

<p><b>IN THE MATTER OF:</b></p> <p><b>AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3721 GRIEVANTS</b></p> <p><b>v.</b></p> <p><b>DISTRICT OF COLUMBIA FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT AGENCY</b></p>	<p><b>DENNIS RUBIN DIRECTOR</b></p> <p><b>GRIEVANCE OFFICIAL</b></p>
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### **STEP 3 GROUP GRIEVANCE**

Comes now, American Federation of Government Employees, Local 3721 (hereinafter “Union”), by and through its undersigned representative, to file this step 3 group grievance.

This grievance is submitted pursuant to Articles B(2)(b) and B(3)(c) of the Collective Bargaining Agreement (hereinafter “contract” or “CBA”) currently in effect between the Union and the District of Columbia Fire and Emergency Medical Services Department (hereinafter “Agency”).

The Group, for the purposes of this grievance, shall be all employees of the Agency in the bargaining unit represented by the Union, who have been declared “Emergency Employees” by the Agency, and who worked on February 10<sup>th</sup> 2010 and February 11<sup>th</sup> 2010, when the District of Columbia Government was closed by the Mayor because of the snow storm during that time period.

### **STATEMENT OF FACTS**

On both February 10<sup>th</sup> 2010 and February 11<sup>th</sup> 2010, Mayor Adrian Fenty closed the District of Columbia Government because of the snow storm that hit the region. The grievants are designated as emergency employees, and as such, are required to report for duty if they are scheduled for work, and the government is otherwise shut down.

In an email dated February 16<sup>th</sup> 2010, authored by DFC Kenneth Jackson, in response to a query regarding premium pay for administrative closings of the government, the Union was informed that the employees we represent are “uniformed employees” of the Agency, and because of that, are exempted from administrative closing pay.

The email stated:

First, just as a point of clarity, I spoke with Ms. Hill today and she stated that she did not contact your Local regarding this issue as you have indicated in your e-mail. She was in fact, contacted by your Executive Vice President Jasper Sterling seeking information on this. With respect to pay for members of your Local on Wednesday, February 10, 2010 and Thursday, February 11, 2010, the Agency based its decision regarding pay on the information contained in E-DPM Bulletin No.11B-63 & 12-249 Hazardous Weather Emergency and Implementation of Shut-Down Policy ordered by the Mayor and issued by the D.C. Department of Human Resources on February 12, 2010.

In the bulletin, specifically number 4 Applicability there's an exception to the bulletin for uniformed members of the Fire and Emergency Medical Services Department which we have interpreted to mean that these members should be treated as normal on the days in question. For further clarification see the attached bulletin and sections 1123.1 and 1201.2 of Chapters 11 and 12 of the regulations. That said members of your Local will receive regular pay for any regular duty hours worked on either day. Additionally, they will receive overtime pay for any hours worked above their regular duty hours on either day.

As always, please feel free to contact me if you have additional questions or concerns.

## **ISSUE**

The issue out of which this grievance arises, is the Agency's failure to properly compensate the grievants in violation of Chapters 11 and 12 of the District Personnel Manual (hereinafter "DPM") and in violation of Article 10 of the Compensation Units 1 and 2 Compensation Agreement currently in effect.

## **COMPENSATION AGREEMENT**

Article 10, Administrative Closings, of the compensation agreement states:

### **SECTION A:**

1. Emergency employees required to work when all other District Government employees are released for administrative -closings, shall be compensated in accordance with the minimum standards established by the Fair Labor Standards Act, ("FLSA"), 29 U.S.C. Sections 201, et seq.

2. Effective October 1, 2004, Section A.1 of the Article shall be superceded and emergency employees required to work when all other District Government employees are released for administrative closings shall be compensated, in addition to their regular pay, one hour for each hour worked during an administrative closing.

### **SECTION B:**

1. Emergency employees required to work when all other District Government employees are released for administrative closings shall earn compensatory time on an hour for hour basis. The determination as to whether the employee receives overtime or compensatory time will be made by joint agreement between the employee and his/her supervisor.

2. Effective October 1, 2004, emergency employees required to work when all other District Government employees are released for administrative closings, in lieu of compensation, shall earn administrative closing leave on an hour for hour basis for each hour worked during an administrative closing. The determination as to whether the employee receives compensation or administrative closing leave will be made by joint agreement between the employee and his/her supervisor.

SECTION C:

Each Department shall identify emergency positions. Each emergency employee shall be notified in writing of the emergency status of his/her position.

SECTION D:

Such employees shall make every effort to fulfill emergency duties. If due to emergency conditions an employee is unable to report for duty at the scheduled place and time, the employee will immediately notify his/her supervisor to request release from duty during the administrative closing.

This article requires the payment of premium pay for administrative closings of the District of Columbia Government. The grievants are part of Compensation Units 1 and 2, are subject to the provisions of the Compensation Agreement for Comps Unit 1 and 2, and as such, are to be paid premium pay for administrative closings.

### **DPM CHAPTER ELEVEN**

In addition to the premium pay mandated by the compensation agreement, Chapter 11 of the DPM also contains mandatory regulations regarding the payment of premium pay for administrative closings. Chapter 11 states, *inter alia*:

1135.2 An emergency employee who is required to perform non-overtime work within his or her forty-hour (40-hour) basic workweek during a period of early dismissal or government closing in accordance with Chapter 12 of these regulations shall be entitled, as determined by the agency head, to either administrative closing pay or administrative closing leave, but not both, for the hours actually worked.

1135.3 Administrative closing pay shall consist of additional compensation provided on an hour-for-hour basis, equivalent to the employee's rate of basic pay, as compensation for work actually performed during a designated emergency.

The grievants in this case are properly designated emergency employees, and as such, are entitled to administrative closing premium pay for both February 10<sup>th</sup> and 11<sup>th</sup> 2010.

### **UNIFORMED MEMBER DESIGNATION**

The Agency's claim that the grievants are uniformed members of the Department is specious, erroneous and in violation of the Agency's own rules and regulations.

Article I, Section 1(a) of the Agency's Rules and Regulations, adopted in 1965, states (emphasis added):

The uniformed force of the fire department **shall** consist of the Fire Chief, Assistant Fire Chief, Deputy Fire Chiefs, Battalion Fire Chiefs, Captains, Lieutenants, Sergeants, Fire Inspectors, Privates, Pilots, Assistant Pilots, Marine Engineers, Assistant Marine Engineers and Technicians.

The common factor in the definition of the uniform members (synonymous with uniform force) is that they are firefighters. All of the positions defined by Section 1(a) of Article I are fully trained as Firefighters, and engaged, *inter alia*, in the provision of fire protection/suppression activities.

Article I, Section 2 of the Agency's Rules and Regulations (also adopted in 1965) states (emphasis added):

The civilian force of the Fire Department shall consist of fire alarm operator, fire alarm radio and telephone dispatchers, fire alarm and radio repairmen, electricians, laborers, clerks, stenographers, mechanics **and other employees of such designations and numbers as may be authorized from time to time.**

It is therefore, with utmost clarity, by the plain language of the existing rules and regulations which provide the definition of civilian and uniform, how each of the respective employees are designated. Firefighters within the Agency are uniformed members, and all other employees, **whether they wear a uniform or not**, are considered civilians.

The designation of "uniformed member" is not one which the Agency can change at its will or desire. In fact, only the Council can make changes to the Department's Rules and Regulations.<sup>1</sup>

DC Code § 5-402(a) states (emphasis added):

The Mayor of the District of Columbia shall appoint, assign to such duty or duties as he may prescribe, promote, reduce, fine, suspend, with or without pay, and remove all officers and members of the Fire Department of the District of Columbia, according to such rules and regulations as the Council of the District of Columbia, in its exclusive jurisdiction and judgment (except as herein otherwise provided), may from time to time make, alter, or amend; **provided, that the rules and regulations of the Fire Department heretofore promulgated are hereby ratified (except as herein otherwise provided) and shall remain in force until changed by said Council**; provided further, that all officers, members, and civilian employees of such Department, except the Fire Chief and Deputy Fire Chiefs, shall be appointed and promoted in accordance with the provisions of §§ 1101 to 1103, 1105, 1301 to 1303, 1307, 1308, 2102, 2951, 3302 to 3306, 3318, 3319, 3321, 3361, 7202, 7321, 7322, and 7352 of Title 5, United States Code, and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States, except as herein otherwise provided; provided further, that the Deputy Fire Chiefs shall be selected from among the battalion fire chiefs, the Fire Marshal, and the superintendent

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<sup>1</sup> Which is why Article 1 of the Rules and Regulations is dated from 1965.

of machinery; provided further, that all original appointments of privates shall be made to class 1, privates who have served 1 year in class 1 shall, if found efficient, be transferred to class 2, and privates who have served 2 years in class 2 shall, if found efficient, be transferred to class 3. Such transfers shall not be subject to the provisions of said sections of Title 5, United States Code, and the rules and regulations made in pursuance thereof. Whenever vacancies occur in class 2 or 3 which cannot be filled by such transfers, the Mayor may appoint additional privates in class 1 equal in number to the positions vacant in class 2 or 3; and any moneys appropriated for the payment of the salaries for such vacant positions shall be available to pay to such additional privates of class 1 the salaries of their grade.

Only the D.C. Council can make changes to the original Rules and Regulations that were carried forward with the implementation of the Comprehensive Merit Personnel Act.

It is those Rules and Regulations that define both civilian employees and uniformed members of the Agency. A definition that the Agency cannot change on its own.

### **SUMMARY**

The grievants in this case are civilian employees of the Agency who have been duly designated as emergency employees pursuant to both the compensation agreement for compensations units 1 and 2, and pursuant to the appropriate personnel regulations contained within the DPM. As such, the grievants are entitled to premium pay for the administrative closing of the District of Columbia Government on both February 10<sup>th</sup> 2010 and February 11<sup>th</sup> 2010.

### **RESOLUTION**

As resolution to this grievance, it is respectfully demanded that the Agency properly compensate those employees who worked their regular shift on February 10<sup>th</sup> and February 11<sup>th</sup> 2010. The compensation shall consist of their regular base pay, and an additional amount for administrative closing premium pay as defined in Article 10 of the Compensation Agreement.

DATED: FEBRUARY 17<sup>th</sup> 2010  
WASHINGTON, DC

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven B. Chasin". The signature is stylized with a large, looped "S" and "C".

Steven B. Chasin  
Chief Shop Steward  
AFGE Local 3721

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