

National Council of Food Inspection Locals
 OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
 AFFILIATED WITH THE AFL-CIO

- GRIEVANCE -

THIS GRIEVANCE IS FILED UNDER THE PROVISIONS OF THE NATIONAL BASIC AGREEMENT BETWEEN THE OFFICE OF THE ADMINISTRATOR, FSIS AND THE NATIONAL JOINT COUNCIL OF FOOD INSPECTION LOCALS, AFGE, AFL-CIO.

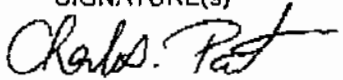
TO: Ms. Robinn DeCecco LERD Director

Grievant's Name
 Charles S. Painter
 4673 County Road 24
 Crossville, Alabama 35962

Position	Title	Grade	Telephone Number	
Chairman	CSI	GS-10	256-659-3391	
Plant No.	Circuit	District Office	AFGE Local	Council
P-548		Jackson	2357	Southern

(Grievant or Union Representative)

GRIEVANCE - State nature of grievance - also cite applicable Article of Agreement, practice or regulation violated 9 CFR 307.4; 9 CFR 381.37; Article 13 Sections 2 & 3; Article 2 Section 1
 This grievance is being filed under Article 33 Section 8.
 In Ms. Tia Gayle's email message to Mr. Charles Stan Painter, NJC Chairman of September 16, 2008. Ms. Gayle, Acting Branch Chief, speaking for the Agency, stated that the 2008 LMA allows the Agency to conduct meeting or otherwise assign work to Inspectors during plant breaks. Following this, Inspectors were required by management to attend meetings during plant breaks at, but not limited to: Blountsville, Alabama; Moorefield, West Virginia (two locations P-18 & P-810); Ellijay, GA.; Cumming, GA.; Russellville, AL.; Est. 208 A Liberal, KS; Canton, GA; E-21488 Brawley, CA; E-477 Nampa, Idaho; P-559 Albertville, AL; Nacogdoches, TX; Carthage, TX; Center, TX; Natchitoches, TX; Broken Bow, OK P-7085; with the Agency taking the position that all plants that have a plant break are subject to the assignment of work during company breaks, with no exclusion for breaks provided under the regulations. The Union disputes the Agency's interpretation of the LMA and maintains that the negotiators did not agree, nor intend to allow this. Moreover, even if the LMA can be interpreted to allow the assignment of work during such breaks, that is contrary to the Agency's own regulations found at 9 CFR 307.4 and 9 CFR 381.37. This regulation has been previously interpreted for the parties by Arbitrator John B. Barnard of October 21, 2004 in FMCS 041208-01845-3. The Arbitrator said that, "there is not language contained in 9 CFR 381.37(b) which gives the right or that even suggest that the Agency can utilize a portion of the thirty minutes to hold meeting(s), assign work, etc." As indicated in the wording, "such thirty minute period is for the Inspectors to meet his personal needs". The current text of this regulation is identical to what existed at the time of Arbitrator Barnard's decision. Therefore, the Agency's action requiring Inspectors to attend meeting(s) with management during plant breaks is contrary to the above cited regulation. Under Article 2 Section 1, the Parties are bound by "published Agency policies and regulations in existence at the time the Agreement is effectuated."
CORRECTIVE ACTIONS DESIRED: Cease and desist assigning Inspectors to attend meetings/performing work during the plant breaks in the above cited regulation. Resume allowing Inspectors to use all such time to meet their personal needs. Post a notice to the effect at all Agency work places.

SIGNATURE(s)

 NJC Chairman

DATE OF FILING
 September 30, 2008



United
States
Department of
Agriculture

Food
Safety and
Inspection
Service

Labor & Employee
Relations
Division

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Room 3175 South Bldg.
Washington, DC 20250
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Toll Free (800) 217-1886

October 29, 2008

Mr. Charles S. Painter, Chairman
National Joint Council of Food Inspection Locals, AFGE
4673 County Road 24
Crossville, Alabama 35962

Subject: Grievance 08-NJC-FSIS-11

Dear Mr. Painter:

This is in response to your September 30, 2008 grievance on behalf of Agency Inspectors regarding the Agency's alleged failure to provide company breaks under Article 13, Section 2(d) Lunch Period. We received your faxed grievance on September 30, 2008.

Your grievance alleges the following:

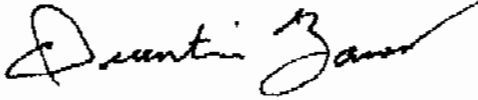
In Ms. Gayle's email message to Mr. Charles Painter, NJC Chairman (sic) of September 16, 2008, Ms. Gayle, Acting Branch Chief, speaking for the Agency, stated that the 2008 LMA allows the Agency to conduct meeting or otherwise assign work to Inspectors during plant breaks. Following this, Inspectors were required by management to attend meetings during plant breaks at, but limited to: Blountsville, Alabama; Moorefield, West Virginia (two locations P-18 & P-810); Ellijay, GA; Cummings, GA; Russellville, AL; Est. 208A Liberal, KS; Canton, GA; E-21488 Brawley, CA; E-477 Nampa, Idaho; P-559 Albertville, AL; Nacogdoches, TX; Carthage, TX; Center, TX; Natchitoches, TX; Broken Bow, OK; OK P-7085; with the Agency taking the position that all plants that have a plant break are subject to the assignment of work during company breaks. (sic) with no exclusion for breaks provided under the regulations. The Union disputes the Agency's interpretation of the LMA and maintains that the negotiators did not agree, nor intend to allow this. Moreover, even if the LMA can be interpreted to allow the assignment of work during such breaks, that is contrary to the Agency's own regulations found at 9 CFR 307.4 and 9 CFR 381.37. This regulation has been previously interpreted for the parties by Arbitrator John B. Barnard of October 2004 in FMCS 041208-01845-3. The Arbitrator said that, "there is not language contained in 9 CFR 381.37(b) which gives the right or that even suggest that the Agency can utilize a portion of the thirty minutes to hold meeting(s), assign work, etc." As indicated in the wording, "such thirty minute period is for the inspectors to meet his personal needs." The current text of this regulation is identical to what existed at the time of Arbitrator Barnard's decision. Therefore, the Agency's action requiring inspectors to attend meeting(s) with management during plant breaks is contrary to the above cited regulation. Under Article 2 Section 1, the Parties are bound by published Agency policies and regulations in existence at the time the Agreement is effectuated."

As relief, you requested that the Agency:

Cease and desist assigning inspectors to attend meetings/performing work during the plant breaks in the above cited regulation. Resume allowing Inspectors to use all such time to meet their personal needs. Post a notice to the effect at all Agency work places.

Consistent with 9 CFR 381.37, the Agency will no longer hold meetings, assign work, etc. during plant breaks that are observed in order to delay the lunch period 5 ½ hours. Your grievance with regard to Article 13, Section 2(d), Lunch Period, is sustained.

Respectfully,



for Robinn A. DeCecco, Director
Labor and Employee Relations Division

cc:

Kenneth Petersen, Assistant Administrator, OFO
Yvonne Davis, Chief Human Capital Officer, OM
Dennis O'Malley, Deputy Chief Human Capital Officer, OM
Kimberly Moseley, Deputy Director, LERD, OM
Tia Gayle, Acting Labor Relations Branch Chief, LERD, OM