

***Labor Management Relations
Quarterly Meeting Agenda
Central Office, Washington, DC
February 18-19, 2015***

Participants

<u>Agency</u>	<u>Union</u>
Christopher Wade	Eric Young
Beth Reese	Mike Rule
Chung-Hi Yoder	Ray Coleman
Joseph Moorhead	Clifton J. Buchanan
Jeff Barnes	Don Martin
Lisa Eger	Jose Rojas
Floyd Eller	Derrick Bradden
	Jorge Fermin
	Shane Fausey
	Jason Stemely

February 18-19, 2015 Agenda Items
Agenda Items: UNION

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1. Stab proof vest

The Union has received several complaints regarding the following issues regarding the stab proof. The Union is requesting to meet with Management on or before May 01, 2015 to resolve these issues prior to implementation of the vest.

The t-shirts/undergarments currently being issued are 100% cotton, which contains moisture causing the vest to be soiled with body perspiration.

It is the Union's stance that there should be some type of undergarment to prevent body perspiration, which could cause health concerns.

Management is doing the fit testing of the vest in correctional services. These individuals are measuring the vest incorrectly.

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It is the opinion of the Union that the fit testing should be fitted by the company that the vest are being purchased by.

The vest are being distributed to staff without distinction of a vest that is designed for male or females.

Who: CPD

Resolution: Management has learned that some moisture wicking t-shirts shipped to institutions for use with the stab resistant vests were improperly labeled and will need to be returned to UNICOR. These t-shirts were constructed using the correct polyester material (the same material used for the military wicking t-shirts); however, the shirts were incorrectly labeled as 100% cotton. In addition, the shirts have a sewn-in label instead of the "tagless" label. As such, UNICOR will cover the cost of shipping them back and will ensure that appropriately labeled t-shirts will be shipped back to the facility. Please consult the Financial Management staff who will coordinate the return.

For the remaining issue, the parties agreed to modify the National Protective Vest Procedures policy to include procedures for initially issued vests that are not properly fitted. The Council President will designate a representative to meet with management.

2. Agency requiring staff to work without compensation

It has been brought to the attention of the Union. Medical and Mental Health staff specifically Psychologist and Psychiatrists is being required to come into the institution on weekends to make rounds. Although in most cases they are only in the institution for a short time (less than half a day) they are being told by the agency this requirement are duties related to their position description. However, the employees are not being compensated for the time they are required to come into the institution.

The basis for the non- payment is because they can't make more that the Vice President of the United States. Is this true?

This issue poses two separate problems,

First the on call and secondly working without being paid

It is the opinion of the Union that employees are being required to come into work and are not being compensated for the time in which they are required to work. This is a violation of law specifically. Additionally, employees are being required to address inmate issues or staff concerns regarding inmate behaviors/issues via the phone while on call for a length of time without being compensated.

Who: HRMD

Resolution: After a lengthy discussion, the issue was clarified as whether the BOP can require staff to be compensated for overtime work with compensatory time off instead of overtime pay.

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It is the Management's position that 5 C.F.R. 550.114 (c) provides the authority to allow the BOP to require certain FLSA exempt employees to be compensated for irregular or occasional overtime work with an equivalent amount of compensatory time off. The regulation specifically states: "The head of an agency may provide that an employee whose rate of basic pay exceeds the maximum rate for GS-10 (including any applicable special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 [Pub. L. 101-509], respectively; a locality based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) shall be compensated for irregular or occasional overtime work with an equivalent amount of compensatory time off from the employee's tour of duty instead of payment under 550.113 of this part."

3. The Position of Teacher, GS-1710-11, is classified as FLSA exempt

This issue was discussed in our previous meeting regarding the overtime exemption for teachers. After our lengthy discussion the Union still contends that Teacher should be classified as exempt under the regulations for the following factors. The regulations do not list correctional institutions as "educational establishments", the regulatory definition of educational establishments is clear and unambiguous even going to the extent that it defines the term "other educational establishment" since the regulations require that the exemption criteria be narrowly construed, and that each employee is presumed to be nonexempt unless they clearly meet the requirements of one or more of the exemptions

The Union is requesting that the Agency reconsider their previously response to this issues by factoring the aforementioned information. If there is any additional information needed please do not hesitate to give me a call.

Who: HRMD

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Resolution: The BOP maintains that the determination the Teacher standardized position description, GS-1710-11, is appropriately identified as FLSA exempt under the Professional Exemption criteria, as defined in 5 CFR 551.207. Nevertheless, Management is willing to review the existing standardized PDs for Teacher and Education Specialist to determine if duties are accurate.

4. Proper relief of Union representatives

In instances whereas Union official representatives of the union are required to leave their duty station or workplace, why are they being penalized for performing Union Representation? For example, staff is receiving negative ratings in their quarterly evaluation due to their Union Representational Duties. Union Representatives work is not being assigned to other staff while these Union Representatives are performing their representational duties in accordance with 5 U.S.C. § 71.

The Master Agreement is crystal clear concerning the relief of Union officials to be on official time.

The Agency always without exception assigns supervisor's work to bargaining unit staff every time a supervisor is on leave, training or absent from work for any reason. Supervisor's work is not being left for them untouched while they are out.

Who: HRMD/LRO

Resolution: *The Union LMR Chair and the Chief, LRO will attempt to resolve this issue within the next 14 calendar days.*

5. Medical Facilities Staffing

Why is the Agency having difficulty staffing Licenses Practical Nurses, Registered Nurses, Physician Assistants and Nurse Practitioners in our Medical Facilities (e.g., Lexington Kentucky, Fort Worth, Texas, Rochester Minnesota, Springfield Missouri)? Medical staff are being pull 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 violated 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?

Is the pay rate for Medical Staff being compared to the hourly rate of the private sector?

Augmentation

The Agency previous guidance to the field regarding augmentation, the practice of augmentation should only be utilized during annual refresher training, mandatory training sort, disturbance control team etc.

Has the position of the Agency changed?

Who: HSD/HRMD

Resolution: *The Federal Bureau of Prisons (BOP) has 6 Medical Referral Centers (MRCs) to include FCC Butner (BUX), FMC Carswell (CRW), FMC Devens (DEV), FMC Lexington (LEX), FMC Rochester (RCH), and USMCFP Springfield (SPG). Unlike most stand-alone institutions, these locations have either medical recruiters or staff specifically assigned to medical hiring. Therefore, these locations have historically been responsible for creating their own recruitment plan based on their needs.*

As a result of discussions during Partnership, staff members from the Health Services Division (HSD), Human Resource Management Division, and the national Union met to discuss recruitment issues. From that meeting, there was an agreement to further broadcast the use of incentives to assist with hiring for BOP's hard to fill medical positions. Potential venues to

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attract candidates continue to be explored.

The Office of Personnel Management (OPM) approved nine new and one modified BOP Special Salary Rate (SSR) Tables for medical positions effective June 1, 2014. In addition, OPM approved one modified table effective October 5, 2014. In total, these tables provided increases for 38 locations including four MRCs.

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6. New Hires Retirement Contributions

Newly hired staff, while in their probationary period and/or at the end of their probationary period, are receiving offset letters from the National Finance Center (CFR). The notices indicate that their payroll deduction for retirement has been keyed incorrectly.

The problem is becoming very common throughout the agency.

These employees are being required to pay this money back. In some instances these employees are being forced to pay back up twelve months of back pay. This error is causing an extreme financial difficulty to these employees. Because of this error caused by the agency some of these employees owe from six (6) to twelve (12) months of deductions. The Union is requesting that these employees receive a waiver for the money they are told is owed.

Who: HRMD

Resolution: Several pieces of legislation passed since 2012 resulted in changes to retirement contributions for new employees who entered on duty since the beginning of 2013. Specifically, new employees covered by the Federal Employee Retirement System (FERS) are paying higher employee contributions. Due to a lag in the pay processing systems, however, appropriate contributions were not collected in some cases. As a result, some new staff have received a bill from the National Finance Center (NFC) for the employee portion of retirement funds not previously collected. Management is currently exploring ways to lessen the impact of affected employees and will keep the Union apprised.

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7. The Agency claim of covered by in regards to local supplemental agreements

The union has received numerous complaints in the field, whereas Management is claiming, "covered by" as their basis not engage in collective bargaining on local supplemental agreements.

It is the opinion of the union that there are specific circumstances that are the appropriate claim, "covered by". Whether the proposal specifically conflicts with the Master Agreement, the negotiability appeal process is not the proper forum. See 5 CFR 2424.30 (b). But, if the Agency also raises some other negotiability objection i.e., violation of law or government-wide regulation, then the negotiability appeal process will be used to resolve all aspects of the dispute, including the "covered by" issue.

Furthermore, management claims that a proposal for a Supplement is outside the scope of bargaining because it is "Covered by" some provisions of the Master Agreement. The FLRAs "Covered By" test contains two prongs. But, in agreeing to the language in Article 9, Section b of

the Master Agreement, It is the position of the Union that the Bureau has waived the second prong of the FLRA's test. All that matters is whether a proposal (s) a Local makes "specifically conflicts" with a provision of the Master Agreement. Management is not allowed to claim that this proposal is "inseparably bound up with a matter contained in the agreement and thus an aspect of the matter contained in the agreement." The only restriction is a specific conflict.

The union contends that the Agency is aware of the negotiability process includes a short, but absolute deadline for filing an appeal with the FLRA. If the Agency continues this improper application of the rule as it relates to the, "covered by" clause.

The Council of Prison Local as the exclusive representative will file the appropriate litigation against the agency if necessary.

Who: HRMD/LRO

Resolution: Management agrees with the DC Court of Appeals decision regarding the "covered by" doctrine. Federal Bureau of Prisons v. Federal Labor Relations Authority, 654 F.3d 91 (2011). It succinctly states, in part:

If a collective bargaining agreement "covers" a particular subject, then the parties to that agreement "are absolved of any further duty to bargain about that matter during the term of the agreement." For a subject to be deemed covered, there need not be an "exact congruence" between the matter in dispute and a provision of the agreement, so long as the agreement expressly or implicitly indicates the parties reached a negotiated agreement on the subject. (internal quotation marks omitted).

It further states that "[w]e will therefore reject any construction of a collective bargaining agreement that treats it as but "a starting point for constant negotiation over every agency action." It is Management's position that Article 9 of the Master Agreement is not a waiver to the "covered by" doctrine.

8. Training instructors limited to a three (3) year assignment in Glynco

The Agency currently requiring staff employed at Glycol is to a three (3) year assignment of duty. This practiced was determined by the Agency. At the end of the three (3) year term, these employees are being required to apply for other position throughout the Bureau of Prisons. If the employee is unsuccessful in finding other position the employee can request for an extension.

The three (3) year term for several of the employees has expired, these employees has been notified by the Agency that they must find a positions or they will be forced to alternative locations and be reassigned to other positions. The Council of President was not provided the proper notice of this change prior to implementation. The local was informed that the president at the time was informed of this change in working was never brought to the Union prior to implementation. The Union is requesting that theses employee's positions be extended until the Agency and the Union

complete negotiations of procedures and appropriate arrangements of the aforementioned change in working conditions.

Who: HRMD

Resolution: *The parties agreed to address this matter outside of the LMR Quarterly forum.*

ADDED UNION AGENDA ITEM

Form B

The Warning and Assurance to Employees required to provide information form is (BP-S194.012)

In accordance with Office of Internal Affairs P.S. 1210.24, 5/20/2003, page 11. Section b. Interviewing Subjects. The Warning and Assurance to Employees required to provide information form is (BP-S194.012)

Office of Internal Affairs P.S. 1210.24, 5/20/2003, page 2. Section b. states Directives Referenced P.S. 1380.05 Special Investigative Supervisors Manual (8/1/95)

The current form B being used (see 2nd form B attached) is Warning and Assurance to Employees, BP-A0194, dated June 10 which replaced BP-A194 dated Aug 93. The form B second paragraph reads "You are going to be asked a number of questions regarding the performance of you official duties."

This is not in accordance with P.S. 1380.05, SIS Manual 8/1/95, attachment M.

The other form B, (see 1st form B attached) is in accordance with the SIS Manual P.S. 1380.05, 8/1/95, attachment M, which reads "You are going to be asked a number of specific questions regarding the performance of your official duties." (see attached)

The two form B's are different. In form B, BP-A0194, dated June 10 which replaced BP-A194 dated Aug 93, the word "specific" has been removed.

It is the position of the Union , if employees are required to answer questions in an administrative investigation are being compelled to respond the word "specific" makes a difference in their "Due Process".

Why is these forms requiring staff to answer any other than specific questions as it relates to there performance of duty??

Resolution: *Management agreed to change the BP-A0194 form. On the BP-A0194, WARNING AND ASSURANCE TO EMPLOYEE, dated June 2010, change the following sentence from:*

"You are going to be asked a number of questions regarding the performance of your official duties".

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To:

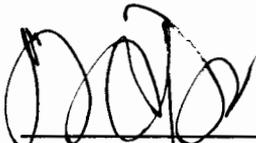
“You are going to be asked a number of specific questions regarding the performance of your official duties.”

February 18-19, 2015 Agenda Items
Agenda Items: AGENCY

1. Expanding WebTA

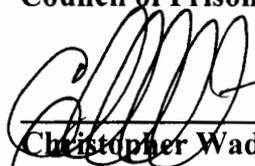
Who: HRMD

Resolution: Withdrawn at this time.



02/19/2015

Michael Rule
North Central Vice-President
Council of Prison Locals



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Christopher Wade
Chief
Labor Relations Office