

February 23, 2018

**VIA FIRST CLASS MAIL AND EMAIL AT [hfishgold@yahoo.com](mailto:hfishgold@yahoo.com)**

Herbert Fishgold  
2200 Pennsylvania Avenue, NW, Suite 400 East  
Washington, DC 20037

RE: Unfair Labor Practices Charge:  
IUPA Local 5004/Metropolitan Washington Airports Authority

Dear Arbitrator Fishgold:

Please accept this letter in response to the January 31, 2018 letter (the "Opposition") filed by the Metropolitan Washington Airports Authority ("MWAA") in opposition to the Unfair Labor Practices Charge ("Charge") brought on behalf of the Metropolitan Washington Airports Police Association International Union of Police Associations AFL-CIO Local 5004 (the "Union").

I. Proper Party

As the President and Chief Executive Officer assigned to oversee all operations for MWAA, Mr. Potter is properly named as the party to this Charge. In the event that the Panel believes this argument has any merit, the Union would move the Panel to allow it to conduct discovery and if appropriate, to amend the Charge to identify the exact party or department responsible for the acts giving rise to the Charge – most notably the individual or department authorizing and instituting pay policy changes directly contrary to the clear language of the Union's Collective Bargaining Agreement ("CBA").

II. Night Pay/Shift Differential

As you are aware, MWAA has conceded that the differential issue is negotiable due to the plain language in Article 4 Section 6 of the Union's CBA. Nonetheless, it is worthy to make two points related to this issue.

In its Opposition, MWAA claims that it had provided prior notice to the Union regarding the pay and shift differentials, and that Union counsel erroneously alleged to the contrary that there was no notice. The Union continues to stand by its assertion that MWAA failed to provide notice. The plain language in Article 4 Section 6 of the CBA requires MWAA to notify the Union of any proposed changes to differential pay, and to give sufficient opportunity for the Union to request negotiations. As "notice," MWAA

points to an email sent to union leaders on October 31, 2017 and the attached Memorandum dated October 31, 2017. This Memorandum announced the 2018 Pay Policy, including the night pay and shift differential changes, as basically a "done deal." Any changes to any pay differential for the Police Department needed to be proposed well ahead of time to the Union, and with sufficient time to allow negotiations. This simply did not happen.

MWAA's Opposition goes on to state, "In fact, there have been no changes to the current pay practice for night pay/shift differential, and no Pay Policy changes announced to the Union Presidents will be implemented until January 2019." The Union has not seen this statement in writing prior to receiving MWAA's Opposition, and the Union plans to rely on this statement to ensure that no Pay Policy changes announced to the Union Presidents will be implemented until January 2019.

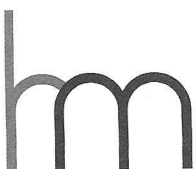
Ultimately, MWAA's Opposition concedes that the Union is absolutely correct that the plain language of Article 4 Section 6 of the CBA makes differential pay negotiable. MWAA further concedes that it is therefore bound to negotiation on and intends to negotiate this issue.

### III. Overtime

Under the Labor Code and the March 2, 1987 Lease ("Lease"), MWAA is bound to honor the Union's collective bargaining agreements as well as the collective bargaining rights before the Lease. Under the Union's current CBA as well as under the employee's collective bargaining rights before the Lease, the Sick Leave/Overtime Issue is negotiable.

First, the Sick Leave/Overtime Issue is a matter that was within the employee's collective bargaining rights before the Lease. Consistent with the *International Brotherhood* case, and consistent with 5 C.F.R. Section 551.401(b) and (d), "generally that time spent in a paid nonwork status is considered hours of work for determining employee entitlement to overtime pay under the FLSA." *International Brotherhood of Police Officers and General Services Administration*, 47 F.L.R.A. 397 (1993). This would have held true during the time MWAA entered the Lease.

Second, the Sick Leave/Overtime Issue is not an effort to bargain pay. MWAA makes the argument that the Union is attempting to bargain pay, resting on Arbitrator Jacksteit's opinion in *American Federation of Government Employees, AFL-CIO, Local 2303 and Metropolitan Washington Airports Authority*, Case No. MWAA 1-2003, *Negotiability*. In her opinion, Adjudicator Jacksteit analyzed, among other issues, whether a union proposal seeking holiday pay rates exceeding those provided by federal law was negotiable. The union in that case conceded that the proposal involved pay, but argued that it was entitled to bargain the issue of pay with MWAA. Adjudicator Jacksteit rejected this argument and concluded the issue was related to pay and not negotiable.



However, on page 15 in the same opinion, Arbitrator Jacksteit also analyzed a union proposal to implement a procedure relating to pay involving work assignments for employees. Adjudicator Jacksteit pointed out that the union had the right to "negotiate procedures for the exercise" of the right to determine pay, saw no direct interference with the right to determine pay in the union's proposal, and concluded that the union's proposal was negotiable as a *procedure*. Likewise, whether sick leave is considered in the forty-hour work-week calculation constitutes a *procedure* as to how to calculate the forty-hour work week, would not interfere directly with MWAA's right to determine pay, and is therefore negotiable.

This distinction is consistent with *International Brotherhood* case, which found that payment of premium pay for overtime work was not negotiable. However, allowing compensatory time in lieu of overtime pay for irregular or occasional overtime was not an attempt to bargain for compensatory time in lieu of overtime pay, and was negotiable.

Third, the Sick Leave/Overtime issue is negotiable under the Union's specific CBA as a proposed change to "leave accrual rates." Section 6 of Article 4 (with emphasis added) states:

The Employer will notify the Union of any proposed changes to differential pay or *leave accrual rates*. The Union may request negotiations in accordance with Section 3 of this Article.

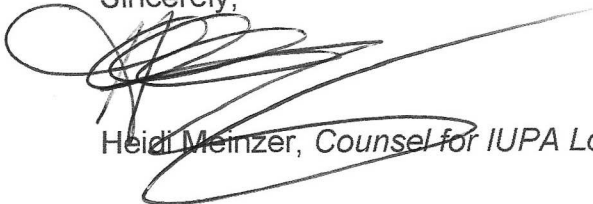
The Sick Leave/Overtime Issue is sufficiently related to leave accrual rates to make this issue negotiable under the Union's specific CBA.

#### IV. Conclusion

As to the first issue regarding pay differentials, that issue has been conceded to be negotiable by MWAA. As to the second issue, the Union respectfully requests that the Panel find this issue to be negotiable, and reiterates its desired remedies outlined in the original Charge filed in this matter.

If you have questions regarding this letter or the Unfair Labor Practice Charge, please contact me at 703-548-1915 or [heidi@meinzerlaw.com](mailto:heidi@meinzerlaw.com).

Sincerely,



Heidi Meinzer, Counsel for IUPA Local 5004

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