

***Labor Management Relations  
Quarterly Meeting Minutes  
Washington, D.C.  
January 18-19, 2012***

**AGENCY**

*Paul Layer  
Christopher Wade  
Bryan Pownall  
Lourdes Rivera  
Chuck Ingram*

**UNION**

*Eric Young  
Dwayne Person  
Michael Castelle, Sr.  
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Don Martin  
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**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**

**1. 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: This matter was resolved prior to meeting. (Article 7, Section h., of the Master Agreement addresses this matter.)***

## **2. 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.*

## **Unresolved November 30 – December 1, 2011 Agenda Items**

### **Agenda Items: UNION**

#### **1. 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: Funding for professional personnel positions is governed by PS 6010.02, Health***

*Services Administration. Additionally, the Chief, Labor Relations Office, and the President, CPL #33, will continue to work together to promptly exchange information distributed on a national level and of mutual concern.*

## **2. 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**

## **3. 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***

#### **4. 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***

## **5. 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*

## **6. 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:*

*What is the purpose of ICPs?*

*The purpose of ICPs is articulated on the first page of the ICP program statement 1070.08. ICPs are the only structured view of an entire facility at one time. They also serve the purpose of being the only time policy requires regional management presence in an institution for an extended period of time.*

*How much money is spent on travel to ICPs each year and in each region?*

*Money spent on travel would vary by year, region and ICP schedule (3-year cycle). PRD does not have this information. Each region funds their own ICPs.*

*When the results are not favorable, what occurs?*

*If unfavorable issues arise, the issues are verified by the ICP team. Per the program statement, "Recommendations may be provided when warranted." Further actions are dictated by what was found which was not favorable, i.e. referable offenses discovered would be referred to OIA, etc.*

*Is this information provided to employees or to DOJ? What else occurs with the information, if any?*

*Results of the ICP are shared with staff on a need to know basis and is not routinely shared with anyone outside the executive staff. However, there are times DOJ representatives request the documents in conjunctions with inquiries, audits, or investigations.*

## **7. 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*

## **8. 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*

## **9. 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*

## **10. 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. Copenhaver, is, and has been for some time, married to Deputy Regional Director, Audrey M. Gill. Warden Copenhaver 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 (Copenhaver) 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*

#### **11. 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*

## **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**

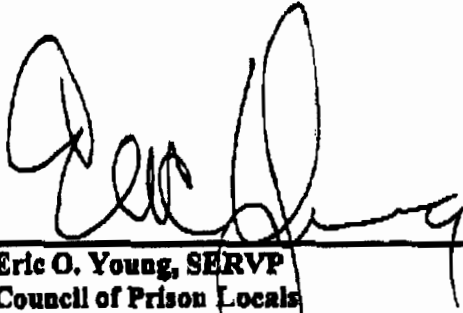
***Resolution: Deferred***

### **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***




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Eric O. Young, SERVP  
Council of Prison Locals

2-10-12

Date




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Paul W. Layer, Chief  
Labor Management Relations Branch

2-10-12

Date

*(NOTE: This LMR Quarterly meeting was unexpectedly cut short on January 19, 2012, due to the participants being notified of the unexpected death of a Central Office staff member.)*