

***Labor Management Relations
Quarterly Meeting Minutes
FDC Miami, FL
November 14-15, 2012***

AGENCY:

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UNION:

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January 18-19, 2012 Agenda Items
Agenda Items: UNION

1. Delays in appointing Agency Representatives for arbitrations:

Many Locals are complaining that the Agency is causing unnecessary delays in the grievance/arbitration process by failing to assign Agency Representatives to the case in an expeditious manner. A specific example is FMCS Case # 111001-50011-8, FCI Sheridan. Arbitration was invoked September 8, 2010; the arbitrator was selected on October 29, 2010; yet, no Agency Representative had been appointed to the case by the employer at present date (December 28, 2011). Article 31, Section a. of the CBA says that ***“The purpose of this article is to provide employees with a fair and expeditious procedure covering all grievances properly grievable under 5 USC 7121.”***

How can a fourteen (14) month delay in assigning an Agency Representative be reasonably considered **“expeditious?”**

Who: HRMD

Resolution: The above agenda item was discussed. No agreement was reached. No suspense date was set for follow-up action.

2. Denial of Compressed Work Schedules

The Agency has denied Compressed Work Schedule requests in ways that are inconsistent with the Federal Employees Flexible and Compressed Work Schedules Act.

In a specific example, the Employer and the Union at FCI Sheridan signed a Compressed Work Schedule on June 7th, 2011. The Employer, in the person of Regional Director Robert McFadden, responded to the Compressed Work Schedule agreement on August 19th, 2011, seventy-three (73) days after the agreement was signed. The Master Agreement, Article 18, Section (b)(1) states, ***"any agreement reached by the local parties will be forwarded to the Office of General Counsel in the Central Office who will coordinate a technical and legal review. A copy of this agreement will also be forwarded to the President of the Council of Prison Locals for review. These reviews will be completed within thirty (30) calendar days from the date the agreement is signed"*** (emphasis added). The contractual obligation for the agreement to be ***"forwarded to the Office of General Counsel in the Central Office"*** for review clearly belongs to the Agency, so similarly, the obligation that ***"A copy of this agreement will also be forwarded to the President of the Council of Prison Locals for review"*** is the agency's as well. Neither Bryan Lowry (the Council President at the time of the Compressed Work Schedule agreement) nor Dale Deshotel (The acting Council President on the date of the denial) claim to have received a copy of the Compressed Work Schedule agreement for FCI Sheridan, as required by the CBA. This failure to comply with the contractual notification and window of response obligations agreed to by the agency, in and of itself should nullify the denial of the Compressed Work Schedule agreement issued by Regional Director McFadden. However, we will address the merits of the denial, without waiving our right to dispute the legitimacy of the denial under the doctrine of laches.

The denial issued by Mr. McFadden states that, ***"The Agency's statutory right to assign work includes determining the numbers, types, and positions assigned to any work project or tour of duty."*** However, the courts have ruled that flexible and compressed work schedules are fully negotiable and management rights under 5 U.S.C. § 7106 are not a bar to negotiations of flexible or compressed work schedules. In *Bureau of Land Management v. Federal Labor Relations Authority*, 864 F.2d 89 (9th Cir. 1988), (Bureau of Land Management), the court held that ***"[i]n order for employees to have the flexibility and choice envisioned by the [Flexible and Compressed Work Schedules] statute, both the overall contours of the employees' available choices and the manner in which an individual's choice is exercised within those contours, must be subjects included within the terms of the collective bargaining agreement and hence negotiable."***

Mr. McFadden's denial letter also claims that, ***"The parties' prior collective bargaining reflected in Article 18, reserved the discretion to the Warden to formulate the rosters. The Agency has no further duty to engage in additional bargaining regarding work schedules of the Sick and Annual posts."*** This argument falls short in view of the Article 18, Section (b.) language, which states, ***"The parties at the national level agree that requests for flexible and/or compressed work schedules may be negotiated at the local level, in accordance with 5 USC"***.

The negotiability of flexible and compressed work schedules was extensively discussed during the Congress' deliberations on the three-year experiment, the Federal Employees Flexible and Compressed Work Schedules Act of 1978, and the current law, the Federal Employees Flexible and Compressed Work Schedules Act of 1982. A congressional report on the bill that became the 1982 Act (S. 2240) indicates the use of these schedules is to be fully negotiable, subject only to the provisions of the 1982 Act. See Senate Committee on Governmental Affairs, Federal Employees Flexible and Compressed Work Schedules Act of 1982, S. Rep. No. 365, 97th Cong., 2d Sess. 3, 5 (1982). The statute does provide that an agency head may object to the negotiation of a flexible or compressed work schedule proposed by a union if he or she finds that the proposed schedule would have an adverse agency impact; however, this objection was never made on behalf of the agency. Nowhere in Mr. McFadden's letter of denial does he mention 'adverse agency impact' as a reason for the denial of the signed Compressed Work Schedule.

According to the OPM publication, Negotiating Flexible and Compressed Work Schedules, "Negotiations over establishing and using flexible or compressed work schedules should be undertaken in a spirit of partnership. A collaborative, interest-based approach will greatly increase the likelihood that a workable schedule will be established and implemented. For example, during the early planning stages, meet with the union to discuss the feasibility of a flexible or compressed work schedule, even on a trial basis, and discuss the types of schedules that could be successfully implemented at your agency. Share information; and if you are going to conduct a feasibility study, get input from the union on the methodology of the study. Try to work through differences that could result in a negotiation impasse." Merely stating that the agency need not consider implementing a signed agreement for a Compressed Work Schedule because it is "covered by" or falls under management's "right to assign work" does not comply with either the provisions of the Master Agreement or the Federal Employees Flexible and Compressed Work Schedules Act.

Who: OGC

Resolution: The above agenda item was discussed. No agreement was reached. No suspense date was set for follow-up action.

3. Re-entry Bargaining Unit Staff

Re-entry bargaining unit employee's are being instructed by Regional supervisors to perform work that contradicts, or violates the Unit Management Manual. They also are instructing them to basically instruct Case Manager's to perform duties that conflict or violate the Unit Management Manual. The manual was negotiated between the parties many years ago and has not been re-negotiated. Part of the issue is the ISDS program which still does not have a program statement finalized. The only agreement on this ISDS issue is a signed agreement between former President Lowry and management. It does not authorize the violation of any current Program Statements or policies.

Who: CPD

Resolution: Deferred

May 30-31, 2012 Agenda Items

Agenda Items: UNION

1. Notification of Agency Representatives on national grievances.

Why does it take the Agency months to notify the Union whom the Agencies Representative is and the contact information of the Representative. In instances whereas a national grievance is filed by the Union, the Agency is causing unnecessary delays in the grievance/arbitration process by failing to assign Agency Representatives to the case in an expeditious manner. Article 31, Section a. of the CBA says that "The purpose of this article is to provide employees with a fair and expeditious procedure covering all grievances properly grievable under 5 USC 7121."

Who: HRMD

Resolution: Deferred

July 25-26, 2012 Agenda Items

Agenda Items: UNION

1. Last Chance Agreements

Why is the Agency inserting language in a last change agreement (LCA) that implies that the Union must give up its rights to file any claims? We believe a Last Chance Agreement should be drafted by the Agency for an employee. The agreement is between a staff member represented by the Union and Management in an informal attempt to negotiate the best outcome between the parties for the interest of the parties (Union and the Agency). Is it the position of the Agency , " in instances whereas there is a last change agreement offered to an employee represented by the Union, and the employee agrees to the terms, the Union must waive its statutory right under 5 USC Chapter 71". If this is Managements interpretation of the agreement, this clearly violates our rights. What is Management's interpretation of entering into Last Chance Agreements?

Who: OGC

Resolution: Deferred

2. Medical Facilities Staffing

Why is the Agency having difficulty staffing Licenses Practical Nurse's, Registered Nurses and Physical Assistants, in our Medical facilities (e.g., Lexington, Kentucky, Fort Worth, Texas, Rochester, Minnesota, Springfield, Missouri)? Medical staff are being pulled off their quarterly assignments posted on the Medical services roster and being utilized as sick and annual relief on a regular basis. In some instances staff are being informed by the Wardens that they will be forced to deny approved annual leave as a result of under staffing within the Medical Services Department.

It is the position of the Union that this process clearly violates Article 18 section d and Article 19 section l of our Collective Bargaining Agreement (CBA). This problem is also creating very hostile working conditions in these medical facilities that are inherent hazards that compromises the safety and security of staff. What is the Agency's plan to expedite hiring at these facilities? These practices must cease immediately.

Who: HRMD

Resolution: Deferred

3. Bureau Credentials

This issue was previously raised as a matter of prudence to the Union. Staff are being challenged by law enforcement agencies outside of the Bureau on the issue of whether or not (we) Bureau of Prison Employees are Law Enforcement Officers under the (LEOSA) Law Enforcement Officers Safety Act. The primary problem is our current credentials do not identify us as Law Enforcement Officers or having an arrest authority. During recent discussions between the parties the Agency acknowledged that this was not something that would be difficult to resolve. In fact we discussed having "Law Enforcement Officer" inserted on our *current credentials*. **What is the status of this issue?** It is the position of the Union that by not clearly having our Law Enforcement title inserted on our credentials this is a potential violation of the Law (H.R.218) as well as an unnecessary inconvenience to our staff.

Who: HRMD

Resolution: On June 30, 2012, an agreement was finalized through the Partnership Council whereby the Agency agrees to place the wording "Law Enforcement Officer" on the Bureau of Prisons credentials of current staff in primary/secondary law enforcement positions. Modified credentials will be available upon request from employees' responsible Human Resource offices in the near future, once supplies are obtained.

November 14-15, 2012 Agenda Items

Agenda Items: UNION

1. Last Chance agreements

Why is the Agency inserting language in a last change agreement (LCA) that implies that the Union must give up its rights to file any claim against the agency in connection to the agreement signed by an employee of the bargaining unit? Why is the agency requiring the Union to sign off on last chance agreements? A (LCA) drafted by the Agency is an agreement between a staff member and Management in an informal attempted to negotiate the best outcome for the interest of the Agency.

Representatives of the Agency from the Labor Branch are advising the employees in the field, "If the Union do not agree with the terms of the agreement that the employee will not be offered a last chance agreement". Is this guidance coming from central office? Is this the position of the Agency

regarding last chance agreements? What is Management interpretation of entering into Last Chance Agreements?

Who: OGC

Resolution: Deferred.

2. Compressed Work schedules

Why are Compressed work schedules negotiated and signed by the parties at the local level (Union and Management) after the agreements have been signed? Central Office Labor Branch particularly Meryl White, Assistant General Counselor, Labor Law Branch of the Federal Bureau of Prisons denying the compressed work scheduled for the following reasons as a standard reply or response. The Employment Law and Ethics has deemed that any post on the Correctional Services Roster is “Mission Critical” contending that Mission Critical post are post critical to the Mission of the Agency. What does this mean? Is it the Agencies position that any post deemed to be “Mission Critical “ will not be negotiated in a compressed schedule? What is a mission critical post?

Who: OGC

Resolution: Deferred.

3. Staff Lockout

Why is the Bureau of Prisons prohibiting staff to enter the secure confines prior to the start of their assigned shifts? Why is the Bureau prohibiting staff from entering into the secure confines after the end of their assigned shift? This practice is restricting staff from the usage of lockers provided by the agencies, as well as, resources such as computers, restrooms staff lounges etc.

Who: OGC

Resolution: Deferred.

4. Promotion criteria

What are the criteria or factors used to determine qualifications and/or illegibility for promotions within the Bureau of Prisons? Such as employees clubs, sort teams members, disturbance control members, voluntary functions, affirmative action programs etc. What criteria is being used against employees who are applying for promotions within the Agency such as the amount of leave accumulation, to include both sick leave and annual?

Who: HRMD

Resolution: Deferred.

5. Bureau Credentials

This issue was raised as a matter of prudence to the Union, staff is constantly being challenged by law enforcement agencies throughout the country questioning our status of law enforcement

officers under (LEOSA). Our current credentials do not identify the Bureau of Prisons staff as Law Enforcement Officers. What is the status on the issuance of credentials that will have Law enforcement inserted on them?

Who: HRMD

Resolution: Deferred.

November 14-15, 2012 Agenda Items

Agenda Items: AGENCY

1. National Policy Ground Rules

The Agency requests to re-negotiate the ground rules for national policy negotiations, so as to provide a process that will protect staff and inmate safety, and internal security, through prompt and necessary updates to national policy. Updates to national policy are not keeping pace with changing technology, correctional techniques, laws, and legal decisions.

Who: HRMD

Resolution: Deferred.

2. Joint Policy Committees

The Agency requests to negotiate an amendment to the Joint Policy Committee (JPC) agreement regarding termination of individual JPCs. Specifically, the amendment would permit terminating the JPC only for reasons related to the operation of the JPC itself.

Who: HRMD

Resolution: Deferred.

3. Standards of Employee Conduct

The Agency requests to finish negotiating the policy on Standards of Employee Conduct, including, whether staff may obtain copies of their own investigation affidavits upon completion.

Who: OGC

Resolution: Deferred.

Michael Rule, NCRVP
Council of Prison Locals – 33

Date Signed

Paul W. Layer, Chief
Labor Relations Office, HRMD

Date Signed