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To: Eric Young
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From: Paul W. Layer
Chief LMR
Subject: Meeting Minutes

Date: December 1, 2011
Pages: 10, including this cover sheet.

Comments:

Labor Management Relations Quarterly Meeting
MDC Guaynabo, Puerto Rico
November 30 – December 1, 2011

AGENCY

Paul Layer
Christopher Wade
Loretta Burke
Mike Markiewicz

UNION

Eric Young
Michael Castelle
Clifton Buchanan
David Gonzalez
Dan Ludwig
Dale Deshotel
Roger Payne
Sandra Parr
Michael Meserve
Clellan Tyson

Unresolved November 30 - December 2, 2010 Agenda Items

Agenda Item: AGENCY

1. BOP Learn – Demonstration

A computerized demonstration of the BOP Learn System was provided to the union at the November 2010 meeting. A number of questions and concerns were raised by the union. There remains some outstanding issues which will be addressed during the next LMR Quarterly meeting, to include identifying and providing the union the current written procedures for completing training courses, as well as addressing specific procedures for when staff may access training courses electronically through the BOP Learn system.

Who: Mitch Allen, HRMD

Resolution:

After a computerized demonstration of BOP Learn system was provided to the Union, Management answered a number of questions and concerns raised by the Union, including who employees should contact when they have questions regarding a training module (contact local department head over the subject matter). Management provided the Union with an excerpt of the relevant policy (3906.20). The BOP Learn system will now be available to all staff for use.

The following language will be incorporated into a computer banner (or its equivalent) for bargaining unit employees entering and utilizing BOP Learn:

Employees must ensure they request and receive approved relief before using BOP Learn training.

Unresolved June 1 - 2, 2011 Agenda Items

Agenda Items: UNION

13. Guidelines versus Policy

What is the difference between guidelines and policy?

There is back and forth change in the interpretation by management officials at both the national and local level whether or not guidelines are like negotiated policy. There are several instances where management has told Locals when these guidelines are being implemented, there's no duty to bargain, because they were negotiated nationally with the Council – which is absolutely false. In fact, the agency has bypass the Council repeatedly, sending guidelines directly to the field to be utilized in various departments by employees. Clinical Care and MRSA guidelines are some examples.

On one hand, management tells the national these are just guidelines and that these guidelines just guide employees in some form of discretionary responsibilities – which helps them in their day to day, decision-making. When asked by the Council years ago, we were told they couldn't be utilized in disciplinary actions, if they are not followed. Now, we see management locally utilizing these various guidelines, in proposal letters and arbitration against bargaining unit employees. Then, on the other hand, we have witnessed Labor Management Specialists, from time to time, say, "Post Orders are 'only' guidelines" when defending their cases – meaning employees cannot get in trouble if they do not follow the instructions. Are Clinical Care, MRSA and/or Post Orders guidelines or not? Can employees be disciplined for failure to follow them? What is the difference between guidelines and/or policy?

Who: LMR/HSD

Resolution:

Clinical Care guidelines and MRSA guidelines are issued for informational and teaching purposes and are not policy. They help define the scope of healthcare provided to the inmate population. It is recognized that proper medical practice necessitates that all patient cases are evaluated on an individual basis and that treatment decisions are patient-specific. Employees cannot be disciplined for non-compliance with these guidelines, however they may be disciplined for malpractice.

Post orders are mandatory instructions, some of which require the exercise of sound correctional judgment, and must be followed by staff. Employees may be disciplined for failure to follow post orders.

Unresolved September 7 - 8, 2011 Agenda Items

Agenda Item: AGENCY

1. Automated Transit Subsidy System Demonstration

A demonstration will be provided of BOP's automated transit subsidy system which allows employees to electronically submit all new transit subsidy applications, changes, and annual certifications.

Who: ADMIN

Resolution: Deferred

Agenda Items: UNION

2. Article 7 – Rights of the Union

Union representatives are being restricted and/or denied their right to have at least one Union representative on the daytime hours as indicated in Master mentioned above. Section f., clearly articulates, "The Employer and the Union agree to the scheduling, at the local level, of **at least one** Union representative, designated by the Union, to daytime hours of work. Daytime hours of work are defined as those hours between 6:00 a.m. to 6:00 p.m., Monday through Friday."

Who: LMR/HRMD

Resolution: The parties had an extensive discussion on this issue and were not able to agree on a resolution. Article 7, Section f., speaks for itself, nevertheless, the parties agreed this type issue ought be resolved at the local level through good faith deliberation of the parties.

3. Article 7 – Rights of the Union

The Council President and Western Regional Vice President were denied entry into a BOP facility in Tucson, AR, after advance notice was given to the Warden. Article 7, Section (h)(1) summarizes that Union representatives who are not employees of a specific local Bureau of Prisons managed facility who desire admission to the facility will be allowed access in the same manner as any visiting employee.

Who: LMR/HRMD

Resolution: Deferred.

4. Privacy Act Violations

5 USC, 552a (Privacy Act) forbids management to divulge certain individual identifiers to the Union especially when employees are proposed disciplinary/adverse actions. The Act goes even further. The DC Circuit Court of Appeals affirmed in a decision that privacy act violations are

considered misdemeanors and penalties provide for individual liability for managers and supervisors – as well as unlimited damages. It is the CPL’s belief, Special Investigative Agents, Special Investigative Supervisors, Office of Internal Affairs and/or Office of Inspector General (OIG) often engage in privacy act violations by interviewing other employees (witnesses) – who are not the target of the investigation – before interviewing the subjects first.

It further stated “to the greatest extent practicable” agencies’ investigators must collect “objective, unalterable and/or “factual” data” information from the subject of the investigation first before interviewing other witnesses. In example, “objective” information include questions of alleged misconduct such as whether the subject “**Made a phone call on a particular date,**” “**Took an unauthorized trip on a particular date,**” “**Took possession of a government vehicle on a certain date.**” The court stated, “The investigation would end if the employee admits to committing the act when questioned.”

Who: OGC

Resolution: Deferred.

November 30 – December 1, 2011 Agenda Items

Agenda Items: UNION

1. Premium Shift Differential

Employees injured in the performance of their duties and are on COP are they entitled to straight pay or appropriate premium shift differentials if at the time of injury they were scheduled to work during the working hours between 6 p.m. – 6 a.m. and/or on Sunday? What does federal regulations or the law states in this regard?

Who: HRMD

Resolution:

20 CFR Sec. 10.216(a) states that “the pay rate for COP purposes is equal to the employee’s regular ‘weekly’ pay.”

The Department of Labor, OWCP, Publication CA-810, Injury Compensation for Federal Employees, Chapter 5, states that an employee’s regular pay includes night or shift differential but not Sunday pay.

The 1998 Appropriations Act prohibits any appropriation contained in the Act or any other Act, for any fiscal year, from being available to pay Sunday premium pay to any employee unless such employee actually performed work during the time corresponding to such premium pay (Public Law No. 105-61).

2. Workers Compensation

When an employee is on continuation of pay (COP) and is given an 8-point letter who is required to pay for the medical examination? Is it correct that such examinations ordered by the agency must be paid in accordance with Title 5 Section 339.304?

Who: HRMD

Resolution:

5 CFR 339.304 requires, for example, that Fit For Duty (FFD) medical evaluations by 3rd parties, which are ordered or offered by the employer, be paid by the employer. Eight point letters are requests for existing medical information from an employee's personal physician, and not requests for examinations.

3. ISDS

The Council is recommending the CIMS BP339 document be included on the ISDS system. This would save all Case Mangers a great deal of time when updating the 339 information particularly when the inmate has a large number of separations (separatees).

Who: CPD

Resolution:

This recommendation will be considered by ISDS for future consideration in automation development.

4. Continuing Professional Medical Education (CPE)

It continues to be the practice of Dr. Newton E. Kendig to undermine the Union by circumventing the parties' CBA. In past months, Dr. Kendig placed out Nursing Guidelines that were later rescinded by the agency. Prior to this, he has sent out other guidelines to the field undermining the policy review process. In a memorandum dated October 5, 2011 he by the Union again, proposing a change in working conditions, conditions of employment, personnel policies, practices or procedures – undermining the essence of Article 3 of the parties' CBA.

In his latest act, he sent a memorandum out to HSD Branch Chiefs, Regional Medical Directors and Regional Health Services Administrators ordering them to violate national policy with regards to how much the employer should pay employees for keeping up with their Continuing Professional Medical Education Training (CME) training. Policy already stipulates the amounts of funds that can be paid for each position. Yet, this memorandum undermines such. At a minimum, this memorandum should have been forwarded to the exclusive representative (CPL) for our review.

Who: HSD

Resolution: Deferred

5. Grand Prairie

It appears the Federal Bureau of Prisons continually exclude qualified candidates in merit promotion boards when the applicants are in fact qualified. In a letter dated July 11, 2011, the agency deemed a candidate not qualified for a Safety Specialist, GL-0028-09 position – although he had a graduate degree in the field.

The Section Chief, Brad Eskridge stated, “After a consultation with a subject matter expert, it was determined your graduate degree in Environmental Policy is not comparatively related to the safety or occupational health field. In a case such as this, when the qualification area is indistinguishable and no clear validation is present, it is the policy of the Consolidated Staffing Unit to lean in favor of the applicant.” He then offered to remedy the situation by placing the employee on a “Priority Placement List.”

1. How can the agency justify selecting an applicant with no degree and placing that individual in the “Among the Best Qualified” group, yet the applicant with the graduate degree is not even qualified when in fact, he has a degree in the field for which the position announced?
2. If the applicant’s degree was not comparatively related to the safety or occupational health field, then why would the agency even considered the applicant after the review for “Priority Placement?”
3. What is the policy number, which exists that, went thru the Union that permits the Consolidated Staffing Unit to make independent thesis such as this?

Who: HRMD

Resolution: Deferred

6. Employee Health Records

What agency policy number or rules, laws or regulations that requires management to provide Institution Familiarization (I.F.) employees and/or any employee the below document to sign? What rules, laws or regulations authorize the Employer to author a government memorandum that direct employees to release all their medical information? The memorandum formatted below was given to employees at several institutions within the Western Region. This particular letter below was confiscated by the Union at FCC Tucson, AR. It state the following:

To whom it may concern,

I hereby authorize any duly accredited representative of the United States Federal Bureau of Prisons bearing this release, or a copy thereof, to obtain any information concerning my medical history. I hereby direct you to release such information upon request of the

bearer. I understand that the information released is for official use by the Bureau of Prisons and may be disclosed to such third parties as necessary in the fulfillment of official responsibilities. I hereby release any individual, including record custodians, from any and all liability for damages of whatever kind or nature which may at any time result to me on account of compliance, or any attempts to comply, with this authorization. Should there be any question as to the validity of this release, you may contact me as indicated below.

Who: HRMD

Resolution: Deferred

7. Staff Search

BOP new floor scans are being programmed to include ghost images (e.g., guns, knives, cell phones, etc.) in staff personal property. As staff tries to screen in their personal effects thru the floor scanned, the lobby officer sees false images of guns, knives or cell phones in their property. After approval of management, and searching thru staff personal effects, no such items are later found. It has come to our attention, management in the NCR are aware of these unreasonable searches.

BOP policy specifies what constitutes a "reasonable suspicion" search. If this is being done, the CPL believes this is a flagrant violation of policy. The Council of Prison Locals has been informed this is perhaps is going on other facilities, not limiting FMC Springfield, IL and potentially, being considered at other facilities like FMC Rochester, MN. Please stop this immediately, to prevent any Bivens' claims being filed against the Employer. The agency has vicarious liability if this is not corrected immediately.

Who: CPD

Resolution: Deferred

8. LEOSA

Can BOP retirees be permitted to maintain their annual certification (qualification) at BOP gun ranges. Can this be permitted to occur, if BOP retirees purchase their own ammunition and targets?

Who: OGC

Resolution: Deferred

9. Institutional Character Profiles

What is the purpose of ICPs? How much money is spent on travel to ICPs each year and in each region?

When the results are not favorable, what occurs? Is this information provided to employees or to DOJ? What else occurs with the information, if any?

Who: PRD

Resolution: Deferred

10. Public Health Services (PHS)

PHS employees are utilized in the Bureau of Prisons in hard to fill positions. Why are vacancies for positions only being announced to Public Health Service personnel? Public Health Service employees are not Bureau of Prisons employees, yet they are being placed in supervisory positions that are not hard to fill. Policy says through various human resource programs employees will have opportunities for personal growth, professional development, and upward mobility potential. If this is the case, why are these positions being filled with non-bureau employees instead of staff within BOP? How can non-Bureau employees evaluate and discipline bargaining unit staff?

Who: HRMD

Resolution: Deferred

11. Official Time

When union representatives in the field request reasonable amounts of official time to perform the essential functions of their duties, management officials are interfering and restraining them by reducing the amount of official time they request. Union officials know how much time it will take to perform their fiduciary responsibilities. They are trained and know exactly what procedures are to be followed when they have to initiate representing the bargaining unit. Article 7, section e., says (emphasis added) Union officials must request time from their supervisors prior to leaving the worksite. It further state the Union official will inform the supervisor of the anticipated time that the representative will be away from the worksite, and thus notify the supervisor upon return. So, why are management officials telling union officials how much time they will need to discharge their fiduciary responsibilities?

Who: HRMD

Resolution: Deferred

12. Official Time

Each year, management at Central Office, Labor Management Branch and Regional Offices sends out several guidances to the field to local management as to what constitutes mutually beneficial training. Section h. Employee Union representatives will be excused from duty, workload permitting, to attend training which is designed to advise representatives on matters within the

scope of 5 USC, and which is of mutual benefit to the Employer and the Union. The employee Union representative wishing to attend such training will present a vendor's written description of the course to the Employer which demonstrates which portion of the training is mutually beneficial. The parties agree that training under this section is generally of mutual benefit when it covers areas such as contract administration, grievance handling, and information related to federal personnel/labor relations' laws, regulations, and procedures. Why is management in the field telling Union officials training is not mutually beneficial – because the union seeks to attend training in arbitration, EEO or grievance handling.

Who: HRMD

Resolution: Deferred

13. Nepotism

In spite of the fact that the Agency acknowledges the impropriety of having a spouse or immediate relative in a direct superior/subordinate chain-of-command relationship, the Bureau continues to allow such nepotistic situations to continue when it chooses to. Specific example: The Warden of FCI Mendota CA, Paul J. Copenhagen, is, and has been for some time, married to Deputy Regional Director, Audrey M. Gill. Warden Copenhagen has made many attempts to conceal this fact from the staff at FCI Mendota, and recently accused a Local Union Officer of "outing" him in regard to his marriage to someone who has him (Copenhagen) in their direct line of supervision. Article 24 of the CBA states that there should be "no situation created in which one relative is in the supervisory chain of command over the other." The Agency agreed to the wisdom of that language for a number of specific reasons. Will the Agency continue to allow what appears to be an inappropriate situation in the Western Region?

Who: HRMD

Resolution: Deferred

14. LMR Quarterly Meetings

Why isn't it a requirement of the Agency to have Executive Staff attend quarterly LMR. Definitive answers to numerous LMR agenda items goes unresolved based on the fact that those in authority in the Agency are not required to be present at Quarterly LMR Meeting.

Who: HRMD

Resolution: Deferred



**Eric O. Young, SERVP
Council of Prison Locals**

12-1-11

Date



**Paul W. Layer, Chief
Labor Management Relations Branch**

12-1-11

Date