

FEDERAL MEDIATION AND CONCILIATION SERVICE

**AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCALS 3696, 405, 408,**

Unions,

and

**UNITED STATES DEPARTMENT OF
JUSTICE,
FEDERAL BUREAU OF PRISONS,
FEDERAL CORRECTIONAL COMPLEX,
BUTNER, NORTH CAROLINA,**

Agency.

*AFGE Local 3696 and FCC Butner
(Nov. 29, 2012)*

*AFGE Local 405 and FCC Butner
(Nov. 6, 2012)*

*AFGE Local 408 and FCC Butner
(Nov. 15, 2012)*

*AFGE Local 408 and FCC Butner
(Mar. 12, 2014)*

*AFGE Local 405 and FCC Butner
(Mar. 15, 2014)*

*AFGE Local 3696 and FCC Butner
(Aug. 12, 2014)*

*AFGE Local 405 and FCC Butner
(Aug. 12, 2014)*

*AFGE Local 408 and FCC Butner
(Aug. 12, 2014)*

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex Butner, ("FCC Butner"), Butner, North Carolina ("Agency") and the American Federation of Government Employees Locals 3696, 405, and 408 ("Unions") in global resolution of seven (7) grievances. The Grievances filed on November 29, 2012 (Local 3696); November 6, 2012 (Local 405); and November 15, 2012 (Local 408) allege that the Agency failed to safeguard bargaining unit employees' personally identifiable information (PII) when it allowed inmates to handle staff members' files in the Safety Recycling Center in October 2012, in violation of the Privacy Act, 5 U.S.C. § 552a. The Grievances filed on March 12, 2014 (Local 408) and March 15, 2014 (Local 405) allege that the Agency failed to safeguard bargaining unit employees' PII when an inmate was found in possession of staff members' personnel files from the Education Department in February 2014, in violation of the Privacy Act. The Grievances filed on August 12, 2014 (Local 3696); August 12, 2014 (Local 405); and August 12, 2014 (Local 408) allege the Agency failed

to safeguard bargaining unit employees' PII when the Agency left crates and boxes of Time and Attendance files, performance evaluations, and other documents which contained bargaining unit employees' PII outside the Medical Administration Room in June 2014, in violation of the Privacy Act. In full, final and complete settlement of the above-referenced grievances, the parties by and through their undersigned representatives, freely and voluntarily agree to the terms outlined in this Agreement.

1. Coverage

The Grievants are the Unions at FCC Butner, North Carolina. The Unions are the certified representatives of all bargaining unit employees assigned to FCC Butner. The Grievants covered by this Agreement warrant and represent that no other action or suit with respect to the claims that are set forth in the grievances covered by this Agreement will be filed in or submitted to any court or any administrative forum including but not limited to, the General Accounting Office or the Office of Personnel Management for the violations that these Grievances cover. By agreeing to accept payment under this Agreement, the Grievants agree to waive any right or entitlement to pursue or collect payment for the Privacy Act violations that are subject of the grievances filed on November 6, 2012 (Local 405); November 15, 2012 (Local 408); November 29, 2012 (Local 3696); March 12, 2014 (Local 408); March 15, 2014 (Local 405); and August 12, 2014 (Locals 3696, 405, 408) that are covered by this Agreement.

2. Lump Sum

Without constituting an admission of liability or any wrongdoing upon the part of either the Agency or the Grievants, the Agency agrees to pay, through the Grievants' attorneys Mehri & Skalet, PLLC, a lump sum settlement amount of \$1,900,000.00 to resolve all claims and damages arising out of the Privacy Act violations that are subject of the grievances filed on November 6, 2012 (Local 405); November 15, 2012 (Local 408); November 29, 2012 (Local

3696); March 12, 2014 (Local 408); March 15, 2014 (Local 405); and August 12, 2014 (Locals 3696, 405, 408) that are covered by this Agreement on behalf of the bargaining unit employees at FCC Butner. This lump sum covers all damages, and attorneys' fees and costs ("Damages"), which may have been claimed by the Grievants on behalf of present and former bargaining unit members of the Bureau of Prisons with a duty station at FCC Butner, and, for the Damages portion of the grievance, those current and former bargaining unit members who have identified themselves as being affected by the Privacy Act violations at issue in the Grievances by completing the paperwork required by the Unions to demonstrate that they were willing to participate in the Damages portion of the grievance ("Participating Damages Recipients").

3. Payment Timetable and Method for Payment of Lump Sum

The Agency shall make the lump sum payment of \$1,900,000.00 to the law firm of Mehri & Skalet, PLLC, at 1250 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036, by electronic funds transfer or a single check made payable to "Mehri & Skalet, PLLC" on or before forty-five (45) days after the agreement is signed. Mehri & Skalet, PLLC, on behalf of the Grievants will be responsible for distributing to each Participating Damages Recipient his/her respective share of the lump sum amount. The parties agree payments are based on remedies available under the Privacy Act. i.e., actual damages sustained. Grievants' claims are not related to their employment with the Agency and payments are not based on or allocated to back pay, front pay, or remuneration for services. Payments are not a function of lost wages, years of service, or any other factor related to their employment with the Agency. The parties agree that this Agreement does not determine the amount of any taxes for which the Grievants, Participating Damages Recipients, or beneficiaries may be liable now or in the future as a result of this Agreement. The Unions agree that the Participating Damages Recipients will be responsible for any federal, state, or local tax liability arising from the payment of the amounts

set forth in the Agreement, and that they will hold the Agency harmless from any liability for such taxes which may be owed on account of payment from this settlement. Further, the Unions acknowledge the Agency fully discharges its financial responsibility in this matter with the payment of the lump sum identified in paragraph 2. Mehri & Skalet, PLLC will hire a third party claims administrator who will utilize a Qualified Settlement Fund ("QSF") under Treasury Regulation 1.468B-1 et seq. The parties agree that these payments shall be reportable under IRC section 6041 and Reg. section 1.6041-1(a)(1)(i)(B) on Forms 1099-MISC as miscellaneous other income, subject to the \$600 threshold set forth therein. Pursuant to Reg. section 1.468B-2(l)(2), the QSF will comply with any information reporting and withholding requirements resulting from payments by the QSF to plaintiffs. After making any distribution to the Grievants, Participating Damages Recipients, or other beneficiaries, all required forms will be submitted by Mehri & Skalet, PLLC, on behalf of the Union to the IRS for each Grievants, Participating Damages Recipient, or beneficiary. Mehri & Skalet, PLLC, on behalf of the Union will be responsible for distributing all required federal tax forms to the Grievants, Participating Damages Recipients, or beneficiaries. These tax forms must be sent in accordance with Federal tax regulations.

4. Interest

In the event that the Agency fails to pay the amount of \$1,900,000.00 on or before the deadline set in paragraph 3, interest shall begin to accrue on the amount owed on day 46. Interest will accrue in accordance with the formula prescribed under the Back Pay Act, 5 U.S.C. § 5596(b)(2)(A), and by the Office of Personnel Management in FPM Letter 550-78. The interest shall be computed at the rate or rates in effect under Section 6621(a)(1) of the Internal Revenue Code of 1986 and shall continue to accrue until the Agency transmits the lump sum amount to Mehri & Skalet, PLLC, in accordance with paragraph 3 above.

5. Release From Claims Related to Settlement

The Grievants and the Agency understand and agree that in consideration for the payment made by the Agency and the Agency's compliance with the terms of this Agreement, the Grievants remise, release and forever irrevocably discharge the United States government, the Bureau of Prisons, the Agency and their officers, agents and employees, and each of them, separately and collectively, from the Privacy Act violations that are subject of the grievances filed on November 6, 2012 (Local 405); November 15, 2012 (Local 408); November 29, 2012 (Local 3696); March 12, 2014 (Local 408); March 15, 2014 (Local 405); and August 12, 2014 (Locals 3696, 405, 408) that are covered by this Agreement.

6. Waiver

In consideration for the payments made and the promises provided herein the Grievants will not sponsor any arbitration or individual grievances seeking compensation for the violations of the Privacy Act that are subject of the grievances filed on November 6, 2012 (Local 405); November 15, 2012 (Local 408); November 29, 2012 (Local 3696); March 12, 2014 (Local 408); March 15, 2014 (Local 405); and August 12, 2014 (Locals 3696, 405, 408) filed by AFGE Locals 3696, 405, and 408 on behalf of bargaining unit employees at FCC Butner.

7. Extensions

Any of the deadlines set forth in this agreement may be extended by mutual agreement of the Unions and the Agency.

8. Precedent

This Agreement is made solely for the purpose of settling and permitting entry of final resolution of the Grievances. The parties agree that this Agreement shall not be cited as precedent, and may not be cited, published, or referenced by either party as justification for their respective positions or referred to in any other proceeding, whether judicial or administrative, for

any purpose other than to enforce the terms of this Agreement. The parties recognize that it is in their respective interests to resolve this dispute through this settlement.

9. **Completeness of Agreement**

This document constitutes the complete terms of the settlement and supersedes any and all prior oral or written representations, understanding, or agreements between the parties to this Agreement.

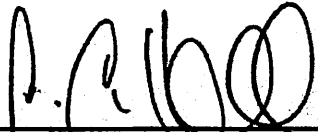
10. **Severability**

If any provision of this Agreement shall be held invalid or unenforceable, the remainder of the agreement shall not thereby be held invalid or unenforceable.

11. **Authority of the Parties**

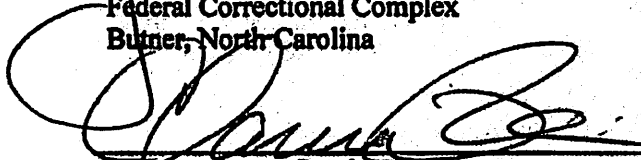
The parties agree that they have full authority to enter this Agreement and to make the promises, obligations and considerations contained herein. The Grievants' representatives of record represents that they are authorized to enter into this Agreement on behalf of AFGE Locals 3696, 405, and 408, which has full authority to enter into this Agreement and to make the promises, obligations and considerations contained herein.

The Agency's representative of record represents that he is authorized to enter into this Agreement on behalf of the U.S. Department of Justice, Bureau of Prisons, Federal Correctional Complex, Butner, North Carolina, which has full authority to enter into this Agreement and to make the promises, obligations and considerations contained herein.



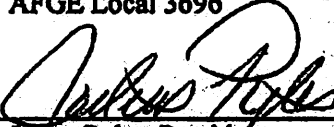
James Holland, Warden
Federal Correctional Complex
Butner, North Carolina

10-19-2016
Date




Clarence Peace, President
AFGE Local 3696

10-19-2016
Date



Julius Pyles, President
AFGE Local 405

10/19/2016
Date



Anthony Little, President
AFGE Local 408

10-14-16
Date