

January 12, 2018

VIA FIRST CLASS MAIL

Unfair Labor Practices Panel
MWAA Employee Labor Relations Board
Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001

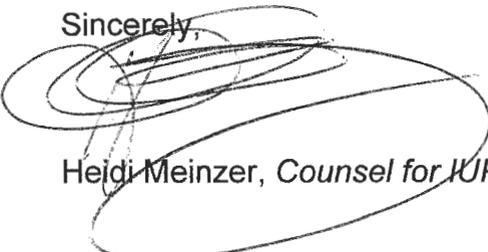
RE: Unfair Labor Practices Charge

Dear Unfair Labor Practices Panel:

Please find enclosed the Unfair Labor Practices Charge being brought on behalf of the Metropolitan Washington Airports Police Association International Union of Police Associations AFL-CIO Local 5004.

If you have questions regarding this letter, please contact me at 703-548-1915 or heidi@meinzerlaw.com.

Sincerely,



Heidi Meinzer, *Counsel for KUPA Local 5004*

cc: Via first class mail and email:
Janice Borneman-Eckels, Esq.
Labor Relations Specialist
Metropolitan Washington Airports Authority
Ronald Reagan National Airport
Washington, DC 20001-6000
Janice.Eckels-Borneman@MWAA.com

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITES
EMPLOYEE RELATIONS COUNCIL**

UNFAIR LABOR PRACTICE CHARGE

DATE: January 12, 2018

NAME OF PARTY CHARGED: Jack Potter, President and Chief Executive Officer,
and any designees acting on his behalf

CONTACT PERSON: Janice Borneman-Eckels, Labor Relations Specialist

TITLE: Labor Relations Specialist

ADDRESS: Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001

PARTY BRINGING CHARGE: The Metropolitan Washington Airports Police Association International Union of Police Associations AFL-CIO Local 5004 (the "Union"), on behalf of and as the exclusive representative for the police officers and corporals employed by the Metropolitan Washington Airports Authority ("MWAA")

CONTACT PERSON: Heidi Meinzer, Esq.

TITLE: Legal Counsel for the IUPA Local 5004

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

A. SECTIONS OF THE LABOR CODE BEING VIOLATED:

Section 2.12(1) of the applicable Labor Code and MWAA Regulations, and specifically the following subsections:

(1)(a): Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by this part;

(1)(e): Refusing to bargain collectively in good faith with the exclusive representative as required in Section 2.9;

(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.

B. BASIS OF THE CHARGE:

1. FACTUAL BACKGROUND

The Union contends that MWAA, through its agents Jack Potter and all designees acting on his behalf (the "Employer"), failed to negotiate and bargain in good faith with the Union over changes proposed by the 2018 Pay Policy. In particular, the Employer failed to negotiate and bargain on two distinct points: (1) proposing modifications to the night pay and shift differential and (2) proposing to discontinue counting sick leave as part of the FLSA 40-hour work week calculation.

On October 31, 2017, the Employer announced these and other proposed policy changes, with no previous notice to the Union. See Exhibit A (October 31, 2017 Memorandum re: 2018 Pay Policy). That announcement stated in part:

We will also make the following adjustments in 2018.

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.

The current and long-standing policy for night shift differential (between the hours of 6:00 PM and 6:00 AM) is to pay an additional 10% of the officers' hourly wage. The current policy for work on Sundays is to pay premium pay of an additional 25% of the officer's hourly wage. Midnight shift receives double the premium pay if the officer works both Saturday and Sunday. See Exhibit B (screenshot of differential policies).

Under current and long-standing policy, the Employer has been counting sick leave as part of the FLSA 40-hour work week calculation.

On November 8, 2017, counsel for the Union sent a letter to the Employer's Labor Relations Specialist regarding the night pay/shift differential issue (the "Differential Issue"), requesting negotiations and providing notice of the Union's intent to exercise its rights to file an Unfair Labor Practice Charge on that issue. See Exhibit C (November 8, 2017 letter).

On November 13, 2017, the Employer's Labor Relations Specialist emailed counsel for the Union, taking the position that the Differential Issue is not within the Union's collective bargaining rights and is excluded under the Labor Code as a condition of employment. See Exhibit D (November 13, 2017 email).

On November 17, 2017, counsel for the Union sent a second letter to the Employer's Labor Relations Specialist insisting that the Employer does need to negotiate the Differential Issue. That same letter also requested negotiations and provided notice of the union's intent to exercise its rights to file an Unfair Labor Practice Charge on the issue of discontinuing counting sick leave as part of the forty-hour work week (the "Sick Leave Issue"). See Exhibit E (November 17, 2017 letter).

On November 29, 2017, the Employer's Labor Relations Specialist emailed stating that she was still waiting on management prior to responding to the November 17, 2017 letter. See Exhibit F (November 29, 2017 email). On December 22, 2017, the Employer's Labor Relations Specialist again emailed acknowledging that the Union was waiting for a response. See Exhibit G (December 22, 2017 email).

2. LEGAL DISCUSSION

a. Applicable Law

The Metropolitan Washington Airports Act of 1986, codified as amended at 49 U.S.C.A. Sections 49101-49112, (the "MWAA Act") authorized the Secretary of Transportation to transfer responsibility of the Reagan National and Dulles Airports from the Federal Aviation Administration to the Metropolitan Washington Airports Authority. This transfer of control took effect in 1987 through the Lease.

The MWAA Act obligates MWAA to "continue all collective bargaining rights enjoyed by employees before June 7, 1987." 49 U.S.C.A. § 49104(a)(6)(D). The Lease has a provision in which MWAA agreed to "adopt and maintain an employment code" to assure that it would continue to protect those collective bargaining rights. Lease, Art. 14.B. MWAA adopted a Labor Code establishing a venue for unfair labor practice charges. MWAA Regulations, §2.12.

Section 2.12(1) of the applicable MWAA Regulations prohibits the Employer from, among other things:

- (a) interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by this Part;
- (e) refusing to bargain collectively in good faith with the exclusive representative as required in Section 2.9; and
- (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.

b. The Differential Issue is subject to negotiation

The Employer has committed an unfair labor practice by failing and refusing to bargain in good faith with the Union regarding the Differential Issue in the proposed 2018 Pay Policy.

In February 2011, the Employer and the Union entered into a collective bargaining agreement (the "CBA"). Article 4 of the CBA is provided as Exhibit H. Article 4, Section 6 of the CBA 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.

Under the clear and unambiguous language of Article 4, Section 6, the Differential Issue is negotiable. The Employer wholly failed to provide any notice prior to adopting the policy. Upon learning of the new policy, the Union immediately raised its objections and requested negotiations, which the Employer initially denied, and has subsequently ignored.

In accordance with the above legal authority, the Union seeks the opportunity to bargain on and negotiate the Differential Issue, as this practice has been done since the time of the Lease, and should remain under the prevailing rights guaranteed by the parties' Collective Bargaining Agreement and the Labor Code.

c. The Sick Leave Issue is subject to negotiation

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.

Whether sick leave is considered in the 40-hour calculation is negotiable, and sick leave should be part of the 40-hour calculation. See *International Brotherhood of Police Officers and General Services Administration*, 47 F.L.R.A. 397 (1993); see also 5 CFR §551.401(b) and (d) (stating that hours in a paid nonwork status are "hours of work" for purposes of overtime pay).

In accordance with the above legal authority, the Union seeks the opportunity to bargain for the use of sick leave hours taken as part of the calculation for FLSA overtime, as this practice has been done since the time of the Lease and should remain under the prevailing rights guaranteed by the parties' Collective Bargaining Agreement and the Labor Code.

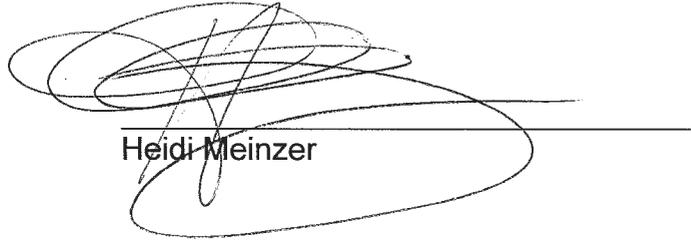
C. **CONCLUSION**

As a remedy to the Employer's unfair labor practices, the Union seeks an order: (1) declaring that the Employer has committed unfair labor practices by failing and

CERTIFICATE OF SERVICE

On this 12th day of January 2018, I hereby certify that I delivered via first class mail and email a copy of this Unfair Labor Practice Charge to:

Janice Borneman-Eckels, Esq.
Labor Relations Specialist
Metropolitan Washington Airports Authority
Ronald Reagan National Airport
Washington, DC 20001-6000
Email: Janice.Eckels-Borneman@MWWAA.com



Heidi Meinzer

MEMORANDUM

To: All Airports Authority Employees
From: Anthony J. Vegliante *AJV*
Subject: 2018 Pay Policy
Date: October 31, 2017

To remain competitive, the Airports Authority conducts annual pay and benefits comparability reviews in our geographic area as well as the general market. We also review compensation best practices. Acting on the information we gather, we make adjustments to maintain market comparability. Our goal is to pay at market rate or better and to ensure even-handed application of rules for all employees.

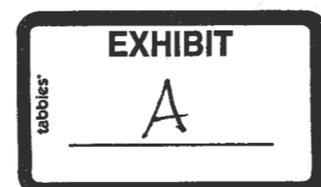
As a result of this review, we have concluded that the Airports Authority offers one of the best total compensation packages in the Washington Metropolitan area, comprised of a highly competitive pay package and a comprehensive benefits package. Based on our review, we will make the following adjustments in 2018.

In December of this year, we are proposing to our Board a 2018 pay-for-performance rate of 3% per person on average. In addition, based on pay range position, employees will receive adjustments of 1.0%, .75%, and .50%, respectively, effective January 2018. Also effective in 2018, our healthcare plan designs and costs to employees will remain constant with no cost increase for active employees.

We will also make the following adjustments in 2018.

- **Overtime:** Effective March 18, 2018, sick leave will no longer be part of the FSLA 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.

The Airports Authority will continue to ensure that our compensation plans are aligned with our business objectives and that we incorporate leading edge practices to attract and retain the best personnel.





Uniforms and equipment provided.

\$120 allowance for footwear yearly

Performance Based Pay Increases

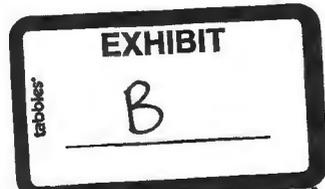
- Annual pay raises are based on a Performance Management Partnership Program

Overtime / Shift Differential

- Time and a half for hours worked beyond normal duty hours
- 10% night shift differential
- 25% Sunday premium pay (midnight shift receives double the premium pay if both Saturday and Sunday are worked)
- Holiday pay is twice the hourly rate.

Pay Differential for Voluntary Programs

- Explosive Detector Dog Handlers receive an additional \$150 per pay period
- Field Training Officers receive additional compensation for each day that they mentor a new officer
- Special response Team receive an additional \$50 per pay period



Annual Leave

November 8, 2017

VIA EMAIL AT Janice.Eckels-Borneman@MWAA.com AND FIRST CLASS MAIL

Janice Borneman-Eckels, Esq.
Labor Relations Specialist
Metropolitan Washington Airports Authority
Ronald Reagan National Airport
Washington, DC 20001-6000

RE: Grievance/Unfair Labor Practice
Grievants: All Officers and Corporals

Dear Janice:

In the October 31, 2017 "On Good Authority" "Special Edition" email, the Authority announced the following regarding pay differentials:

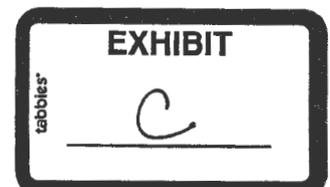
Night Pay/Shift Differential: According to our research, the Airports Authority pays substantially more than the market rate for night pay/shift differential and will adjust our rate to be more comparable. Active, eligible employees as of March 17, 2018, will be grandfathered at their 2018 dollar amount. 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.

Prior to this October 31, 2017 email, the Authority provided no notice to the Union regarding any changes in the pay differential. Under Article 4, Sections 3 and 6, the Authority is obliged to notify the Union of such changes and to submit proposed changes to the Union. The Authority neither provided notice nor submitted the proposed changes to the Union. These failures amount to unfair labor practices and violations of the Collective Bargaining Agreement.

This letter serves as notice of the Union's intent to exercise its rights granted under Article 4 prior to filing an Unfair Labor Practice Charge with the MWAA Employee Relations Council. Under Article 4, Sections 3 and 6, the Union also reserves its rights to request negotiations.

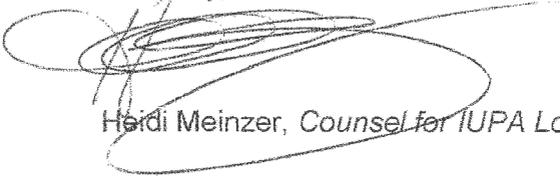
Additionally, pursuant to Article 31, Section 2, the Union submits this letter to grieve the CBA violations as Step 2 of the grievance process because Step 1 under the circumstances would be futile. Consistent with Step 2, I am submitting this grievance to you as the designee for Mr. Norwood as Acting Chief of Police.

The appropriate corrective action is to clarify that the proposed changes to pay differential will not be applied to police officers and corporals.

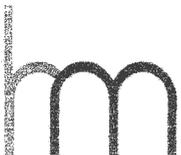


If you have questions regarding this letter, please contact me at 703-548-1915 or heidi@meinzerlaw.com.

Sincerely,

A handwritten signature in black ink, appearing to be "Heidi Meinzer", written over a large, loopy scribble.

Heidi Meinzer, *Counsel for IUPA Local 5004*

A stylized logo consisting of a vertical line on the left and two rounded, connected shapes below it, resembling the lowercase letters 'l' and 'm'.

Subject: RE: Please see the attached re: Pay Differential
Date: Monday, November 13, 2017 at 10:02:08 AM Eastern Standard Time
From: Borneman-Eckels, Janice <Janice.Eckels-Borneman@MWAA.com>
To: Heidi Meinzer <heidi@meinzerlaw.com>

Good morning, Heidi—

This responds to your email and attachment regarding night differential pay at the Airports Authority per the October 31st email notification to the Unions and the announcement in *On Good Authority*. Under the Airports Authority Labor Code, as set forth in the MWAA regulations, pay and benefits were not within the collective bargaining rights of Airports Authority employees at the time of transfer and are excluded as Conditions of Employment under the Labor Code. This is also reflected in Article 31, *Grievances*, Section (4) (d) of the negotiated agreement between the Parties which excludes from the grievance process “anything pertaining to wages and benefits and the calculation thereof.” As such, the change in night differential pay policy is non-negotiable, non-grievable, and does not form the basis for an Unfair Labor Practice.

I hope this provides the necessary clarification.

Best regards,
Janice

From: Heidi Meinzer [mailto:heidi@meinzerlaw.com]
Sent: Wednesday, November 08, 2017 5:17 PM
To: Borneman-Eckels, Janice
Subject: Please see the attached re: Pay Differential

Janice,

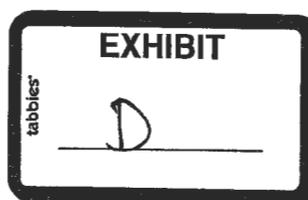
Please see the attached. If you'd like to discuss this, I'll be in court most of the day on Thursday but should be in the office on Friday.

All the best,

Heidi

Heidi Meinzer
Law Office of Heidi Meinzer, PLLC
515-B East Braddock Road
Alexandria, Virginia 22314
(703) 548-1915
(703) 548-1898 (fax)
heidi@meinzerlaw.com
www.meinzerlaw.com

PLEASE NOTE THE FIRM'S NEW ADDRESS!



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November 17, 2017

VIA EMAIL AT Janice.Eckels-Borneman@MWAA.com AND FIRST CLASS MAIL

Janice Borneman-Eckels, Esq.
Labor Relations Specialist
Metropolitan Washington Airports Authority
Ronald Reagan National Airport
Washington, DC 20001-6000

RE: Request to Negotiate/Notice of Unfair Labor Practice Complaints
Grievants: All Officers and Corporals

Dear Janice:

The purpose of this letter is twofold. First, on behalf of the Local 5004, I am providing notice to the Authority that the Union objects to MWAA's proposal to discontinue counting sick leave as part of the FLSA 40-hour workweek calculation.

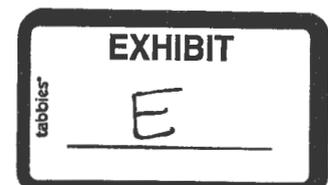
The Authority's October 31, 2017 "Employee Pay Policy" email stated in part: "Overtime: Effective March 18, 2018, sick leave will no longer be part of the FLSA 40-hour calculations for employees who are eligible for overtime." Whether sick leave is considered in the 40-hour calculation is negotiable, and sick leave should be part of the 40-hour calculation. See International Brotherhood of Police Officers and General Services Administration, 47 F.L.R.A. 397 (1993); see also 5 CFR §551.401(b) and (d) (stating that hours in a paid nonwork status are "hours of work" for purposes of overtime pay).

The Union requests negotiations on the issue of discontinuing counting sick leave as part of the 40-hour workweek. If the Authority takes the position that this issue is not negotiable, the Union will proceed with an Unfair Labor Practice Complaint on this issue.

Second, this letter serves as a reply to your November 13, 2017 email regarding the night pay/shift differential proposal that appeared in the October 31, 2017 "On Good Authority" "Special Edition" email. I understand that the Authority's position is that the shift differential is non-negotiable. The Union continues to assert its position that the clear and specific language in Article 4 Section 6 of the CBA makes differential pay and leave accrual rates negotiable.

The Union requests negotiations on the night pay/shift differential issue as well. If the Authority continues to hold the opinion that this issue is not negotiable, the Union will proceed with an Unfair Labor Practice Complaint on this issue also.

The appropriate corrective action for these issues is to clarify that the proposed changes to discontinuing counting sick leave towards overtime and the proposed changes to the pay differential will not be applied to police officers and corporals. If the



Authority insists on applying these two proposed changes to police officers and corporals, these issues must be negotiated.

If you have questions regarding this letter, please contact me at 703-548-1915 or heidi@meinzerlaw.com.

Sincerely,

A handwritten signature in black ink, appearing to be 'Heidi Meinzer', written over a large, loopy scribble.

Heidi Meinzer, Counsel for IUPA Local 5004

Subject: Pay Policy

Date: Wednesday, November 29, 2017 at 9:03:49 AM Eastern Standard Time

From: Borneman-Eckels, Janice <Janice.Eckels-Borneman@MWAA.com>

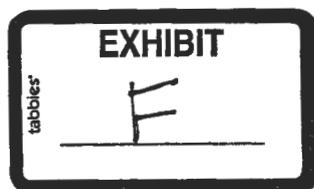
To: Heidi Meinzer <heidi@meinzerlaw.com>

Good morning, Heidi—

I am still working through my Management chain here regarding the response to your November 17 letter about the Pay Policy. Be assured that I will get back to you as soon as I can.

Hope you had a nice Thanksgiving! I will be in touch. As always, feel free to contact me if you have questions.

Best regards,
Janice



Subject: Update

Date: Friday, December 22, 2017 at 8:56:44 AM Eastern Standard Time

From: Borneman-Eckels, Janice <Janice.Eckels-Borneman@MWWA.com>

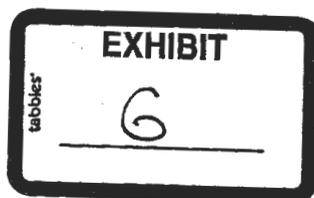
To: Heidi Meinzer <heidi@meinzerlaw.com>

Good morning, Heidi

I know I owe you a response to your November 17 letter regarding the Airports Authority Pay Policy notification. I will be out of the office until January 2, and will work hard to get approval on our response when I return.

Best wishes for a wonderful Holiday and peaceful New Year!

As always, best regards,
Janice





AGREEMENT BETWEEN
POLICE DEPARTMENT
OFFICE OF PUBLIC SAFETY
AND
METROPOLITAN WASHINGTON AIRPORTS
POLICE ASSOCIATION
INTERNATIONAL UNION OF POLICE ASSOCIATIONS
LOCAL 5004
AFL-CIO



FEBRUARY 2011



**Article 4--Matters Appropriate for Consultation and
Negotiation**

Section 1

All matters pertaining to conditions of employment of the Bargaining Unit are negotiable, except as provided in the Labor Code.

Section 2

In the administration of all matters covered by this Agreement, management officials and employees are governed by the provisions of any existing and future laws or regulations or amendments thereto including, without limitation, the provisions of the Metropolitan Washington Airports Transfer Act, the Act of the District of Columbia, the Act of the Commonwealth of Virginia, and applicable statutes of the Commonwealth of Virginia. In the event that any action of the MWAA Employee Relations Council or any administrative, legislative, or judicial tribunal renders null and void any provision of this Agreement, the remaining provisions of the Agreement shall continue in effect for the term of the Agreement. In the event legislation is enacted or of other changes in Airport policies which affect any provision of this Agreement, either Party may request to reopen that provision(s) and renegotiate the impact and implementation of the change.

Section 3

Whenever any Departmental written directives are established or changes are made to existing policies covered under Section 1 above, the Employer will submit such changes to the Union. The Union will have 15 calendar days to request consultation or negotiations, or to submit written comments. Except where immediate changes are necessary due to operational emergencies,

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.

Section 4

The Union will notify the Employer promptly of its intent to exercise its rights granted under this Article prior to filing an Unfair Labor Practice Charge with the MWAA Employee Relations Council.

Section 5

No General Order, Operational Order, or Special Order, nor any memo or other form of oral or written directive/communication will violate any provision of the Agreement.

Section 6

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.

Article 5 - Union and Employee Rights

Section 1

Each employee of the Bargaining Unit shall have the right freely and without fear of penalty or reprisal to join and assist the Union or to refrain from such activity, and each employee shall be protected in the exercise of this right. The right to assist any labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative. The participation and representation