



DEPARTMENT OF DEFENSE
CIVILIAN PERSONNEL ADVISORY SERVICE
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-1100

8 April 2016

MEMORANDUM FOR THE COMMANDER FLEET READINESS CENTER EAST,
CHERRY POINT, NORTH CAROLINA
ATTN: MS. KIM GEORGE, HRS
PSC BOX 8021
CHERRY POINT, NORTH CAROLINA 28533-0021

SUBJECT: Memorandum of Agreement (MOA) between U.S. Department of Navy,
Fleet Readiness Center East, Cherry Point, NC and the International
Association of Machinists and Aerospace Workers, Local Lodge 2297
(IAMAW)

The subject MOA (extending the collective bargaining agreement (CBA) between the parties) as well as the parties' CBA were executed on 10 March 2016 and the MOA along with the parties' CBA were reviewed by this office pursuant to 5 U.S.C. § 7114(c). Although the parties bargained in good faith to reach an agreement, several provisions of the parties' collective bargaining agreement do not conform to law, rule, or regulation. Consequently, the agreement is disapproved. The following provides the specific nonnegotiable provisions:

a. Article 8, Basic Workweek, Hours of Work and Shift Work, Section 2.

This provision provides: "Basic workweeks of other than Monday through Friday may be established for employees whenever the Employer determines the alternative schedule is absolutely the only efficient way to carry out the mission of the FRC East."

This provision precludes management from establishing alternative "workweeks of other than Monday through Friday" unless it determines that "the alternative schedule is absolutely the only efficient way to carry out the mission of the FRC East." Because this provision precludes management from establishing a basic workweek other than one from Monday through Friday, it places a substantive limitation on management's right to assign work and is nonnegotiable under 5 U.S.C. § 7106(a)(2)(B). See, for example, NTEU and U.S. Dept. of the Treasury, Customs Service, Washington, DC, 46 FLRA 696 (1992) (Provision 10).

Suggested revision: delete this provision.

b. Article 9, Overtime (Non-Exempt Employees), Section 15-a. This provision provides: "In the event that regularly scheduled overtime (Saturday, Sunday, pre-shift, post-shift) is cancelled prior to the date the overtime is to be worked, and the employer does not notify the affected employees of the overtime cancellation, then the

employer agrees to compensate the affected employees with a minimum of two (2) hours of overtime pay, provided the employees report as scheduled and the two hours does not exceed the overtime scheduled.”

This provision requires management to pay a minimum of two hours of overtime pay to those employees whose regularly scheduled overtime is cancelled and management does not notify the employees of the cancellation. By requiring management to pay overtime to employees who have not worked the “hours of work” or overtime for which they would be paid, this provision is nonnegotiable as contrary to law which provides that to constitute “hours of work” an activity must be pursued primarily for the benefit of the employer. See, AFGE, Local 900 and U.S. Dept. of the Army, Army Reserve Personnel Center, St. Louis, MO, 46 FLRA 1494 (1993) (Provisions 3 and 8).

Suggested revision: delete this provision.

c. Article 29, Civic Responsibilities, Section 4. This provision provides: “Except to the extent that such time off does not seriously interfere with Department of Navy operations, excused leave will be given to eligible employees for the purpose of voting in national, state, and local municipal elections or referendums. In this connection, employees will be excused without charge to leave for the purpose of voting on the following basis: Within a range of zero (0) to forty (40) road miles, for a period of (3) hours after the polls open, or three (3) hours before the polls close, whichever will cause the least period of absence from the Facility; over forty (40) to seventy-five (75) road miles, for a period of four (4) hours after the polls open, or four (4) hours before the polls close, whichever will cause the least period of absence from the Facility; over seventy-five (75) to one hundred ten (110) road miles, for a period of five (5) hours after the polls open, or five (5) hours before the polls close, whichever will cause the least period of absence from the Facility; or over one hundred ten (110) road miles on an individual case basis not to exceed normal work hours per day.”

Under this provision, management would be unable to determine that an employee was required to work unless the time off does not seriously interfere with the agency’s operations. By requiring management to grant excused leave for an employee to vote, in the situations described in this provision, and despite any management need to have the employee perform work, this provision excessively interferes with management’s right to assign work and is nonnegotiable under 5 U.S.C. §7106(a)(2)(B). See, National Treasury Employees Union and U.S. Dept. of the Treasury, Customs Service, Washington, DC, 46 FLRA 696 (1992) (Provision 10).

Suggested revision: delete this provision.

d. Article 31, General Provisions, Section 8-a. This provision provides: “Except to the extent that such time off does not seriously interfere with Employer operations, employees assigned to the third shift will be given the option to come in on day shift on Monday; or the day after a holiday to participate in the blood donor program; or be allowed to come in at 3:00 a.m. and leave at 7:00 a.m. on the day they

donate blood. The requirements of Section 8 above will apply on the day they donate blood.”

Under this provision, management would be unable to determine that an employee was required to work, and thus could not be spared to donate blood. The provision directly and excessively interferes with management’s 5 U.S.C. §7106(a)(2)(B) right to assign work. See, National Treasury Employees Union and U.S. Department of the Treasury, Customs Service, Washington, D.C., 46 FLRA 696 (1992) (Provision 10 at 46 FLRA 719-721); American Federation of Government Employees Local 1815 and Army Aviation Center, Fort Rucker, AL, 53 FLRA 606 (1997) (Provision 3); See also, National Federation of Federal Employees Local 1655 and U.S. Department of Defense National Guard Bureau, Alexandria, VA, 49 FLRA 874 (1994) (Provision 4).

Suggested revision: delete this provision.

In addition to the disapproved provisions, the following provisions are approved with the following understandings:

1. Article 8, Basic Workweek, Hours of Work and Shift Work, Section 3.

This provision provides: “Changes in an employee’s basic workweek and work shift will be made in accordance with applicable controlling rules and regulations.”

This provision is approved with the understanding that the parties intend, in implementing it, to recognize the exception for changes to employees’ work schedules in instances where the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased as provided under 5 C.F.R. § 610.121(a) which explicitly permits management to make such changes to employees’ work schedules.

2. Article 9, Overtime (Non-Exempt Employees), Section 23. This provision provides: “When the physical limitations are removed and the employee has been denied overtime because of such reasons for more than sixty calendar days, he/she will be entered on the overtime list with the average number of overtime hours earned of employees within the job classification in the shop/shift to which he/she is regularly assigned at that time.”

This provision is approved with the understanding that the parties intend, in implementing it, to ensure that management has the right to make the determination as to whether the employee is qualified to work the overtime in question and that this provision merely enters the employee on the appropriate overtime list.

3. Article 15, Performance Appraisals, Section 9. This provision provides: “A grievance may be filed under the negotiated grievance procedure and arbitration procedure concerning an unacceptable performance rating or an adverse action taken as a result of (i.e., demotion or removal), but not both.”

This provision is approved with the understanding that the parties intend, in implementing it, to ensure that either a grievance or an appeal may be filed "concerning an unacceptable performance rating or an adverse action taken as a result of (i.e., demotion or removal), but not both."

4. Article 31, General Provisions, Section 8. This provision provides: "Except to the extent that such time off does not seriously interfere with Employer operations, employees participating in the blood donor program will be considered for approval of four (4) hours administrative leave on the day such donation is made, provided the donation is made during duty hours."

This provision is approved with the understanding that the parties intend, in implementing it, to mean that the granting of such time off remains subject to management's approval the same as any other absence such that approval of the time off is subject to workload and mission requirements.

The parties to this agreement may, by mutual consent, implement its remaining provision minus the provisions disapproved in this memorandum. If the parties elect to do this, they should submit to this office for approval a document signed and dated by both parties agreeing to implement all agreement provisions not disapproved in this memorandum. If the parties have previously executed a separate agreement to this effect, such as a ground rules agreement that provides for implementation of the agreement minus the disapproved provision, then that agreement should be forwarded to this office. In the alternative, the parties may revise the language and resubmit the agreement for approval at a later time. The documentation of a revised agreement should be forwarded to this office by the most expeditious means as soon as the parties sign and date it. The effective date of the agreement will be the date the additional documentation is approved by this office or a later date specified by the parties.

If there are any questions concerning this matter, you may contact Mr. Lee Alner on DSN 372-1635 or, commercial 571-372-1635.

A copy of this memorandum was served on the union representative by certified mail on 8 April 2016.


Lisa M. McGlasson
Chief
Labor and Employee Relations Division

cc: via certified mail:
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