

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the United States Department of State, Passport Services ("Agency") and the National Federation of Federal Employees, Local 1998 ("Union"), collectively referred to as the "Parties." On April 20, 2004, the Union filed a Grievance of the Parties with the Agency alleging violations of the Fair Labor Standards Act (FLSA) for all bargaining unit positions represented by the Union. Since the filing of that grievance, the Parties engaged in global settlement negotiations in an effort to resolve the grievance.

Now Therefore, the Parties Mutually Agree as Follows:

1. Reclassification as Non-Exempt

The Agency has reclassified all bargaining unit employees represented by the Union in this Grievance (as improperly identified in the Payroll Reports covering the period of April 20, 2002 through April 20, 2004 as Exempt under the Fair Labor Standards Act (FLSA)) as Non-Exempt under the FLSA, effective April 20, 2002. This group includes all employees in the bargaining unit during the specified time period, including those no longer in the bargaining unit, those who have retired and those who have left the Agency.

2. Amendment of the Negotiated Agreement

Article 29 Paragraph 1 of the Agreement between Passport Services and NFFE Local 1998 dated July 2001 is amended to read:

Overtime Employees covered by the provisions of the Fair Labor Standards Act (FLSA) who, with the approval (scheduled) or knowledge (suffered or permitted) of their supervisors, perform work for more than 8 hours in a day or 40 hours in a week (or in excess of their regular daily or weekly tour of duty if they are on a compressed schedule) shall be compensated for that overtime. Requests for overtime will be documented on form JF-56 and signed by the authorizing official (either approving or disapproving). Employees will be granted overtime pay unless they request or accept in writing compensatory time off in lieu of overtime pay for irregular or occasional overtime work. No coercion shall be used to force an employee to request compensatory time off rather than overtime pay, or vice versa. However, Supervisors may offer irregular or occasional voluntary overtime opportunities to be compensated by compensatory time off only, if that fact is made clear before an employee volunteers. Employees on flexible work schedules may be granted compensatory time off in lieu of overtime payment for any overtime work, whether or not it was irregular or occasional in nature. If compensatory time off is not requested or taken within 8 pay periods, the employee must be paid for the overtime worked at the rate in effect when the overtime hours were worked. All

compensatory time earned and used must be recorded in the Department's payroll system.

3. Ordered and Approved Overtime

The Agency agrees to pay all employees reclassified as Non-Exempt under the FLSA pursuant to this Agreement the difference between what they were paid under the Title V capped rate of overtime and what they would have been entitled to be paid under the FLSA (one and one-half times their regular rate of pay), going back two years from the date of the filing of the Grievance (April 20, 2004) until the prospective change in FLSA status was made by the Agency. The Agency agrees to pay an additional equal amount in liquidated damages under 29 U.S.C § 216 for all such payments, and interest up to August 31, 2004. The Agency further agrees to provide documentation to the Union indicating the employee(s) paid, hours paid, rate(s) of pay, and liquidated damages and interest amounts. The back pay due each affected employee will be paid and corresponding documentation will be provided no later than March 3, 2005. Interest and liquidated damages will be paid in a separate payment no later than March 18, 2005.

4. Compensatory Time

The Agency agrees to pay any GS-11 employee assigned to the Charleston Passport Center and the National Passport Center, who was reclassified as a result of this Agreement and who accrued and used compensatory time as a result of working overtime going back two years from the date of the filing of the Grievance until the prospective change in FLSA status was made by the Agency, the difference between that employee's hourly rate of pay and that employee's overtime rate of pay at the time the compensatory time was used as recorded in management and payroll records, plus an additional equal amount in liquidated damages. The Agency further agrees to provide documentation to the Union VIA EMAIL to NFFE-1998@state.gov indicating the employee(s) paid, hours paid, rate(s) of pay, and liquidated damages amounts.

For all GS-11 employees assigned to the New York, Houston, Los Angeles, Miami, Philadelphia, San Francisco, Seattle, New Orleans, Washington, Chicago, Connecticut and the Special Issuance Passport Agencies, and the Passport Services Office of Information Management and Liaison, who were reclassified as a result of this Agreement and who were required to accrue and use compensatory time off, rather than overtime, for irregularly scheduled overtime, the Agency will pay a lump sum amount of \$250.00. Each such employee will be required to submit a certification attesting that they were required to take compensatory time in lieu of overtime (Attachment B hereto), within sixty (60) days of the signing of this agreement by both parties, to receive this payment. The Agency agrees to provide to the Union VIA EMAIL to NFFE-1998@state.gov a list of all the employees who submitted claims forms.

The payment due each affected employee under this section will be paid no later than thirty (30) days after the certification submission deadline.

5. Suffered and Permitted Overtime

The Agency agrees to pay any employee reclassified as FLSA non-exempt as a result of the Grievance who submits a signed certification (Attachment A hereto), within sixty (60) days of the signing of this agreement by both parties, attesting that they worked, traveled or trained above and beyond their scheduled full-time tour of duty with management's knowledge and were not compensated for it, the sum of \$250.00.

This payment is accepted by the Union and Grievants in lieu of any individual claim for suffered and permitted overtime. The Agency further agrees to provide to the Union *VIA EMAIL* to NFFE-1998@state.gov a list of all the employees who submitted claims forms. The Agency will pay each affected employee the sum indicated no later than thirty (30) days after the certification submission deadline.

6. Attorney Fees

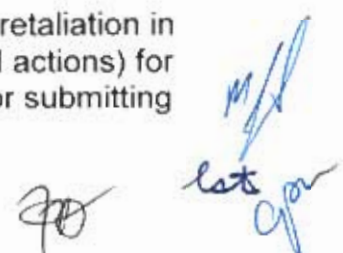
The Agency agrees to pay \$27,495.00 in attorney fees to the Union's Counsel, payable to Snider & Fischer, LLC within 30 days of execution of this Agreement. This amount is for 25 hours of work prior to July 2, 2004 and 40 hours of work thereafter. The Agency agrees that 65 is a reasonable number of hours and that \$423.00 is a reasonable hourly rate for the services of Michael J. Snider, Esq., based upon the Adjusted Laffey Matrix, as adopted by the Court in McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001) and Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

7. Resolution of Other Claims by the Union

The Agency agrees to send an email to all current bargaining unit employees, with language to be agreed to by the Union, informing them of this settlement and stating that non-exempt employees have a right to a choice between compensatory time and overtime pay. The Agency agrees to send a notice, with language to be agreed to by the Union, to each affected current and former bargaining unit employee receiving a payment under paragraph 3 of this settlement, explaining the payment(s) they will be receiving.

8. No Retaliation

The Agency agrees that no employee or Union official will suffer any retaliation in any manner whatsoever (including disciplinary or performance based actions) for participating in this case, receiving payments under this Agreement or submitting



any of the various forms noted herein and that the Union as an entity will suffer no retaliation.

9. Disputes over Interpretation

The Parties agree that any dispute over interpretation of this Agreement or compliance with this Agreement will be submitted to Arbitration in accordance with Article 22 of the Agreement between Passport Services and NFFE Local 1998 dated July 3, 2001.

Executed this 11th day of February, 2005.




Colin Patrick Walle
President, NFFE Local 1998



Frank Moss
Deputy Assistant Secretary for Passport
Services
U.S. Department of State



Michael J. Snider, Esq.
Counsel, NFFE Local 1998



Linda Tagliatela
Deputy Assistant Secretary for Human
Resources
U.S. Department of State



ATTACHMENT A

I _____ (NAME) _____ affirm that in my position as a _____ (POSITION TITLE) _____ at the Department of State's _____ Passport Agency, I worked, traveled and/or trained above and beyond my scheduled full-time tour of duty during the period of April 20, 2002 and August 28, 2004 with my supervisor's knowledge and was not prevented from doing so nor compensated for my time.

I hereby acknowledge that, as per the settlement entered into by the United States Department of State, Passport Services and the National Federation of Federal Employees, Local 1998 on (DATE), I am entitled to a lump sum payment of \$250 as compensation for this time. This payment is accepted by the Union and myself in lieu of any individual claim for suffered and permitted overtime. Management has agreed that I will suffer no retaliation in any manner whatsoever for submitting this form.

I understand that from this point forward before working, training or traveling any time above and beyond my scheduled hours, including working through lunch or breaks, I should seek express approval by management.

Signature

Name

Date

*M/S
est qm*

ATTACHMENT B

I _____ (NAME) _____ affirm that in my position as a GS-11
_____ (POSITION TITLE) _____ at the Department of State's _____
Passport Agency, I was required to accrue and use compensatory time off, rather
than receive overtime, for irregularly scheduled overtimes hours I worked during
the period of April 20, 2002 and August 28, 2004.

I hereby acknowledge that, as per the settlement entered into by the United
States Department of State, Passport Services and the National Federation of
Federal Employees, Local 1998 on (DATE), I am entitled to a lump sum
payment of \$250. This payment is accepted by the Union and myself in lieu of
any individual claim against the Department related to the accrual, use and/ or
recording of compensatory time during the above stated period. Management
has agreed that I will suffer no retaliation in any manner whatsoever for
submitting this form.

Signature

Name

Date

MS *est*
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