

***Labor Management Relations
Quarterly Meeting Minutes
Washington, DC
July 25-26, 2012***

AGENCY:

*Paul Layer
Ruby Navarro
Loretta Burke
Marqueta Andrews*

UNION:

*Michael Rule
Michael Castelle
Dwayne Person
Arturo Reynaldo
Clifton J. Buchanan
Mike Meserve
Joe Mansour
Tom Peavy
Xavier Villarreal
Bob Dudley*

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: *The agency withdraws this agenda item and will resubmit at the appropriate time.*

Unresolved November 30 – December 1, 2011 Agenda Items
Agenda Items: UNION

1. 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: *Visual searches of staff belongings is only authorized upon reasonable suspicion and approval by the Warden, per the Electronic Searches of Bureau of Prisons Staff, par. 11 (2007-11-08). Search program alerts through the Threat Image Projection Program (TIP) should be resolved by re-screening the belongings through the x-ray machine only.*

2. 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

Agency Response: *Federal property cannot be used for non-governmental purposes. See 5 C.F.R. § 2635.704. Retirees seeking firearms qualifications for LEOSA purposes fulfill a personal, not government, purpose and, therefore, cannot have greater access to Agency firing ranges than the general public. Additionally, retiree use of Agency firing ranges would require staff supervision, increase the cost of firing range maintenance, and subject the Agency to liability risks, all unsupported by a government purpose. This does not preclude institutions entering into authorized inter-governmental agreements for use of firing ranges by other law enforcement agencies where there is a benefit to the Agency.*

3. 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: *The Agency strives to fill vacant positions with the best possible candidate regardless of personnel system. The decision as to who is the best candidate for a given*

position is dependent upon the applicant pool for that position. Institutions are counseled to announce their positions through Grand Prairie as civil service with the opportunity for PHS officers to apply. In some cases, e.g., pharmacy positions, there are no qualified civil service candidates and the only hiring mechanism available is through PHS.

PHS officers detailed to the Agency are authorized to perform supervision functions pursuant to 42 U.S.C. § 250.

The Union disagrees with the agency response.

4. 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: The Union withdraws this agenda item.

5. 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: *The Union withdraws this agenda item.*

6. 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: *The union withdraws this agenda item.*

7. 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 Meetings.

Who: HRMD

Resolution: *The union withdraws this agenda item and will resubmit at the appropriate time.*

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: *Deferred*

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: HRMD

Resolution: Deferred

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. Three year rotation procedures placed on the sally port.

The recent guidance memo posted on the sally port page was not forwarded to the Council President for review before it was posted. Why?

Who: LRO

Resolution: The union withdraws this agenda item and will resubmit at the appropriate time.

2. 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: LRO

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: ELE

Resolution:

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:

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:

4. Mutually agreed training

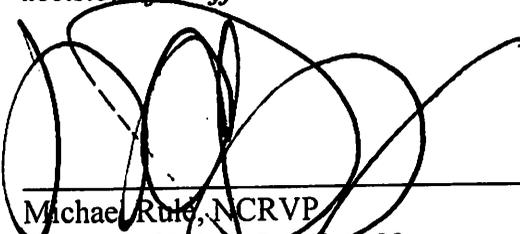
The Master Agreement stipulates that training is generally of mutual benefit when it covers areas such as contract administration, grievance handling, and information related to federal personnel/labor relations laws, regulations, and procedures. It is the opinion of the Union, in

instances whereas a request is initiated by the Union on the national level, and the Agency needs additional information to determine whether or not the training can be deemed mutually beneficial. Why isn't the Council President contacted and consulted prior to guidance being forward to the field denying the Union's request?

Who: HRMD

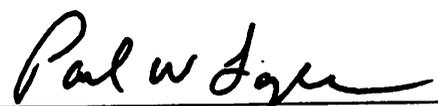
Resolution: When the President, CPL-33, requests the Chief, Labor Relations Office, review national training agendas to determine whether they are "mutually beneficial", as contemplated by the Master Agreement, Article 11, the Chief reviews, consults, and coordinates a response with the Council President prior to being forwarded to the field.

A decision by the Chief, LRO, that particular national training agenda items are "mutually beneficial," only resolves that particular factor. All other aspects of these requests and decisions for official time are to be considered locally under the rest of Article 11.



Michael Rule, NCRVP
Council of Prison Locals - 33

07.26.02
Date Signed



Paul W. Layer, Chief
Labor Relations Office, HRMD

7-26-12
Date Signed