Metropolitan Washington
Airports Authority
1 Aviation Circle
Washington, DC 20001-6000

METROPOLITAN
WASHINGTON
AIRPORTS AUTHORITY

Mr. Seymour Strongin
4000 Cathedral Ave., NW
Suite 625B
Washington, D.C. 20016

Re: Unfair Labor Practice Charge—IUPA, Local 5004
Airports Authority Pay Policy

Dear Mr. Strongin:

The Metropolitan Washington Airports Police Association, International Union of Police Associations AFL-CIO Local 5004 (Union) filed an Unfair Labor Practice Charge (Charge) against the Metropolitan Washington Airports Authority (Airports Authority) on January 18, 2018. The Union contends that the Employer "failed to bargain in good faith with the Union over changes proposed by the 2018 Pay Policy."

The Charge alleges that the Airports Authority violated the following subsections of §2.12, *Unfair Labor Practices*, of the Airports Authority Labor Code: 2.12(1)(a), interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by this Part; 2.12(1)(e), refusing to bargain collectively in good faith with the exclusive representative as required in Section 9; and 2.12(1)(g), refusing or failing to comply with any provision of this Part or any of the procedural regulations established by the Council or its component panels.

By its Charge, the Union improperly names John E. Potter, Airports Authority President and Chief Executive Officer. Mr. Potter has no direct involvement in the allegations or issues set forth by the Union and should be dismissed as a charged Party.

Notwithstanding the fact that the Charge is substantively without merit, as a preliminary matter, subsection 2.12(1)(g) is irrelevant. The Airports Authority has not refused or failed to comply with any procedural regulations established by the Employee Relations Council (Council).

Background

On October 31, 2017, Airports Authority Union presidents were provided a copy of a 2018 Pay Policy Memo via email notification prior to Authority-wide distribution. Tab A. Subsequently on that same date, a Special Edition of *On Good Authority*[1] announced the Employee Pay Policy to the entire organization. Tab B. Included in the 2018 Pay Policy are the following adjustments:

> Overtime: Effective March 18, 2018, sick leave will no longer be part of the FLSA 40-hour calculations for employees who are eligible for overtime.
>
> Night Pay/Shift Differential
> According to our research, the Airports Authority pays substantially more than the market rate for night pay/shift differential and will adjust our rate to be more comparable. Active, eligible employees as of March 17, 2018, will be grandfathered at their 2018 dollar amount. Employees hired March 18, 2018, or after will be paid a flat rate of $2.00 per hour night shift differential for hours worked between 6:00 p.m. and 6:00 a.m. Employees will no longer receive night shift differential for sick, annual, or holiday leave, with the exception of IAD trades.

Night Pay/Shift Differential

On November 8, 2017, IUPA Counsel, Heidi Meinzer sent, via email and first class mail, a letter referenced, "Grievance/Unfair Labor Practice Charge, naming all Officer and Corporals as "Grievants." Tab C. That letter erroneously alleged that prior to the announcement in *On Good Authority*, the Employer provided no notice to the Union regarding night pay/shift differentials changes in the 2018 Pay Policy. The Union further stated that, "pursuant to Article 31, Section 2, the Union submits this letter to grieve the CBA violations."

In fact, all Union Presidents were provided email notification from the Labor Relations & Policy Specialist. See, Tab A. In addition, Article 4, §3 of the CBA provides that "the proposed changes will not be implemented until the expiration of the 15 calendar day period, the conclusion of negotiations, or the decision to submit the matter(s) to impasse procedures as appropriate." Tab D. 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.

[1] *On Good Authority* is an Airports Authority communication publication for employees.

While the Airports Authority Labor Code, as set forth in the MWAA Regulations excludes pay as a negotiable condition of employment,[2] the Employer acknowledges the limited and specific exception in Article 4, §6 of the CBA regarding differential pay, i.e., that the Union may request negotiations. Tab D. In light of this limited CBA exception, the Employer intends to enter discussions with the Union regarding the application of Pay Policy changes to night pay/shift differential for the bargaining unit.

Overtime

The Union alleges that the Employer has committed an Unfair Labor Practice by "failing and refusing to bargain in good faith with the Union regarding the Sick Leave Issue in the proposed 2018 Pay Policy." Specifically, the Union contends that the Employer is obligated to bargain with the Union regarding the Pay Policy decision that sick leave will no longer be part of the FSLA 40-hour calculations for employees who are eligible for overtime pay. As detailed below, there is no contractual exception or applicable regulation or authority supporting the Union's claim.

The Union cites, as its supporting "legal authority," Federal Labor Relations Authority (FLRA) decision, *International Brotherhood of Police Officers and General Services Administration*, 47 F.L.R.A. 397 (1993), which references 5 C.F.R §551.401(b) and (d), regarding the negotiability of non-work status and the calculation of overtime. The Union's reliance on the FLRA decision does not however, withstand the scrutiny of the FLRA's stipulation regarding negotiability that, "*we are unaware of any grounds on which the proposal is nonnegotiable.*" Tab E.

With respect to the 2018 Pay Policy, Part 2, *Labor Code*, of the *Amended and Restated Metropolitan Washington Airports Authority Regulations, November 2015*, (Regulations) definitively renders the Union's cited authorities inapplicable and as such, the Union's reliance on the FLRA decision is baseless. In contrast to the FLRA decision, the MWAA Regulations definitively set forth the grounds for non-negotiability with respect to the Airports Authority.

On June 7, 1987 the operation of Washington Dulles International and Washington National Airports was transferred to the Airports Authority from the Federal Aviation Administration in the U.S. Department of Transportation, pursuant to the March 2, 1987 Lease agreement between the United States of America and the Airports Authority. Through the enabling legislation, the Airports Authority was empowered to adopt governing rules and

[2] In-depth discussion follows below.

regulations. The Regulations, including the Labor Code, have been adopted with the full force and effect of law. Tab F.

As stated in §2.1, *Declaration of Policy* of the Labor Code, "the Authority is mandated by the Lease agreement...to continue the collective bargaining rights of Authority employees to the extent that such rights were enjoyed before the transfer of National and Dulles to the Authority." Section 2.2, *Definitions*, states: "Collective Bargaining Rights" means the rights **and limitations** [emphasis supplied] of collective bargaining enjoyed by employees of the Metropolitan Washington Airports before the date the Lease took effect. Those limitations are further defined in Section 2.2, paragraph, "Conditions of Employment".

> Conditions of Employment means personnel policies, practices, and matters, whether established by directive, regulation or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters:
>
> (1) relating to political activities prohibited to Authority employees by law:
> (2) relating to job classifications by the Authority;
> (3) to the extent such matters are specifically provided for by statute; or
> **(4) if such matters were not within the collective bargaining rights enjoyed by employees of the Metropolitan Washington Airports before the date the Lease took effect.** [emphasis supplied]

In accordance with the provisions of the Transfer Act and set forth with specificity in the Labor Code, collective bargaining rights do not include the right to bargain pay.

This issue was challenged and decided in favor of the Airports Authority by the Employee Relations Council in *American Federation of Government Employees, AFL-CIO, Local 2303 and Metropolitan Washington Airports Authority, Case No. MWAA 1-2003, Negotiability.* Adjudicator Mary Jacksteit identified the issue as, "whether the 'collective bargaining rights enjoyed by employees of the MWA prior to June 1987 and continued by the Transfer Act include the right to bargain pay." Tab G, p. 10.

Adjudicator Jacksteit began her analysis with reference to, MWAA Professional Fire Fighters Association Local 3217, IAFF, AFL-CIO v. U.S., 959 F.2d 297 (D.C.Cir. 1992) which ruled that under the terms of the Lease, the Airports Authority was not required to bargain over pay. Proceeding from this foundational ruling, Adjudicator Jacksteit addressed the issue of pay negotiability post-transfer by determining the meaning of "collective bargaining rights" under the Transfer Act and the Labor Code. She determined that the language (number (4), in **bold** above) added by the MWAA Labor Code is specific to actual subjects that employees had the

right to bargain prior to transfer and, "pay was not one of them." Tab G, p. 10. As such, the Union's proposal to bargain pay in Case No. MWAA 1-2003 was outside the duty to bargain. [3]

In the instant Charge filed by IUPA, the same analysis applies and necessitates the same conclusion—the Employer's decision regarding the calculation of overtime pay is non-negotiable. Pay is excluded as a condition of employment under the MWAA Labor Code and thus, is not a mandatory subject of bargaining.[4] The Union's reliance on "prevailing rights guaranteed by the parties' Collective Bargaining Agreement and the Labor Code" (quoting page 4 of the Charge) is wholly without merit. Section 1 of Article 4, *Matters Appropriate for Consultation and Negotiation* , clearly delineates the scope of bargaining: "all matters pertaining to conditions of employment of the Bargaining Unit are negotiable, **except as provided in the Labor Code**." Emphasis supplied. Tab D.

Based on the foregoing, the Employer respectfully requests that the ULP Panel dismiss the Charge in its entirety without further consideration, under Section 300.206 of the Rules, *Preliminary Action on Charge and Response.*

Respectfully submitted,

Janice Borneman-Eckels
Employer Representative

January 31, 2018

[3] ULP Panel Chairman, Joseph M. Sharnoff and Panel Member Roger P. Kaplan concurred in the decision.
[4] By logical extension, the exclusion of pay as a condition of employment is reflected in the subjects that are excluded from the grievance process in §1(a)(4)(d) of Article 31, *Grievances* of the negotiated agreement. Tab H, pp. 41-42.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2018, a true and correct copy of the Employer Response to the Unfair Labor Practice Charge filed by the Metropolitan Washington Airports Police Association, IUPA, Local 5004, was mailed first-class, postage prepaid, to IUPA Counsel, Heidi Meinzer at the following address:

Law Office of Heidi Meinzer, PLLC
515-B East Braddock Road
Alexandria, Virginia 22314

Janice Borneman-Eckels
Employer Representative