


SETTLEMENT AGREEMENT BETWEEN
U.S. DEPARTMENT OF LABOR
NATIONAL COUNCIL OR FIELD LABOR LOCALS
Re: ARB-0207153

In settlement of the above referenced arbitration case, the U.S. Department of Labor, Occupational Safety and Health Administration/Region II (the Agency) and the National Council of Field Labor Locals, Local 2513 (NCFLL), agree to the following:


1. Annual performance ratings will be issued within 30 days after the end of the rating period, in accordance with Article 43, Section 4a.
2. CSHO statistical profiles will not be attached to the annual performance appraisal.
3. CSHO's will be rated against their individual performance standards and will not be rated by comparison to other CSHO's.
4. Factors outside the employee's control will be taken into consideration in rating employees.
5. In accordance with Section 8h of the OSH Act, statistics on the number of citations issued or the dollar amount of penalties assessed will not be included in performance appraisals.
6. The Agency will provide guidance to the OSHA Region II management team on writing performance appraisals and the terms of this Agreement.


Signature of the Parties:

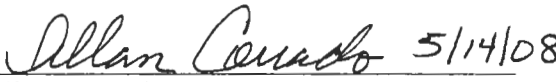
For Management:


Brenda Judson
Assistant Regional Administrator

For the Union:


Nancy Nolan
NCFLL President, Local 2513


Sharon Bogart
Employee Relations Manager


Allan Corrado
NCFLL, Executive VP, Local 2513

AFGE LOCAL 2513

AFL-CIO

P.O. Box 7051
Syracuse, NY 13261



April 3, 2007

Mr. Richard Coon, Chair
NCFL Arbitration Committee
P.O. Box 25367
Denver, CO 80225

COPY

Dear Richard,

Enclosed is a copy of an institutional grievance filed with OSHA, NY regarding the Avenel OSHA Area Office's use of statistical data in bargaining unit employees' performance evaluations as well as timeliness of the evaluations for FY06. This was submitted to Sandra Kepply on 3/21/07 and as of today no response has been forthcoming. In fact, no discussion what so ever has taken place. Friday will be the 10th day from the day Keppley received the documents. Because our turn around time is short on this one, I would hope that we could invoke ASAP.

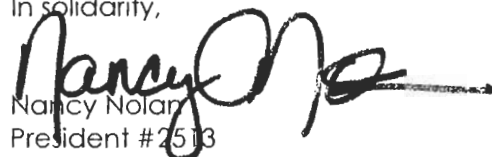
As background: during the week of the January LMR in Manhattan a meeting was held with Brenda Judson OSHA ARA and LRO Beil to discuss this grievance. Attached is Ms. Judson's email summary of issues discussed in an attempt at an informal resolution. While management and the Union did reach a resolution on the issue of timeliness of evaluations, no agreement could be reached on the use of statistical data as part of an employee's performance evaluation.

The union believes that using these statistics to evaluate employees is a violation of the OSHA Act as amended, as well as a violation of policy set forth in a 1997 memo from Deputy Assistant Secretary Frank Strasheim and a violation of Settlement Agreement ARB-OSHA-02-04-064. [copies attached]

In her e-mail, Judson claims, at item #3, that there was an agreement, "with the NCFL, Local 2513 many years ago....." regarding the use of statistical data for evaluation purposes. The NCFL has no documentation, or recollection, of this agreement. ARA Judson also stated at the end of her email that, "Management will follow up and provide evidence of such to the NCFL immediately subsequent to the March 19-23rd managers meeting." To date no additional evidence has been provided.

This is an issue that, while currently impacting only the employees in the Avenel OSHA Area Office, could become a regionally applied policy. It could also 'spread' across the country if left unchecked. Avenel Shop Steward Larry Wheat was diligent in his duties, filing an individual grievance, almost immediately, on the matter. This grievance was withdrawn and the institutional grievance replaced it. I hope you will concur with our findings and support our OSHA brothers and sisters by invoking on this matter.

In solidarity,


Nancy Nolan
President #2513

Nolan, Nancy - ESA

From: Judson, Brenda - OSHA
Sent: Friday, February 23, 2007 6:38 AM
To: Nolan, Nancy - ESA; Rezsnyak, Tom - OSHA
Cc: Beil, Peter - OASAM; Velez, Babette - OSHA; Kulick, Robert - OSHA
Subject: Institutional Grievance Reply

As discussed following OSHA's biannual LMR Meeting on January 25, 2007 OSHA management has agreed to the following actions in response to the institutional grievance filed (copy attached).

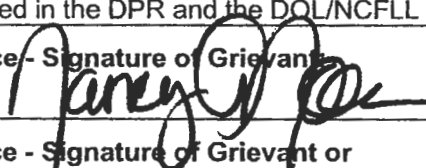
1. OSHA management (ARA Brenda Judson) will reiterate to all managers and supervisors the contractual obligation to issue performance appraisals in a timely fashion in full accordance with the NCFLL Agreement. This discussion will occur during the March 19th OSHA Region 2 managers meeting, Written follow up to the NCFLL as well as OSHA managers and supervisors will occur.
2. OSHA management (ARA Brenda Judson) will modify the production of end of year statistics provided to each manager/supervisor on CSHO performance. Beginning in FY07 information will be gathered as to the exact date an employee (CSHO) is placed under his or her standards and THAT DATE rather than 10/1 of a particular year will be used as the start point for the timeframe of statistical indicators. By doing so, managers will only receive statistical indicators that marry precisely to each employee's performance appraisal annual window.
3. OSHA management (ARA Brenda Judson) will again remind managers and supervisors that no CSHO is to be evaluated against another CSHO's performance statistical measures, As agreed upon with the NCFLL, Local 2513 many years ago, comparison will be limited to comparing individual performance to overall regional and national statistical measures such as regional and national lapse time.

Management realizes that it violated the NCFLL agreement in failing to provide Mr. Wheat with his performance appraisal within the contractual timeframes and commits to not allowing this to occur again. Every effort will be taken to ensure that every manager and supervisor issues appraisals and standards in a timely contractually mandated fashion.

It is my belief that these actions were agreed upon by both the NCFLL and management as settling the valid concerns raised in the attached institutional grievance. Management will follow up and provide evidence of such to the NCFLL immediately subsequent to the March 19 - 23rd managers meeting.

Brenda Judson
ARA/CAPS
(212) 337-2330
judson.brenda@dol.gov

DOL/NCFLG GRIEVANCE FORM

Name of Grievant: AFGE Local # 2513	Region: II
	Agency: OSHA – Avenel Area Office
Name of NCFLG Representative (If Any): Lawrence K. Wheat Steward #2513; VP - NCFLG	Date of Alleged Violation: November 3, 2006 and on-going
Alleged Violation(s) - Contract Article(s), Section(s), Subsection(s), Regulations(s), or Working Condition(s): 1. Article 43 Section 4A - Annual Rating of Record, - Within 30 days after the end of the rating period, each employee shall receive an annual rating of record. 2. Article 2 Section 1: DPR Chapter 430 – Performance Management. 3. Article 2 Section 1: Public Law 105-197 passed in July 1998 amended Section 8 of the OSHA Act by addition of subsection (h).	
Nature and Facts of Grievance: On or about November 8, 2006 the Area Director, Robert Kulick, for the Avenel OSHA Area Office sent an email to shop steward Larry Wheat indicating that all employees in the Avenel OSHA Area Office had been given verbal appraisals within 30 days of 10/1/06. [See attached email #1] Both the DPR and the DOL/NCFLG contract require written appraisals be provided. The context of the attached email addresses a request for an extension of time to produce written appraisals. There are no provisions in the DPR or the DOL/NCFLG contract for extensions for written performance appraisals. Attached to each of the written CSHOs appraisals was a copy of an IMIS statistical report titled, the CSHO Profile 10/1/05 through 9/24/06. Portions of this report include numbers of inspections, numbers of violations, types of violations and comparisons of individual CSHOs to Regional and National averages. This information is protected and prohibited by law from being used as a rating element for CSHOs by Public Law 91-596 as amended through January 1, 2004 by PL 105-198 which amended Section 8 of the OSHA Act by addition of subsection (h). Attached are two sample copies of these reports as examples of information disclosed for all IH and Safety employees. [See attachments #2 and 3] Public Law 91-596 as amended through January 1, 2004 by PL 105-198 which amended Section 8 of the OSHA Act by the addition of subsection (h) which states: <p align="center"><i>The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities. [See attachment #4]</i></p> In addition, the AAD used information from each employee's previous year's performance to evaluate this year's work. This is in direct conflict with DPR 430 Section 7a which limits an employee's performance evaluation to a single 12 month period – from 10-1 through 9-30 of each year.	
Remedy Desired: Cease and desist from violating Public Law 91-596 as amended through January 1, 2004 by PL 105-198 which amended Section 8 of the OSHA Act by the addition of subsection (h) which states: <p align="center"><i>The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities.</i></p> Cease and desist from violating DPR 430 Section 7d and DPR 430 Section 7e-1 For the future, provide bargaining unit employees with their written performance evaluations within the time frames defined in the DPR and the DOL/NCFLG Contract.	
Step 1 Grievance - Signature of Grievant: Nancy A. Nolan 	Date: 12/5/06
Step 2 Grievance - Signature of Grievant or NCFLG Official:	Date:

Attachment #1

\BK Appraisals.doc

From: Kulick, Robert - OSHA
Sent: Wednesday, November 08, 2006 8:13 AM
To: Wheat, Larry - OSHA
Subject: FW: Appraisals

Importance: High

From: Torre, Richard - OSHA
Sent: Wednesday, November 08, 2006 8:01 AM
To: Kulick, Robert - OSHA
Subject: FW: Appraisals
Importance: High

I had discussed verbally with all csho's their appraisals within the allowable time frames (within 30 days of 10/1/06) I could not give them their written appraisals at that time because the copy machine was down.

From: Wheat, Larry - OSHA
Sent: Thursday, November 02, 2006 10:32 AM
To: Torre, Richard - OSHA
Cc: Kulick, Robert - OSHA; Wheat, Larry - OSHA
Subject: RE: Appraisals
Importance: High

Rich:

Thank you for the time to discuss my appraisal this morning, November 2, 2006.

Your discussions with your bargaining unit employees on their appraisals should have been performed per the NA Article 43 Section 4, 'within 30 days after the end of the rating period.' (10/01/06)

Your decision to wait for the last moment should have anticipated service disruptions, this type of delay. What proactive action have you taken to correct this condition?
I consider the delay as the rule not the exception, this is not the first time this has happened.

I can not in good faith give you more time unless you have a plan to accomplish the ratings without any more delay.

Thanks,
Larry Wheat

From: Wheat, Larry - OSHA
Sent: Tuesday, October 31, 2006 2:09 PM
To: Torre, Richard - OSHA
Cc: Wheat, Larry - OSHA
Subject: FW: Appraisals

Rich:

Because of the equipment failure Thursday 11/2 is fine.
I expect to see you about 6:30 am.

Larry Wheat

Courtesy of the
National Council of Field Labor Locals
www.NCFL.org

From: Wheat, Larry - OSHA
Sent: Tuesday, October 31, 2006 6:38 AM
To: Kulick, Robert - OSHA; Torre, Richard - OSHA; Frye, Ronald - OSHA
Cc: Kennelly, Theresa - OSHA; Williams, Betty - OSHA
Subject: RE: Appraisals

The copier is also down and that Thursday, 11/2 is all right.

Larry Wheat

From: Kulick, Robert - OSHA
Sent: Monday, October 30, 2006 5:30 PM
To: Wheat, Larry - OSHA
Cc: Torre, Richard - OSHA; Frye, Ronald - OSHA
Subject: Appraisals

This is to inform you as to the status of my discussions with bargaining unit employees Theresa Kennelly, Betty Williams, and Mike Yarnell. I held appraisal discussions with both Theresa and Betty today. Due to computer problems today, (e-2), leave tomorrow and a meeting in NYC on Wed., I plan on having the paperwork ready for them to review on Thursday, 11/2. I will discuss verbally with Mike Yarnell tomorrow. Appreciate your consideration of this request to administer them their paperwork on Thursday.

CSHO Profiles

October 1, 2005 to September 24, 2006

Insp/Viol. Statistics *	
Total Insp.	7
# Incompl.	1
Total Viol.	29
# of Serious	26
# of Willfull	0
# of Repeat	0
# of Others	3
Avg Viol / Insp	4.14

Time Utilization**	CSHO		Regional Avg		National Avg	
	Safety	Health	Safety	Health	Safety	Health
Lapse Time	0	36.8	31	49.4	31.9	43.5
Average Hrs/Insp	0	51.1	18.4	37.1	17.5	32.1

	CSHO	Regional Avg	National Avg
Ratio of Rpt Prep: Onsite	7.3	2.5	2.3

Program Activity Summary ***	Hours	% Tot. Recorded Hrs
Total Recorded H's (Excludes LV Time)	1510	
Inspection	597	39.5
Accident	0	0.0
Complaint	90	6.0
Referral	5	0.3
Intervention	216	14.3
State Plan	0	0.0
Compliance Assistance	156	10.3
Program Support	447	29.6
Unavailable Hrs	0	0.0
Leave Time	526	

* See Attached CSHO report

** See Attached Inspection 4 Report

*** See Attached Program Activity Report for Detailed Breakdown

THIS REPORT
KEEP THIS PAGE WITH THIS REPORT
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY DATA WERE SELECTED

TYPE OF REPORT: PROGRAM ACT

USER SELECTION NAME: P31MAV

DATE OF REPORT: 2006-09-28

REQUESTOR: OSH202

***** SELECTION CRITERIA *****

REPORTING LEVEL(S): 04 - REGION BY AREA OFFICE FOR FEDERAL (ONLY)

FRIDAY DATE: 01 OCT 2005 THRU 24 SEP 2006

REGION 2

FEDERAL DATA ONLY	AREA	REGION TOTAL
TOTAL HOURS (EXCLUDES LV TIME)	1510	1510
INSPECTION/DISCRIMINATION ACTIVITY		
PREPARATION	14	14
TRAVEL	36	36
ON-SITE ACTIVITY	59	59
TECHNICAL SUPPORT	13	13
REPORT PREPARATION	429	429
OTHER CONFERENCE	47	47
LITIGATION	0	0
DENIAL	0	0
SUBTOTAL	597	597
PCT OF TOTAL HOURS	39.5	39.5
ACCIDENT ACTIVITY		
SUBTOTAL	0	0
PCT OF TOTAL HOURS	0.0	0.0
COMPLAINT ACTIVITY		
SUBTOTAL	90	90
PCT OF TOTAL HOURS	5.9	5.9
REFERRAL ACTIVITY		
SUBTOTAL	5	5
PCT OF TOTAL HOURS	0.3	0.3
INTERVENTION ACTIVITY		
SUBTOTAL	216	216
PCT OF TOTAL HOURS	14.3	14.3
STATE PLAN ACTIVITIES		
CASPA	0	0
CASE FILE REVIEW	0	0
SPOT CHECK	0	0
ACCOMPANIED VISITS	0	0
DATA ANALYSIS (FEDERAL)	0	0
DATA ANALYSIS (FED/STATE)	0	0
ADDITIONAL SPPM	0	0
COORDINATION AND ASSISTANCE	0	0
SUBTOTAL	0	0
PCT OF TOTAL HOURS	0.0	0.0
COMPLIANCE ASSISTANCE		
EMPLOYEES/UNIONS	43	43
EMPLOYERS/ASSOCIATIONS	43	43
PROFESSIONAL GROUPS	71	71
MONITOR/EVALUATION	0	0
TECHNICAL ASSIST/CONSULT	0	0
STRATEGIC PLANNING	0	0
SUBTOTAL	156	156
PCT OF TOTAL HOURS	10.2	10.2

REGION 2

FEDERAL DATA ONLY	AREA	REGION TOTAL
PROGRAM SUPPORT		-----
FORMAL TRAINING	0	0
FIELD TRAINING	64	64
INSTRUCT OSH EMPLOYEES	0	0
CALIB/TEST/RESEARCH	92	92
OTHER TECHNICAL SUPPORT	0	0
SUPERVISORY DUTIES	11	11
ADMINISTRATIVE DUTIES	125	125
PROFESSIONAL DUTIES	114	114
OTHER HOURS	41	41
SUBTOTAL	447	447
PCT OF TOTAL HOURS	29.5	29.5
UNAVAILABLE HOURS		
NATL/CENTRAL OFFICE SUPPORT	0	0
REGIONAL/OTHER OFFICE SUPPO	0	0
SUBTOTAL	0	0
PCT OF TOTAL HOURS	0.0	0.0
LEAVE TIME	526	526

OSHA REPORT
(RECOVER)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N

2006-09-28

THIS REPORT
KEEP THIS PAGE WITH THIS REPORT
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY DATA WERE SELECTED

TYPE OF REPORT: INSPECTION

USER SELECTION NAME: 1494V

DATE OF REPORT: 2006-09-28

REQUESTOR: OSH202

***** SELECTION CRITERIA *****

REPORTING LEVEL(S): 04 - REGION BY AREA OFFICE FOR FEDERAL (ONLY)

OPENING CONFERENCE DATE: 01 OCT 2005 THRU 24 SEP 2006

REGION 2

FEDERAL DATA ONLY	AREA	REGION TOTAL
TOTAL INSPECTIONS	7	7
RECORDS INSPECTIONS	0	0
INSPECTIONS BY CATEGORY		
SAFETY INSPECTIONS	0	0
HEALTH INSPECTIONS	7	7
INSPECTIONS BY TYPE		
UNPROGRAMMED	7	
ACCIDENT	0	7
COMPLAINT	6	0
REFERRAL	1	6
MONITORING	0	1
VARIANCE	0	0
FOLLOW-UP	0	0
UNPROGRAMMED RELATED	0	0
OTHER	0	0
PROGRAMMED	0	0
PLANNED	0	0
PROGRAMMED RELATED	0	0
OTHER	0	0
OTHER	0	0
INSPECTIONS BY INDUSTRY		
CONSTRUCTION	0	0
MARITIME	0	0
MANUFACTURING	2	0
OTHER	5	2
		5
INSPECTIONS BY OWNERSHIP		
PRIVATE SECTOR	7	7
PUBLIC SECTOR	0	0
FEDERAL AGENCY	0	0

REGION 2

FEDERAL DATA ONLY	AREA	REGION TOTAL
INSPECTION CLASSIFICATION		
SAFETY PLANNING GUIDE	0	0
HEALTH PLANNING GUIDE	3	3
LOCAL EMPHASIS PROGRAM	0	0
NATIONAL EMPHASIS PROGRAM	2	2
MIGRANT FARMWORKER CAMP	0	0
EMPLOYEE INFORMATION		
EMPLOYED IN ESTABLISHMENT	478	478
COVERED BY INSPECTION	470	470
AVG CASE HRS PER INSP		
SAFETY	0.0	0.0
HEALTH	51.1	51.1
VIOLATIONS		
WILLFUL	0	0
REPEAT	0	0
SERIOUS	25	25
UNCLASSIFIED	0	0
OTHER	5	5
F-T-A	0	0
TOTAL	30	30
FINES		
WILLFUL	0	0
REPEAT	0	0
SERIOUS	7087	7087
UNCLASSIFIED	0	0
OTHER	1245	1245
F-T-A	0	0
TOTAL	8332	8332
CONTESTED CASES		
INSPECTIONS CONTESTED	0	0
INSP W/CITATIONS CONTESTED (%)	0.0	0.0
LAPSE DAYS INSP TO CIT ISSUED		
AVG LAPSE SAFETY INSP	0.0	0.0
AVG LAPSE HEALTH INSP	36.8	36.8
AVG LAPSE ALL INSP	36.8	36.8

REGION 2

FEDERAL DATA ONLY	AREA	REGION TOTAL
INSPECTION CLASSIFICATION		
SAFETY PLANNING GUIDE	0	0
HEALTH PLANNING GUIDE	3	3
LOCAL EMPHASIS PROGRAM	0	0
NATIONAL EMPHASIS PROGRAM	2	2
MIGRANT FARMWORKER CAMP	0	0
EMPLOYEE INFORMATION		
EMPLOYED IN ESTABLISHMENT COVERED BY INSPECTION	478	478
	470	470
AVG CASE HRS PER INSP		
SAFETY	0.0	0.0
HEALTH	51.1	51.1
VIOLATIONS		
WILLFUL	0	0
REPEAT	0	0
SERIOUS	25	25
UNCLASSIFIED	0	0
OTHER	5	5
F-T-A	0	0
TOTAL	30	30
PENALTIES		
WILLFUL	0	0
REPEAT	0	0
SERIOUS	7087	7087
UNCLASSIFIED	0	0
OTHER	1245	1245
F-T-A	0	0
TOTAL	8332	8332
CONTESTED CASES		
INSPECTIONS CONTESTED	0	0
INSP W/CITATIONS CONTESTED (%)	0.0	0.0
LAPSE DAYS INSP TO CIT ISSUES		
AVG LAPSE SAFETY INSP	0.0	0.0
AVG LAPSE HEALTH INSP	36.8	36.8
AVG LAPSE ALL INSP	36.8	36.8