

## NTEU, Dale Yeilding

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**Subject:** FW: Institutional Grievance & Information Request - Voluntary Overtime Violates FLSA

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**From:** NTEU, Dale Yeilding

**Sent:** Wednesday, March 31, 2010 5:58 PM

**To:** Bolduc, Angela

**Cc:** Buchholz, Jeri; McDermott, James; Rheaume, Cynthia; Dyer, Jim; Johns, Nancy; Davidson, Lawrence; Cain, Brendan; Thoman, Raymond; Mitchell, Reggie

**Subject:** Institutional Grievance & Information Request - Voluntary Overtime Violates FLSA

Angela Bolduc, (NRC-Human Resources Chief Policy and Labor Relations)

### Grievance

NTEU is filing a institutional grievance on behalf of all NRC employees claiming the agency has not properly paid certain employees overtime pay as required by the Fair Labor Standards Act (FLSA), 5 CFR 551 and NRC Management Directive 10.42 (Hours of Work and Premium Pay). At the Step A grievance meeting, after receipt of the requested information, the affected employees will be identified along with justification that NRC supervisors and managers had actual knowledge or reason to believe that overtime work was being performed and had an opportunity to prevent it. Recently, during the Union's normal course of helping an employee during a overtime dispute with their supervisor, it became apparent that the employee was receiving regular supervisory approval on their time and attendance forms to work unpaid overtime using the agency Time & Attendance-Time Recording Code ADDLT for voluntary overtime. As a remedy, NTEU requests the affected employees be properly paid, and any other remedy an arbitrator may deem appropriate.


---Dale Yeilding, NTEU Chapter President

### Information Request

NTEU is requesting the following information under the Collective Bargaining Agreement, Article 53 and 5 USC 7114. The particularized need is to substantiate that supervisors and managers had actual knowledge that overtime work was being performed by NRC employees in support of the associated union's institutional grievance above. NTEU requests for the past three years a list of all employees entering Time Recording Code –ADDLT(Voluntary Overtime) into the agency time and labor computer system (HRMS) along with the amount of time, date the voluntary overtime was worked, and the agency FLSA exempt or non-exempt classification of the employee. The information is requested electronically in an excel spreadsheet as opposed to alternatively requesting the actual T&A sheets signed by supervisors. Information is requested for both bargaining unit and non-bargaining unit employees and employees both exempt and non-exempt from the FLSA such that the Union may inform employees of their associated avenues of appeal.

---Dale Yeilding, NTEU Chapter President

### National Treasury Employees Union



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For a Better Tomorrow**

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**NRC Management Directive 10.42**

Chapter 4136-

037 Supervisors:

b. Must exercise special and continuing control over the work of non-exempt employees in their organizations to insure that overtime work is not performed if prior permission has not been given, or if there is no intention of paying for the additional time worked.

059, Payment for Overtime Worked

b. Nonexempt employees, covered by the Fair Labor Standards Act (FLSA), will be paid for all overtime work which was ordered or approved, or was permitted where the supervisor had actual knowledge or reason to believe that overtime work was being performed and had an opportunity to prevent it. Such payments will be either at the rates and amounts provided in a., above (see Appendix 4136, Part III.B.), or at the rates and amounts provided by the FLSA (see Appendix 4136, Part III.C), whichever is greater. Under the FLSA, "hours worked" are counted differently than are hours worked under Title 5 U.S.C. (see Appendix 4136, Part III.C).

0520 Relationship of FLSA Overtime to Other Premium Pay

Although nonexempt employees are paid overtime in the greatest amount available under either the FLSA or other laws (see Appendix 4136, Part III.C.), payments under the FLSA do not affect the employee's premium pay entitlements for matters other than overtime. Nonexempt employees' entitlements to other premium payments will be established and paid as though overtime pay had not been made under the FLSA. Entitlements to overtime pay under the FLSA are based on the concept of "actual hours of work," as defined in the FLSA.

0521 Administration of the FLSA

- a. Determination of Status. Determination of whether an NRC employee has exempt or nonexempt status under the FLSA is made by the Division of Organization and Personnel, after a review of the "duties" portion of the position description. This determination is based on detailed guidance provided by OPM. New employees are advised of their status by letter and by receipt of the employee copy of NRC Form 50, "Notification of Personnel Action." If an employee's FLSA status changes, the initiating Form 50 will reflect that change. Form 772-A, "Position Action and Evaluation," and records exempt or nonexempt status.

## **NRC Management Directive 10.42**

Chapter 4136-

Part III, Overtime, A. Use of Overtime, 2. Authorization of Overtime

(2) If nonexempt employees work additional hours which Management "suffers or permits" (i.e., the supervisor has knowledge of the work and has had an opportunity to prevent the work from being performed), even if such time is not approved, the employees are entitled to compensation for overtime, under the Fair Labor Standards Act.

Part III, Overtime, C. Overtime Under the FLSA (See 5 CFR 551)

The FLSA was extended to cover the Federal Service by Public Law 93-259, effective May 1, 1974. PL 93-259 acted to superimpose the FLSA requirements on top of the statutory and regulatory pay rules already existing in the Federal Service insofar as overtime pay and compensatory time are concerned. For overtime purposes, nonexempt employees (those covered by the FLSA) may be covered by two laws, the FLSA and Title 5 USC 5542. Exempt employees are not covered by the FLSA.

The FLSA does not affect premium pay other than overtime. Where the FLSA and other statutes are not consistent, nonexempt employees will receive the greater benefit. A nonexempt employee whose overtime entitlement is solely under Title 5 USC 5542 will be treated as an exempt employee subject to all the stipulations and provisions of B., above. Differences in the results of these two overtime computation systems are resolved by requiring that affected employees' hours of work at their regular rate of pay be computed under both systems with the employees being paid under whichever system yields the greater benefit. Exempt employees and nonexempt employees whose overtime entitlement is solely under Title 5 USC 5542 will have their overtime benefits computed in accordance with B., above. The remaining salaried, nonexempt employees will have their FLSA overtime benefits computed under the rules stated below. (See 5 CFR 551 for coverage and implementing OPM regulations. Each employee's status is noted on his or her SF-50, "Notification of Personnel Action.")

2. Overtime Entitlement

a. Nonexempt employees who are ordered or approved to perform overtime work, who are "suffered or permitted" to perform work, or who are in waiting or idle time which is under the control of the agency and which is for the benefit of the agency, are required to be paid overtime for hours worked in excess of 40 in a week. Any work or duty performed by nonexempt employees for the benefit of NRC, whether ordered or not, is to be considered as time worked if the responsible supervisor: (1) Has knowledge of such work; and (2) Has an opportunity to prevent such work from being performed. A nonexempt employee who is permitted to commence productive work prior to the scheduled work hours, or to continue work during meal periods or at the end of the established work day, may become entitled to compensation even though the overtime work has not specifically ordered or approved.

