



Federal Aviation Administration

Memorandum

Date: JUN 1 2007

To: All Directors, Technical Operations Services

From:  Steve Zaidman, Vice President, Technical Operations Services

Subject: ACTION: Repudiation of Professional Airways Systems Specialist (PASS) Collective Bargaining Agreement (CBA) Article 41, Section 4

On May 24, 2007, AHL issued a notice to PASS repudiating Article 41, Section 4 of the PASS CBA. The following contract language has been determined to be unenforceable, "Specifically, employees qualified to work and whose normal schedule calls for them to work will not be placed on holiday leave on a day in lieu of a holiday without the employees consent." This memo and the attached briefing paper have been developed to ensure a consistent application of this action.

Effective immediately, all in lieu of holidays are to be treated the same as actual holidays when scheduling PASS bargaining unit employees to work. Article 41, Section 3 requires management to post a listing of all employees required to work an actual holiday at least 30 days in advance. Managers will now follow that same process when requiring employees to work their in lieu of holidays. In determining how many employees are required to work in lieu of holidays, managers should exercise sound risk management. When determining which employees should work their in lieu of holidays, managers should use the same procedures utilized when determining which employees must work the actual holidays. Keep in mind that Article 41 Section 5 requires, if operational requirements permit, the adjustment of employees RDOs to provide three consecutive days off when the actual holiday falls in the middle of the workweek. This should be taken into account when determining who must work their in lieu of holidays. If PASS bargaining unit employees are not required by management to work the actual holiday or their in lieu of holiday, then those employees shall observe the actual holiday or their in lieu of holiday.

If you have any questions, please contact Mr. Jody Oles at 847-871-7803.

Attachment

Repudiation of PASS Article 41 Section 4 Optionally Observing In Lieu of Holidays

Subject: AHL recently issued a formal notification to PASS repudiating Article 41 Section 4 of the PASS 2000 CBA. The 2nd sentence in Article 41 Section 4 states, “Specifically, employees qualified to work and whose normal schedule calls for them to work will not be placed on holiday leave on a day in lieu of a holiday without the employee’s consent.” This sentence has been determined by AHL to be non-negotiable and therefore unenforceable effective immediately.

Background: On April 13, 2007, the agency lost an arbitration (case no. PA-AEA-06-7514-PCT4) regarding watch schedule changes. There were several reasons we lost the case; however, one reason cited by the arbitrator was the above sentence in Article 41 of the PASS contract. This ruling caused AHL to take a closer look at the specific language cited in the case and they made a determination that this language interferes with managements right to assign work (or not to assign work in this case) and therefore violates 5 USC 7106 (a)(2)(B). As a result, AHL issued PASS a formal notice on May 24, 2007, repudiating that language and therefore rendering it unenforceable.

Discussion: With the issuance of this notice, the second sentence in Article 41 Section 4 is no longer valid. Employees can no longer choose to work their in lieu of holidays if management does not have a requirement for them to work. Management now decides when employees work their in lieu of holidays and should exercise sound risk management in determining the number of employees required. If management has no requirement for them to work, employees should then observe their in lieu of holidays. This action should save the agency approximately \$3 million annually.

Managers and supervisors should:

Communicate this change to employees before taking any action.

Require employees to work their in lieu of holidays, only when it is operationally necessary.

- Ensure employees observe their in lieu of holidays when management has no operational requirement for them to work.
- Ensure employees working administrative work schedules observe all holidays or in lieu of holidays (in the case of compressed work schedules) unless management has an operational requirement for them to work.

Managers and supervisors should not:

- Continue the practice of allowing employees to choose if they wish to work their in lieu of holidays. Only management can determine if there is an operational need to require employees to work their in lieu of holidays.

Make any changes to the basic watch schedule solely as a result of this repudiation. Management must have substantial operational reasons to change the basic watch schedule. This was re-affirmed in the above arbitration.

Summary: Holiday pay is one area where we can take positive steps to reduce our costs. Managers and supervisors should be prudent with the use of this funding and only expend holiday pay when it is operationally necessary. With the repudiation of the Article 41 Section 4 language in the PASS contract, managers and supervisors have greater control over the expenditure of holiday pay. It is imperative that positive action is taken to not only require employees to work on actual holidays only when it is operationally required but now employees should only be required to work on their in lieu of holidays when it is operationally necessary.