Administration (FTA) (all referred to jointly as the "Agency") and the American Federation of Government Employees Local 3313 (the "Union") (collectively, "the Parties").

On or about July 30, 2014, the Union filed grievances (included as Attachment 1 and hereinafter referred to collectively as the "Overtime Grievances") against the Agency, on behalf of all bargaining unit employees (BUEs) at the Agency represented by the Union, alleging violations of the Fair Labor Standards Act (FLSA), Title 5 of the U.S. Code and other applicable laws, rules and regulations.

Since the filing of the Overtime Grievances, the Parties engaged in extensive settlement negotiations for the purpose of narrowing the scope of unresolved issues and reaching a final resolution of this matter. The Parties previously entered into a Partial Settlement Agreement on January 25, 2017, which resolved the FLSA designation issues (included as Attachment 2). The Parties hereby incorporate that Partial Settlement Agreement on FLSA Designations as part of this Final Settlement Agreement.

The Parties now enter into this Final Settlement Agreement in full and complete resolution of any and all claims which were or could have, consistent with the scope of the Overtime Grievances, been raised by the Union in the Overtime Grievances, including but not limited to FLSA designations, overtime compensation of any kind, back pay, interest, liquidated damages, attorney fees and costs.

The employees covered by this Final Settlement Agreement include all current and former bargaining unit employees (hereafter referred to as "BUEs"), represented by the Union, who held a bargaining unit position at any time from July 30, 2008 (for Title

V claims), January 25, 2011 (for OST Professional BUE Title V claims) and July 30, 2011 (for FLSA claims) up to the effective date of this Agreement (hereinafter collectively referred to as “covered BUEs”). The timeframe covered by this Agreement is from July 30, 2008 until the Effective Date of this Agreement (“covered timeframe”).

Accordingly, in consideration of the mutual obligations, promises and consideration described in this document, the Parties hereby agree to the following:

1. Non-Admission Clause

This Final Settlement Agreement does not constitute an admission by either Party that either Party has violated any statute, regulation, policy or the Parties’ Collective Bargaining Agreements, and is entered into solely for the purpose of globally resolving and settling all issues that were or could have, consistent with the scope of the Overtime Grievances, been raised in the Overtime Grievances.

2. Union Withdrawal of Grievances, Waiver of Claims

Upon full execution of this Final Settlement Agreement and payment of all amounts due by the Agency pursuant to the same, the Overtime Grievances filed by the Union, on behalf of all covered BUEs, shall be deemed withdrawn with prejudice.

In addition, the Union, on behalf of all covered BUEs, agrees to release and waive the right to file any complaint, claim, lawsuit, grievance or appeal against the Agency, its officials, employees, former officials or former employees, or their successors and assignees, including any claims against Agency officials, employees or former officials or employees in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board or commission regarding any matter or claim raised, or that could have, consistent with the scope of the Overtime Grievances, been raised, in the Overtime Grievances for covered BUEs for the covered timeframe.

In particular, on behalf of all covered BUEs, the Union releases and forever irrevocably discharges the United States Government, including the Agency, and its respective officers, agents and employees, separately and collectively, from any and all liabilities, obligations, claims and demands, whether in law or in equity arising out of (1) the FLSA Exemption status of any covered BUE for the covered time period; and (2) any claim arising during the covered time period for compensation, including but not limited to overtime, suffered or permitted overtime, induced overtime, Back Pay, liquidated damages, compensatory time, credit time, travel time or training time, interest, attorney’s fees and all costs and expenses, including those for implementation of this Final Settlement Agreement.

Further, except as expressly provided for in this Agreement, the Union, on behalf of all covered BUEs, waives any and all rights to seek any other remedies beyond what is agreed to herein, arising from the Overtime Grievances. The Union, on behalf of all covered BUEs, further agrees that it will not arbitrate or litigate the matters asserted, or

which could have, consistent with the scope of the Overtime Grievances, been asserted, in the Overtime Grievances regarding any covered BUE for the covered time period, other than a claim of noncompliance with this Final Settlement Agreement. To the extent the Union seeks to arbitrate or litigate any such claim(s) of noncompliance, the Union will follow the procedures described in section 7, below.

On the Effective Date of this Final Settlement Agreement, all outstanding Information Requests filed by the Union in connection with the Overtime Grievances shall be deemed withdrawn.

3. The Bargaining Unit

The Agency agrees not to retroactively change the bargaining unit status of any employee represented by the Union, for the purpose of including them in or excluding them from coverage from this Final Settlement Agreement.

4. Monetary Terms

The Parties agree that the following describes the entire monetary relief payable to the Union and its counsel on behalf of all covered BUEs related to the Overtime Grievances and this Final Settlement Agreement.

The Parties agree that the Agency shall pay to Snider & Associates, LLC, counsel for the Union, a Total Lump Sum Payment of Five Million and Five Hundred Thousand Dollars and No Cents (\$ 5,500,000.00). Within thirty (30) calendar days from the Effective Date of this Agreement, the Agency will transfer the Total Lump Sum Payment to Snider & Associates, LLC in accordance with the electronic funds transfer information provided by Union's counsel to the Agency. This Total Lump Sum Payment of Five Million and Five Hundred Thousand Dollars and No Cents (\$ 5,500,000.00) shall constitute the Union Settlement Fund (hereinafter referred to as the "Settlement Fund"), in recognition and settlement of any and all potential liability for all issues and claims which were or could have, consistent with the scope of the Overtime Grievances, been raised in the Overtime Grievances for the period of time beginning no earlier than July 30, 2008, up to the Effective Date of this Final Settlement Agreement.

This Total Lump Sum Payment amount is in full and complete settlement of any and all claims for relief raised in the Overtime Grievances and/or which could have consistent with the scope of the Overtime Grievances, been raised in the Overtime Grievances for all covered BUEs for the covered time periods, consistent with Section 2 above, including but not limited to (a) unpaid entitlement to overtime, including "capped" overtime claims; (b) unpaid entitlement to compensatory or credit time; (c) unpaid entitlement to overtime under Title 5 of the U.S. Code; (d) unpaid entitlement to "suffered or permitted" overtime as defined by the FLSA; (e) unpaid entitlement to travel time overtime; (f) unpaid entitlement to training overtime; (g) the Agency's share of any employer obligations arising under the Federal Insurance Contributions Act (FICA) or

any emoluments due as a result of Settlement Fund payments made to employees under this Agreement; (h) interest owed on damages claimed; (i) liquidated damages; (j) attorney's fees and costs claimed by the Union's counsel of record in the Overtime Grievances, including costs for implementation of this Final Settlement Agreement.

The Parties agree that by making this Total Lump Sum Payment, the agency is relieved now and forever from any and all monetary liability in connection with any and all claims which were or could have, consistent with the scope of the Overtime Grievances, been raised by the Union – except as to any dispute resolved under the enforcement provisions of this Final Settlement Agreement. The Parties further agree that this Total Lump Sum Payment is a negotiated settlement of greater claims and is, therefore, subject to allocation by the Union in a manner consistent with Section 5 below.

5. Administration: Distribution of Settlement Funds

The Union Settlement Fund will be allocated, divided and distributed by the Union or its designated agent(s) in a fair and equitable manner, as directed by the Union. The Union may, in its sole discretion, determine amounts to be paid for all items covered by the Agency's Total Lump Sum Payment, including which BUEs may participate in any claims and/or payment process. The Union agrees to abide by all applicable anti-discrimination laws when determining which BUEs will receive compensation. The Agency shall not participate in any way in the Union's payment and/or claims process or the distribution of settlement funds, including, but not limited to, performing any calculations or determinations regarding allocation, division and distribution.

The Union agrees to provide the covered BUEs with a description of the process by which BUE entitlements are calculated, including the amount(s) of damages being paid. The Union will maintain records of all payments for a minimum of six (6) years. The Agency may request those payment records at any time, if the Agency is audited and it is determined the provision of these payment records is necessary. In the case of such a determination, the Union shall provide the records to the Agency within thirty (30) calendar days.

The Parties agree that the Agency shall not be responsible for paying any state, local or Federal taxes or withholding or emoluments due as a result of Union Settlement Fund payments, or issuing any W-2, 1099 or any other form to any taxing authority or individual receiving payment under this Final Settlement Agreement. The Union, in distributing funds, is solely responsible for the tax treatment of the payments and advising employees that they may be subject to the payment of taxes associated with the receipt of said funds. Further, the Union is solely responsible for resolving, defending, or paying for any disputes or other matters relating to distribution of funds from the Union Settlement Fund and agrees to hold the United States and the Agency harmless for any claims arising between the Union and any employee, Union or Non-Union member, party or individual concerning any action taken by the Union in entering into or implementing

this Final Settlement Agreement including the distribution of any funds from the Union Settlement Fund.

Furthermore, the Parties agree that the Agency is not responsible for providing the Union or any BUE with additional information in connection with the Overtime Grievances or this Final Settlement Agreement except to the extent set forth in this Final Settlement Agreement. Regarding the information to be provided by the Agency to the Union, the Parties agree that all of this information is both relevant and necessary to effectuate the settlement of this matter and the distribution of funds. The Parties stipulate that, to the extent this information would otherwise be prohibited from disclosure pursuant to the Privacy Act or for any other reason, the information is subject to a routine use exception and is fully disclosable as set forth herein.

The Union agrees that the information released by the Agency as set forth below shall not be utilized by the Union or any Union designated representative(s) for any other purpose or in any other fashion other than for the purpose of distribution of settlement funds and implementation of this Final Settlement Agreement. The Union further agrees that it is responsible for the proper safeguard of such information from disclosure, except as required for purposes of facilitation and effectuating the distribution of settlement funds.

- a. Within thirty (30) calendar days from the effective date of this Final Settlement Agreement, the Agency shall provide to Union counsel, in electronic Microsoft Excel format, BUE lists for the entire covered timeframe. These bargaining unit lists will be for OST and each Operating Administration and will include at a minimum, the following historical data points: list date, name, grade, series, step, position title, and FLSA status. The Parties agree that to the extent the Agency has already provided such information to the Union, in response to its Request for Information, it need not provide the information again unless the Union requests such information due to stated concerns with the data previously provided.
- b. Within sixty (60) calendar days following receipt of the information in (a) above, Union counsel shall submit to the Agency counsel a comprehensive listing, in electronic Microsoft Excel format, of all current and former BUEs, by component, who the Union believes are likely to receive a payment from the Union Settlement Fund.
- c. Within sixty (60) days following receipt of the information in (b) above, and to the extent this information is reasonably available, the Agency shall provide to Union counsel, in electronic Microsoft Excel format, for each BUE identified in (b) the social security number; the work email address for current BUEs; and the available last known mailing address for former BUEs maintained by the Agency. If requested by the Union, the Agency shall also provide, for each BUE identified in (b), the overtime/compensatory time records for the period July 30, 2011 up to the effective date of this Final

Settlement Agreement.. The Parties agree that to the extent the Agency has already provided such information to the Union, in response to its Request for Information, it need not provide the information again unless the Union requests such information due to stated concerns with the data previously provided.

Upon the Union's receipt of the information described in this section, the Agency's obligation to provide information to the Union, pursuant to this Final Settlement Agreement ceases. To the extent the Union may need additional data from the Agency to effectuate implementation or distribution pursuant to this Final Settlement Agreement, the Agency agrees to timely respond to any such reasonable requests. This Final Settlement Agreement releases both Parties from any liability to the other Party or future claims from the other Party resulting from any representation, information or statement disclosed by either Party, its attorneys, representatives or other agents, in the course of the resolution of the Overtime Grievances and the reaching of this Final Settlement Agreement, should it be found hereafter, by either Party, its attorneys, representatives or other agents, to have been incomplete, inaccurate or erroneous.

The Union's designated representatives may make reasonable use of Agency resources, including the Agency email system, to send and receive notices and information to and from BUE employees regarding implementation of this Final Settlement Agreement and BUEs may make reasonable use of Agency resources (email, computer, phone, fax) to participate in implementation including any claims process.

6. Hold Harmless: Indemnification

The Union agrees to hold the United States and the Agency (which for purposes of this section includes all employees, representatives and agents) harmless from any claims arising between the Union and any employee, Union or Non-Union member, third Party or individual concerning any action taken by the Union in entering into or implementing this Final Settlement Agreement. The Union further agrees that it will indemnify and reimburse the Agency for any damages resulting from any finding of liability of any kind, including but not limited to joint and several liability, incurred by the Agency as a result of any act or omission or alleged act or omission, in the Union or its implementation company's distribution of any settlement payment made under this Agreement. The Union further agrees that it will indemnify and reimburse the Agency for any damages resulting from any finding of liability, including but not limited to joint and several liability, regarding any alleged misconduct in distributing any settlement payment made by the Union or its implementation company under this Agreement. The Union also agrees to hold the Agency harmless and indemnify the Agency for any claims made by any covered BUE who may successfully raise a claim against the Agency in any forum alleging a violation of the FLSA and/or Title 5 of the U.S. Code occurring during the covered timeframe. For the purposes of this section "claims" refers to losses, actions, liabilities, damages, expenses and reasonable attorney's fees and costs.

7. Dispute Over Terms

In the event that a dispute arises regarding the terms of this Final Settlement Agreement or over its implementation, the Parties agree to attempt to mutually resolve the dispute. The Party alleging a dispute shall notify the other Party in writing within sixty (60) calendar days from the date the issue giving rise to the dispute is known, or should reasonably have been known, to the raising Party. If the Parties are unable to mutually resolve the dispute within sixty (60) calendar days from the date of the notification, the Parties agree to submit the dispute for Arbitration in accordance with the respective collective bargaining agreements between the Parties. The Parties may extend the time period with which to submit the dispute to arbitration upon written agreement.

8. Non-Precedential Nature of Agreement

This Final Settlement Agreement is entered into for the sole purpose of settling the matters stated herein and may not be introduced as evidence by either Party, their representative or their successor\ s or assigns, in any type of litigation, proceeding or dispute between the Parties other than to enforce the terms of this Final Settlement Agreement. Accordingly, this Final Settlement Agreement shall not be cited as precedent in any future grievances, arbitration or litigation between the Parties. It shall not bind the Parties in any proceedings, judicial or administrative in nature, except as necessary to effectuate the terms of this Final Settlement Agreement.

9. Future Actions

The Parties agree that in the future the Agency may designate or re-designate current or future BUEs/Bargaining Unit positions as Exempt or Non-Exempt in accordance with applicable statutes and regulations.

10. Incorporation

This Final Settlement Agreement sets forth the entire agreement between the Parties and there are no other terms express or implied. The terms and conditions of this Final Settlement Agreement are contained exclusively with this Final Settlement Agreement and have been voluntarily agreed upon by the Parties after consultation with their respective counsel.

11. Amendments or Modifications

This Agreement is a binding and enforceable settlement contract and no Party may modify it at a later date without execution of a separate written agreement between the Parties.

12. Authority

The Parties stipulate that the signatories to this Final Settlement Agreement have the full authority to enter into this Agreement and to make the agreements, obligations and considerations contained herein.

13. Signatures

For the purposes of this Final Settlement Agreement, a facsimile or photocopy of signature(s) shall be considered to be an original signature. Signatures may be on successive pages and attached to the Agreement.


14. Effective Date


This Final Settlement Agreement is effective upon the date of last signature by the Parties.

For the AGENCY:

Keith Washington Date
Deputy Assistant Secretary for Administration

For the UNION:

 10/4/2018
Eugene Johnson, President Date
AFGE Local 3313


Michael J. Snider, Esq.
Attorney for the Union

Date 10/4/2018

10/4/2018
Date

Reith Kaufman, Esq.
Attorney for the Union