

**IN THE MATTER OF ARBITRATION  
BEFORE ARBITRATOR SEAN J. ROGERS**

----- X	:	
THE AMERICAN FEDERATION OF	:	
GOVERNMENT EMPLOYEES, COUNCIL 222,	:	ISSUE: FLSA OVERTIME
AFL-CIO	:	
	:	
Union,	:	
	:	
- and -	:	
	:	
U.S. DEPARTMENT OF HOUSING AND URBAN	:	
DEVELOPMENT,	:	
	:	
Agency.	:	
----- X		

**UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S  
SURREPLY TO THE UNION'S MOTION TO COMPEL RESPONSES**

The United States Department of Housing and Urban Development ("Agency" or "HUD"), through counsel, surreplies to the Union's Reply to the Agency's Opposition to the Union's Motion to Compel dated October 5, 2006 (Motion #12).

The Agency respectfully submits to the Arbitrator that the Union's Reply does nothing to undermine the Agency's Opposition, which provided ample grounds for the denial of the Union's Motion to Compel.

The very statute relied upon by the Union for its Motion to Compel places clear boundaries upon its right to receive information from HUD. The information must be both "necessary" and "reasonably available." The Union's reply fails to rebut the Agency's showing that the requested information is unnecessary and/or not reasonably available, that the Union is not entitled to the information and that the Union is not entitled to an adverse inference if such information is not provided.

The Agency's Opposition cites numerous decisions in which information was held not reasonably available where the burden of producing such information was far less than the expected burden in this matter. See Agency's Opposition at 2-3. The Union cites two decisions, presumably the most favorable decisions it could find, that information was reasonably available (1) which required three weeks effort to compile and (2) which required approximately 150 staff hours to compile. HUD's expected burden in terms of staff displacement and cost dwarfs the burden in both of the decisions cited by the Union.

The Agency's Opposition provided specific figures detailing the enormous burden of production associated with the Union's requests. The Union's Reply dismisses the Agency's specific figures regarding costs and staff hours as "puffery." However, the Union's demeaning characterization of the Agency's expenditures is unhelpful and does nothing to undermine the fact that HUD's expected burden to produce the requested information would far exceed the threshold for reasonable availability. The Union argues that the Arbitrator should not accept HUD's estimates because they were not provided by affidavit. There is no basis for that position. Nevertheless, although the Agency is not required to offer sworn statements, HUD hereby attaches two Declarations so that there is no issue concerning the unreasonableness of the Union's request.<sup>1</sup> As set forth in these two sworn Declarations, which represent only a fraction of the burden associated with the information already produced by the Agency and an even smaller fraction of the burden

---

<sup>1</sup> Declaration Of Jeannetta M. Evans In Opposition To Union's Motion For Discovery And Additional Equitable Relief is attached hereto as Exhibit A. Declaration Of Juanina B. Harris In Opposition To Union's Motion For Discovery And Additional Equitable Relief is attached hereto as Exhibit B.

that would be associated with the requests set forth in the Union's Motion to Compel, HUD has provided a minimum of approximately one-half million (500,000) pages of documents to the Union at a cost of a minimum of approximately one hundred thousand (100,000) dollars in salary. In addition, the salary costs do not even reflect the costs associated with the displacement of the Agency's staff. The Union's information request would unreasonably require additional Agency expenditures far in excess of even these enormous amounts.

The Union's remaining arguments are entirely beside the point. First, the fact that HUD is required to maintain the requested information and has such information in its possession does not mean that such information is reasonably available. To respond to the Union's request, the Agency would have to locate the information, sort the information, collate it, review it for privilege, and photocopy it, among other tasks. As set forth in the two sworn Declarations, HUD has already expended significant resources providing information in its possession to the Union. The additional cost associated with producing the remaining requested information renders such information unreasonably available.

Second, the fact that HUD could have avoided having to produce the requested information if it signed stipulations with the Union does not make the information any more reasonably available. HUD has no duty to enter into stipulations at the whim of the Union. The only question that has any bearing upon the Union's request for information is whether the information is reasonably available, which it is clearly not.

For the foregoing reasons, the Agency respectfully requests that the Arbitrator deny the Union's Motion to Compel Responses and grant the relief requested in the Agency's Opposition, filed on November 20, 2006.

Dated: December 13, 2006

Respectfully submitted,

EPSTEIN BECKER & GREEN P.C.

/s/ Shlomo D. Katz

Peter M. Panken

Daniel B. Abrahams

Shlomo D. Katz

1227 25<sup>th</sup> Street, N.W.

Washington, D.C. 20037

(202) 861-0900

Facsimile (212) 878-8630

[skatz@ebglaw.com](mailto:skatz@ebglaw.com)

Counsel to the Agency

### **Certificate of Service**

I hereby certify that a copy of this United States Department of Housing and Urban Development's Opposition to the Union's Motion to Compel Responses was sent to Michael J. Snider, Esquire on December 13, 2006 by email to [mike@sniderlaw.com](mailto:mike@sniderlaw.com) and [carolyn\\_federoff@hud.gov](mailto:carolyn_federoff@hud.gov).

/s/ Shlomo D. Katz

Shlomo D. Katz

**IN THE MATTER OF ARBITRATION  
BEFORE ARBITRATOR SEAN J. ROGERS**

-----X  
 -----  
 THE AMERICAN FEDERATION OF GOVERNMENT :  
 EMPLOYEES, COUNCIL 222, AFL-CIO :  
 :  
 Union, :  
 :  
 - and - :  
 :  
 U.S. DEPARTMENT OF HOUSING AND URBAN :  
 DEVELOPMENT, :  
 :  
 :  
 Agency. :  
 -----X  
 -----

ISSUE: FLSA OVERTIME

DECLARATION OF  
JEANNETTA M. EVANS  
IN OPPOSITION TO UNION'S  
MOTION FOR DISCOVERY  
AND ADDITIONAL  
EQUITABLE RELIEF

**JEANNETTA M. EVANS**, being sworn states:

Based on information obtained from my staff, I have set forth below my good faith estimates of the costs associated with obtaining and providing documentation to the Union in connection with the above-captioned arbitration proceedings.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Office of the Chief Financial Officer  
FLSA Case Data Gathering - OCFO Cost Estimates

# Pages Copied:	70,800
# People Copying:	27
Estimated Total Hours Expended for 27 People:	2,360
Estimated Salary Costs Expended by 27 People:	73,991
Estimated Costs of Paper Used:	714

### **Type of Material Copied**

HUD 25012 Time and Attendance Record Worksheets  
SF 71 Leave Slips  
HUD 260 Leave Records  
HUD 25020 Employee Record and Certification of Extra hours of Work Forms  
HUD 25018 Notification of Intent to Work Credit Hours Forms  
HUD 25017 Work Schedule Request Form  
HUD 1040 Overtime Authorization Forms  
STARWEB Printouts  
PC-Tare Printouts  
Medical Documentation  
Donated Leave Forms  
Advanced Sick Leave Documentation  
Leave Audits  
eMail Documenting Leave Requested or Taken  
Voluntary Leave Forms

### **Cost of Records Retrieval**

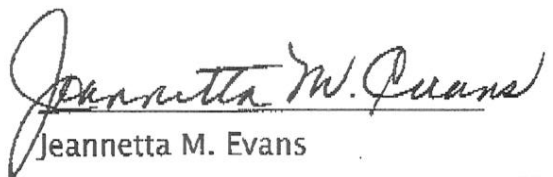
Estimated Time Expended - 2 People: 18 days  
Estimated Salary Costs - 2 People: 923.67

### **Laborious and Time Consuming Process**

Sanitize documents by removing SSNs  
Short due dates imposed - Caused time loss to complete regular duties  
Removing staples, paper clips, binder clips from original documents  
Make copy of entire fiscal year's documents  
Sanitize SSNs from each page  
Copy 2 more sets  
Staple documents by pay period  
Prepare cover sheets for each fiscal year's set of documents  
Label boxes containing sets

\* \* \*

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on December 13, 2006.

A handwritten signature in cursive script that reads "Jeannetta M. Evans". The signature is written in black ink and is positioned above the printed name.

Jeannetta M. Evans

Acting Director, Management Staff

Office of Chief Financial Officer



IN THE MATTER OF ARBITRATION  
BEFORE ARBITRATOR SEAN J. ROGERS

-----X	
THE AMERICAN FEDERATION OF GOVERNMENT :	ISSUE: FLSA OVERTIME
EMPLOYEES, COUNCIL 222, AFL-CIO :	
Union, :	
- and - :	DECLARATION OF
U.S. DEPARTMENT OF HOUSING AND URBAN :	JUANINA B. HARRIS
DEVELOPMENT, :	IN OPPOSITION TO UNION'S
Agency. :	MOTION FOR DISCOVERY
-----X	AND ADDITIONAL
	EQUITABLE RELIEF

**JUANINA B. HARRIS**, being sworn states:

I have set forth below my good faith estimates of the costs associated with obtaining and providing documentation to the Union in connection with the above-captioned arbitration proceedings.

**The type and amount of material provided was:**

Time and attendance records, leave slips, doctor's certificates, notes to file  
Approximately 427,180 pages of material provided

**Number of employees engaged in your efforts:**

Five Employees

- Barbara Britton
- Ursula Davis
- Nina Harris
- Pierre Martin
- Deborah Taylor

**Number of Hours spent on Project:**

Approximately 1,706 Hours

NAME	REGULAR HOURS	EXTRA HOURS
Barbara Britton	572	26
Ursula Davis	130	0
Nina Harris	638	26
Pierre Martin	184	0
Deborah Taylor	130	0

**Dollar cost of the time spent by your staff:**

NAME	HOURS	HOURLY RATE	COST
Barbara Britton	572	16.08	\$9,197.76
Ursula Davis	130	23.64	\$3,073.20
Nina Harris	638	36.36	\$23,197.68
Pierre Martin	184	12.68	\$2,333.12
Deborah Taylor	130	27.94	\$3,632.20

NAME	EXTRA HOURS	COST
Barbara Britton	26	\$627.12
Nina Harris	26	\$1418.04

\* \* \*

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 13, 2006.

*Juanina B. Harris*  
Juanina B. Harris  
Program Support Specialist  
Office of Fair Housing & Equal Opportunity