



Andrew M. Cuomo
Governor

State of New York
Governor's Office of Employee Relations
Contract Negotiation and Administration Division
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Gary Johnson
Director

March 15, 2011

Mr. Robert A. Carrothers
Director of Labor Relations
Public Employees Federation, AFL-CIO
1168-70 Troy-Schenectady Road
P. O. Box 12414
Albany, New York 12212-2414

RE: Class Action
OTDA – All Regions
SUBJ.: Out-of-Title Work
OER File No. 2011-05-5033

Dear Mr. Carrothers:

Enclosed is a copy of the Step 3 decision in the above-captioned matter. We are sending two copies directly to the PEF Field Representative, so that one copy can be forwarded to the grievant.

Sincerely,

Richard R. Ahl
Assistant Director

RRA/jpc
Enclosure

cc: Lee Ryan (AFN 2011-1),
Patricia A. Hite, Susan H. Radosh

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**STATE OF NEW YORK
GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS**

In the Matter of
PUBLIC EMPLOYEES FEDERATION, AFL-CIO,
(Class Action),

Grievant,

- and -

STATE OF NEW YORK (Office of Temporary and
Disability Assistance – All Regions),

Employer.

**Professional, Scientific
and Technical Services
Unit**

Step 3 Grievance

OER File No. 2011-05-5033

Subject: Out-of-Title Work

On February 22, 2011, this grievance was presented at Step 3 of the grievance procedure contained in the 2007-2011 Agreement between the Executive Branch of the State of New York and the Public Employees Federation, AFL-CIO for the Professional, Scientific and Technical Services Unit. The designee for the Governor's Office of Employee Relations is Richard R. Ahl.

This matter was referred to the Director of Classification and Compensation for review and an advisory opinion. The Director reported as follows:

We have completed our review of the out-of-title work grievance filed by the Public Employees Federation (PEF) on behalf of all Disability Analysts 3-5 represented by PEF working in OTDA offices in the State.

PEF contends that Disability Analysts 3, 4, and 5 are working out-of-title when assigned to follow contractor cleaning crews throughout the building to ensure that such crews do not access or remove any secure records from office areas. PEF argues that the monitoring of crews requires approximately one hour to ensure no unauthorized access or theft of secure records takes place. The assigned visual monitoring is rotated among supervisory positions. As a remedy, PEF seeks a cease and desist of such assignment to Disability Analysts and assignment of the monitoring to Bureau of Management Services staff or security guards.

At Step 2, the agency denied the grievance and stated that the grieved duties are not beyond the scope of responsibility already assigned to Disability

Analysts 3, 4 and 5 to maintain the security of sensitive data in their work areas, and the duties are very limited in scope and would take about ten minutes each day.

At Step 3, the union appealed the grievance stating that the duties are not included in the Classification Standard for Disability Analyst 3, 4 and 5, are more appropriately assigned to security titles because of the need to know how to respond if an attempt was made to steal information or records, and that Disability Analysts have had no training in how to respond to an attempted breach of security. The appeal includes several documents related to the agency security plan and the agency response to a recent security theft.

At Step 3, the agency stated that the additional information submitted by PEF in the appeal is redundant, and the monitoring assigned to the Disability Analysts at all levels is not supervisory, but rather monitoring to assure the cleaning staff do not access any confidential information. Moreover, the agency states the Step 3 Appeal is frivolous and trite.

According to the Classification Standard, Disability Analysts supervise the review and administrative adjudication of claims for benefits under Title II and Title XVI of the Social Security Act (SSA). They provide expertise on SSA rules and regulations on case processing, including face-to-face adjudications to terminate benefits; assess the quality of claims processing and determinations for efficiency; coordinate training; evaluate regional programs; and oversee the Automated Case Processing System. Positions at Disability Analyst 3, 4 and 5 supervise.

We find the duties to monitor the cleaning crews while they are in the physical proximity of the electronic or paper files that store confidential information is an activity consistent with the duty of all employees to be responsible for maintaining security of the systems with which each staff member is working daily. The setting of security goals by management confers upon all staff the responsibility to protect the security of information in the workplace. The total security of the information is the responsibility of various staff within the agency at various levels, from IT staff, to management staff, to professional staff and support staff. Any attempted breach of security is reportable to the agency unit responsible for the security plan. Such reporting is considered security awareness for which every employee is responsible, consistent with the various Federal and NYS Office of Cyber Security guidelines on protecting the security of the workplace. The physical custody or restraint of any personnel who attempts a security theft falls within the typical duties of security personnel

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Therefore, we find the issue is similar to all employee policy guidance in other security areas such as Workplace Violence Prevention and is not a grievable issue. Accordingly, we recommend that the grievance be denied.

On the basis of the determination by the Director of Classification and Compensation that the duties at issue do not constitute out-of-title work, this grievance is denied.

A handwritten signature in black ink, appearing to read 'RRA', is written over a horizontal line.

Richard R. Ahl
Assistant Director

Dated: March 15, 2011
Albany, New York