

NTEU, Dale Yeilding

Subject: Institutional Grievance - Law Enforcement Availability Pay - Criminal Investigator Travel Exclusion
Attachments: 1811LEAPtravelAdecision.pdf; Dale Yeilding2.vcf

From: NTEU, Dale Yeilding
Sent: Tuesday, December 08, 2009 4:08 PM
To: Bolduc, Angela
Cc: Thoman, Raymond; Buchholz, Jeri; Schmidt, Katherine; Dyer, Jim; Davidson, Lawrence
Subject: Institutional Grievance - Law Enforcement Availability Pay - Criminal Investigator Travel Exclusion

Angela Bolduc,

NTEU is filing an institutional grievance on behalf of all criminal investigators (1811 series) eligible for Law Enforcement Availability Pay (LEAP) in accordance with Article 46 of the Collective Bargaining Agreement claiming the agency has and continues to calculate incorrectly excludable hours. These investigators are eligible to receive 25% LEAP pay, after working the required 2 extra hours each day on average for the year. Some days may fall under a provision of the regulation allowing for that day to be excluded from the need to work the extra two hours. One of the exclusions is travel. An appropriately excluded travel day would then not require the extra two hours of work and affect the year's average calculation which the NRC currently does not take into consideration. This results in investigators having to work more hours than required by the regulation to bring their year's average to 2 hours per regular workday for 25% LEAP pay eligibility.

5 CFR 550.183(b) states that a "regular workday means each day in the criminal investigator's basic workweek during which the investigator works at least 4 hours, excluding" the "hours during which an investigator is engaged in agency-approved training, is traveling under official travel orders, is on approved leave, or is on excused absence with pay (including paid holidays).

As a remedy, NTEU request the agency:

- 1) correct the current NRC practice and include travel as an exclusion from the LEAP average calculation
- 2) reimburse all affected employees back pay for the extra time required by the agency to qualify for the LEAP pay.
- 3) any other remedy an arbitrator deems appropriate

For example, if an investigator had 100 eligible travel days in a given year, the NRC would have required him/her to work 2hr/day x100days or 200 additional hours to qualify for the LEAP pay.

Please contact Dale Yeilding, for a time and place for the Step A Institutional Grievance meeting.
---Dale Yeilding,

OPM Availability Pay Fact Sheet

National Treasury Employees Union

NTEU, Dale Yeilding

Subject: FW: Institutional Grievance Appeal to Step B - Law Enforcement Availability Pay - Criminal Investigator Travel Exclusion
Attachments: 1811LEAPtravelAdecision.pdf; Dale Yeilding2.vcf

From: NTEU, Dale Yeilding
Sent: Thursday, February 25, 2010 12:00 PM
To: Borchardt, Bill
Cc: McDermott, James; Bolduc, Angela; Buchholz, Jeri; McCrary, Cheryl; Virgilio, Martin
Subject: Institutional Grievance Appeal to Step B - Law Enforcement Availability Pay - Criminal Investigator Travel Exclusion

Bill Borchard,


NTEU is appealing a timely Step A decision from Cheryl McCrary to a Grievance Step B under your jurisdiction (CBA, Article 46.13). McCrary's reason for grievance denial is: "*due to the time constraints of the negotiated grievance procedure, based on the information available to me at this point in time, I have no choice but to deny the grievance.*" Of the three segments with grievance deadlines; 1) time to file, 2) time to meet, and 3) time to render a decision; the latter is the longest, including in this case one mutually agreed extension, allowing 25 workdays for her to render a decision.

NTEU charges McCrary with not adhering to the purpose (Article 46.1) of the grievance process twofold:

- 1) She did not attempt to "*resolve the dispute at the lowest administrative level*";
- 2) She did not "*render a decision as quickly as possible*".

I am afraid if you permit this practice to continue, NTEU will always be faced with a forced requirement to mutually agree to a manager's request to extend the grievance decision deadline, so as to avoid facing an abrupt denial as a consequence. Thank you in advance for a half hour of your time to re-present this case and ask for your fair decision on the matter affecting over 25 employees. The December 8, 2009 grievance is reproduced below along with attached McCrary's Step A decision which is not worth your time to even read.

---Dale Yeilding, NTEU Chapter President

	<p>Dale Yeilding NTEU Chapter President</p> <p>Phone (301) 415-3600 E-mail NTEU@nrc.gov Office OWFN O1G22</p> <p>NTEU Working Today For a Better Tomorrow</p>
--	---



UNITED STATES
NUCLEAR REGULATORY COMMISSION

Date: February 23, 2010
From: Cheryl L. McCrary, Director
Office of Investigations
Subject: Step A Grievance Decision
To: Dale Yeilding, President
NTEU 208

A handwritten signature in cursive script, appearing to read "Cheryl L. McCrary", written in black ink.

This is in response to your Step A grievance filed under Article 46 of the negotiated grievance procedure in the Collective Bargaining Agreement (CBA) between the Nuclear Regulatory Commission (NRC) and the National Treasury Employees Union (NTEU). Your grievance was dated December 8, 2009, and received by me on December 9, 2009.

The issue grieved is that

“...the agency has and continues to calculate incorrectly excludable hours. These investigators are eligible to receive 25% LEAP pay, after working the required 2 extra hours each day on average for the year. Some days may fall under a provision of the regulation allowing for that day to be excluded from the need to work the extra two hours. One of the exclusions is travel. An appropriately excluded travel day would then not require the extra two hours of work and affect the year's average calculation which the NRC currently does not take into consideration. This results in investigators having to work more hours than required by the regulation to bring their year's average to 2 hours per regular workday for 25% LEAP pay eligibility.”

The grievance was timely filed and raised a grievable matter. Therefore, I accepted it at the Step A under the negotiated grievance procedure in the NRC-NTEU CBA.

The relief you seek is: 1) correct the current NRC practice and include travel as an exclusion from the LEAP average calculation; 2) reimburse all affected employees back pay for the extra time required by the agency to qualify for the LEAP pay; and 3) any other remedy an arbitrator deems appropriate.

A Step A meeting was held on January 11, 2010. In your oral presentation you asserted that when determining excludable days for the LEAP eligibility, the LEAP provisions in 5 C.F.R. did not distinguish between purposes for travel when discussing excludable days. Rather, it included all travel for which official travel orders are issued. Ronald Langstaff, also representing NTEU by telephone at the Step A meeting, added that any travel more than 35 miles from an employee's duty station would require an official travel order. You also stated that because the law with respect to LEAP had not been properly applied, criminal investigators would be due back pay for overtime worked.

In reaching my decision, I considered the Step A grievance and the information presented during the Step A meeting. The grievance raises several complex issues. In the interest of ensuring fairness and equity, I have been reviewing the issues raised. In fact, I requested additional time to respond to the grievance so I could thoroughly research LEAP pay and OI's implementation. While NTEU initially agreed to a five (5) work day extension, it denied a request for any additional time beyond that. Therefore, due to the time constraints of the negotiated grievance procedure, based on the information available to me at this point in time, I have no choice but to deny the grievance.

NTEU has the right to appeal this Step A grievance decision in accordance with the NRC-NTEU CBA. If you elect to appeal this decision, the appeal must be submitted to Martin Virgilio, Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs, who will serve as the designee for the Executive Director for Operations for the Step B grievance.



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

Date: February 1, 2010

From: James McDermott, Director
Office of Human Resources

To: Cheryl McCrary, Deputy Director
Office of Investigations

Subject: Delegation of Authority

A handwritten signature in black ink, appearing to read "James McDermott", with a checkmark to the left.

In accordance with the provisions of Article 46.13 of the Collective Bargaining Agreement between the Nuclear Regulatory Commission and the National Treasury Employees Union (NTEU), you are hereby delegated the authority to serve as the Step A official for the institutional grievance filed by NTEU on December 9, 2009. A copy of the grievance is attached. Please take appropriate action to schedule a Step A grievance meeting in accordance with Article 46.14.1 and to render a written decision on the Step A grievance in accordance with Article 46.14.2.

If you have any questions with respect to this delegation or your responsibilities as the Step A Official, please contact John Budnik at 301-492-2324.

Attachment: Step A Grievance

CC: Dale Yeilding, President, NTEU Chapter 208
John Budnik