

NTEU, Dale Yeilding

From: NTEU, Dale Yeilding
Sent: Monday, February 22, 2010 8:28 AM
To: Bolduc, Angela
Cc: Buchholz, Jeri; Thoman, Raymond; McCrary, Cheryl; Davidson, Lawrence
Subject: Updated Grievance - Criminal Investigators denied work schedule flexibilities
Attachments: Dale Yeilding.vcf

Angela Bolduc,

NTEU is updating an institutional grievance filed last Friday against the agency claiming the agency has inappropriately reduced work schedule flexibilities as outlined in the Collective Bargaining Agreement (CBA), Article 6, Hours of Work and Article 29, Compensatory Time, for series 1811 Criminal Investigators.

In the Agency's attached February 2, 2010 memorandum Bolduc/Yeilding, you state:

- 1) *"As criminal investigators are compensated for unscheduled work beyond eight hours in a day by LEAP [Law Enforcement Availability Pay], they are not eligible for overtime or other forms of compensation such as credit hours or special compensatory time for travel for those hours to which LEAP applies...Note, however, that this does not preclude a criminal investigator from earning scheduled overtime in some circumstances (e.g. when the scheduled overtime exceeds 2 hours per day) or under some circumstances, special compensatory time off for travel (e.g., for training)*
- 2) *"Since LEAP is predicated on an eight-hour workday, criminal investigators cannot have a regularly scheduled workday greater ore less than eight hours."*
- 3) *"The flexibilities in NEWflex have been applied to OI Criminal Investigators consistent with the provisions of the Collective Bargaining Agreement and NRC management dives. Therefore, further negotiations are not required."*

1) By definition, LEAP is un-scheduled and credit hours are scheduled requiring a plan with advanced supervisory approval. Thus there is no circumstance in which planned credit hours could apply to a time period that would conflict with unscheduled LEAP. Your memorandum provides an example for which special compensatory time off for travel would only be granted with regards to training. Compensatory time for travel is a provision permitted by regulation and Article 28.9 of the CBA, allowing employees to have time off at some other time as compensation for travel outside their duty hours versus the agency's inappropriate mandate that an employee apply this extra travel time towards their LEAP accrual. The majority of travel is scheduled which again by definition could not conflict with LEAP applying only to unscheduled availability. The agency's unilateral action to deny a class of bargaining unit positions use of credit hours and compensatory time for travel, is in violation of regulations and the CBA.

2) The negotiated flexibility to have workdays of lengths varied from the typical 8 hour day cannot be unilaterally denied to a class of employees (criminal investigators) without Union notice and negotiation, especially since the flexibility would not conflict with the LEAP regulations associated with unscheduled time. The agency's claim that LEAP is predicated on an 8-hour day is without basis. For example, investigators could simply schedule some 7 and some 9 hour day(s) with a two hour LEAP requirement associated with each day but retain the flexibility to balance work and home life as equally and fairly provided to other agency employees. The agency's unilateral action to deny a class of positions a variable length day is in violation of regulations and the CBA.

3) The agencies change to work schedule flexibilities for bargaining unit criminal investigators without notice to NTEU, allowing for the opportunity to bargain, is an Unfair Labor Practice under 5USC7118 and Article 42 of the Collective Bargaining Agreement.

As a remedy, NTEU requests the agency provide series 1811, Criminal Investigators with all the work schedule flexibilities available to bargaining unit employees and any other remedy an arbitrator deems appropriate. Contact Dale Yeilding with the date and time of the Step A grievance meeting.

---Dale Yeilding



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 2, 2010

MEMORANDUM TO: Dale E. Yeilding, President
NTEU Chapter 208

FROM: Angela M. Bolduc, Chief
Employee/Labor Relations and Worklife Branch
Office of Human Resources

SUBJECT: RESPONSE TO QUESTIONS ON LAW ENFORCEMENT
AVAILABILITY PAY

This responds to your email to Larry Davidson dated December 10, 2009, asking a series of questions concerning Criminal Investigator work schedules and pay.

Law Enforcement Availability Pay (LEAP) is administered consistent with the provisions of applicable laws. Under 5 USC 5545a, a criminal investigator earns 25 percent premium pay established in the Law Enforcement Availability Pay Act of 1994. It is paid to ensure the "availability" of criminal investigators for unscheduled duty in excess of their 40-hour basic work week. Availability pay will be considered as part of basic pay for the computation of retirement benefits, lump sum annual leave, life insurance, and the value of subsistence and quarters, where applicable.

A criminal investigator is paid availability pay if the annual average of unscheduled duty hours worked meets the substantial hours requirement. To meet that requirement, the annual average of unscheduled duty hours the criminal investigator works or is available to work at the request of the agency on each regular work day must be equal to or greater than 2 hours. While investigators are expected to work unscheduled duty, LEAP also covers periods designated by the agency during which the agency specifically requires the investigator to be available to meet agency needs. That being the case, availability hours do not mean simply all off duty hours during which an investigator is reachable or accessible by telephone, radio, pager, etc.

As criminal investigators are compensated for unscheduled work beyond eight hours in a day by LEAP, they are not eligible for overtime or other forms of compensation such as credit hours or special compensatory time for travel for those hours to which LEAP applies. Further, the two-hour annual daily average of unscheduled duty for LEAP eligibility is a minimum requirement; there is no maximum average hourly limit. Therefore, LEAP compensates criminal investigators for all unscheduled duty time worked, no matter how many hours are involved. Note, however, that this does not preclude a criminal investigator from earning scheduled overtime in some circumstances (e.g., when the scheduled overtime exceeds 2 hours per day) or, under some circumstances, special compensatory time off for travel (e.g., for training).

Since LEAP is predicated on an eight-hour workday, criminal investigators cannot have a regularly scheduled workday greater or less than eight hours. However, on a case by case basis, a criminal

investigator may have a workday scheduled in advance that is greater than eight hours. In such a situation, hours in excess of ten hours in the workday would be paid as overtime.

Under NEWflex guidance, Office of Investigations (OI) Criminal Investigators can start their workday as early as 5 a.m. and work as late as 8 p.m. Moreover they can take advantage of a gliding schedule. However, because LEAP provisions do not limit the number of unscheduled hours an investigator may work, they are not subject to the NEWflex 11.25 hour daily maximum.

Time and attendance of OI criminal investigators is carefully monitored with respect to LEAP, and all OI criminal investigators are provided the opportunity to meet the statutory requirements for LEAP eligibility. However, since LEAP is paid for unscheduled duty by definition, LEAP assignments cannot be scheduled in advance.

The flexibilities in NEWflex have been applied to OI Criminal Investigators consistent with the provisions of the Collective Bargaining Agreement and NRC management directives. Therefore, further negotiations are not required.

cc: Cheryl L. McCrary, Deputy Director, Office of Investigations

NTEU, Dale Yeilding

Subject: FW: Criminal Investigator Work Schedule & Pay Questions

From: NTEU, Dale Yeilding

Sent: Thursday, December 10, 2009 3:21 PM

To: Davidson, Lawrence

Cc: Budnick, John; Bolduc, Angela; McCrary, Cheryl; Thoman, Raymond

Subject: Criminal Investigator Work Schedule & Pay Questions

Larry Davidson,

A few Criminal Investigators (1811 series employees) have asked me some questions related to work schedules associated with their receipt of 25% Law Enforcement Availability Pay (LEAP). I did not know the answers and thank you in advance for a reply.

---Dale Yeilding

NTEU Criminal Investigator Work Schedule & Pay Questions:

Please address your answer as it relates to regulations or case law (thank you for adding references if you have them). If any answer is based upon Agency or Office of Investigation internal policy, please so state and reference the NRC policy-document, again only if you have it. Work schedule approvals are, of course, subject to supervisor approval which need not be in each of your answers.

- 1) Do investigators have to actually work the time typically referred to as LEAP time which is greater than their scheduled 8 hour day or simply be "available" to work?
- 2) If investigators have to simply be "available", and not actually work, describe these requirements in detail. i.e. remain at the worksite, capable to be reached by telephone, other standby duty requirements, etc.
- 3) Can investigators earn and use credit hours?
- 4) Can investigators start their workday as early as 5am and end as late as 8pm or for the OI office, 11pm?
- 5) Can investigators glide on their NEWflex schedule? Is LEAP earning subject to the NEWflex 11.25 hr/day max?
- 6) Can investigators have a scheduled workday greater or less than 8 hours? (cite OPM telecon, case-law or regulation if available)
- 7) Can investigators work regular 9 hour days resulting in one day off a pay period, with that day off then not subject to LEAP? i.e. their 20 hours/pay period LEAP earning would reduce to 18hours/pay period as a result of that single weekday off, not scheduled to be worked.
- 8) Can investigators ever be paid for overtime?
- 9) If agency management scheduled the actual clock hours for an actual investigator work requirement that was above 8 hours in a day, would that time then not qualify for LEAP but require OT payment or compensatory time?
- 10) Can investigators be paid for any LEAP hours at the end of the year that is above the required 2-hour annual average?
- 11) If investigators cannot be paid for LEAP time, when their average ends the year greater than 2, are there any management assignment of work policies to more evenly assign this LEAP (overtime type of work) to others to maintain fairness and equity?

12) Will the agency be willing to negotiate with NTEU the inability (if exists) of investigators to utilize any NEWflex flexibilities that are not restricted by regulations?

National Treasury Employees Union



Dale Yeilding

NTEU Chapter President

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For a Better Tomorrow**