

BP-S176.037 FORMAL GRIEVANCE FORM CDFRM
MAY 94 U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISON

<p>1. Grievant(s) Council of Prison Locals C-33</p>	<p>2. Duty Station National Council, Federal Bureau of Prisons</p>
<p>3. Representative of Grievant(s) E.O. Young, SERVP AFGE, Council of Prison Locals</p>	<p>4. Informal resolution attempted with (name Person) R.E. Holt, Southeast Regional Director</p>

5. Federal Prison System Directive, Executive Order, or Statute violated: 5 USC 7106, 7114, 7116, 7117, 18 USC Chapter 44, Section 930; Law Enforcement Officers Safety Act; 5 CFR; Staff Safety; Master Agreement not limiting, Preamble, Article 1,3, 4, 6, 7, and 36; DOJ 1630.1B; DOJ HR Order 1200.1 and any other applicable laws, rules or regulation

6. In what way were each of the above violated? Be specific.

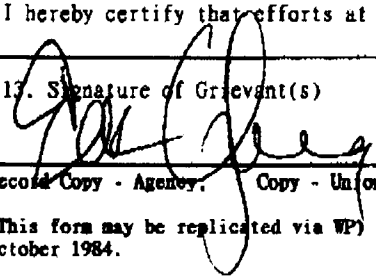
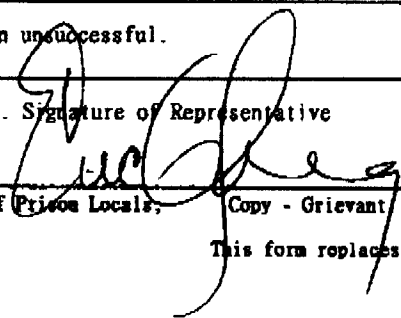
See Attached

7. Date(s) of violation(s) June 22, 2009, current and continuing

8. Requested remedy (i.e., what you want done)
Order the Agency to cease and desist this practice; Order an end to the practice of restricting employees to their residences and the term Home Duty; Make any employee whole in accordance with the Back Pay Act; That the Arbitrator maintain jurisdiction over this matter until the Agency comes to resolution; Order the agency to develop procedures, alternatives or options before putting employees on administrative leave, not limiting, negotiate with Exclusive Representative; Order a 45-days Posting to be on all bulletin boards at each facility, if there is an Unfair Labor Practice finding; Order reimbursement of attorneys fees; Any other action deemed appropriate by the Arbitrator.

<p>9. Person with whom filed H. Lappin or designee</p>	<p>10. Title Director, Federal Bureau of Prisons</p>
<p>11. Signature of recipient</p>	<p>12. Date signed July 31, 2009</p>

I hereby certify that efforts at informal resolution have been unsuccessful.

<p>13. Signature of Grievant(s) </p>	<p>14. Signature of Representative </p>
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Record Copy - Agency, Copy - Union Local, Copy - Council of Prison Locals, Copy - Grievant
(This form may be replicated via WP) October 1984. This form replaces BP-176(37) Dated

I am in receipt of a memorandum dated June 22, 2009, in which Southeast Regional Director stated, in short, the following: "If a staff member brings a firearm into the institution, the firearm is to be confiscated, the matter referred to the appropriate authority for prosecution, and the staff member is to be immediately placed on home duty status. They will remain on home duty status until we get a decision from the prosecuting authority. If the prosecuting authority does not prosecute, we will then decide whether to remove the staff member from home duty status." First of all, it is management's obligation to notify the Exclusive representative of a change per the CBA. Specifically, Article 4, Section a., states: "In prescribing regulations relating to personnel policies and practices and to conditions of employment, the Employer and the Union shall have due regard for the obligation imposed by 5 USC 7106, 7114, and 7117." The Union requested to bargain over these matters and attempted an informal resolution with the Regional Director but efforts were unsuccessful.

Nevertheless, the Council of Prison Locals contends the memorandum sent to all Southeast Regional Warden is contrary to 18 USC Chapter 44, Section 930. In fact, not only does this law permits Federal Officials to possess a weapon, on BOP grounds, the Law Enforcement Safety Act otherwise known as LEOSA does as well. More important, the memorandum repudiates clear and plain, English language in the Staff Search Procedures dated 11/08/07. Staff Search Procedures, paragraph #1, states, specifically, "All staff will be required to clear a metal detection device prior to gaining access to the secure confines of the institution. "Secure confines" for this purpose generally means entering the secured inner perimeter of the institution. The MOU states further, "It is the responsibility of the employee to clear the metal detector . . . (emphasis added). Employees will be allowed to take any items not able to clear the metal detector or x-ray machine to their vehicles, unless doing so would jeopardize the safety, security, or good order to the institution." Holt's memorandum is not only contrary to law it repudiates the Staff Search MOU.

In retrospect, LEOSA permits staff the right to carry a concealed weapon in an off-duty status. Surely, a law enforcement officer who has not cleared the metal detector or has not breached the secured confines of an institution should not subsequently have his/her weapon confiscated as instructed by the RD, unless, of course, the agency has actual intelligence (reasonable suspicion) the person is or was trying to introduce the weapon as contraband. Consequently, just because a person may have brought his/her weapon on federal property, doesn't mean he or she was trying to introduce it as contraband. As stated, staff has the right to possess a weapon commuting to and from work - in an off-duty status. The lobby area - where searches are performed - is considered the outside secured perimeter of the Institution for which a weapon can be in possession of any sworn law enforcement official according to 18 USC Chapter 44, Section 930 - on or off-duty. The blanket statement that staff weapons are to be confiscated and subsequently placed on administrative leave is contrary to the Preamble, Article 6, section b(2)(4)(6) and Article 36. Presently, in the Southeast region there is staff -permitted for more than ten years - allowed to bring weapons and secure them on BOP ground. Holt's memorandum treats employees differently and his instructions supercede DOJ Order 1630.1B and DOJ HR Order 1200.1, including Article 3, - **GOVERNING REGULATIONS**, Section a.

Lastly, the CPL does not agree with the agency that it has a right to place a staff in what it calls a "Home Duty" status - restricting employees to their residences during certain working hours, assigning work, etc. I reiterate there is no such provision in BOP Policy (s) - that was negotiated with the Exclusive Representative or Department of Justice Regulations which

permits "Home Duty." There is however an inalienable right which has been granted by DOJ to all of its agency components to place an employee on Administrative Leave with pay pending an investigation. But, there are specific guidelines ordered by Assistant Attorney General for Administration in a memorandum dated September 27, 2002, which Mr. Holt failed to follow. For example, all Head of Components and Executives Officers were instructed before placing an employee in an administrative leave status must first explore other alternatives and options. His memorandum does permit alternative or options, just instruct and directs all CEOs in this region to simply place employees in an administrative leave status.

The Administrative Leave regulations cite nothing about restricting an employee to their privately owned and personal residence while pending an investigation (Home Duty) - at least nothing has been negotiated with the Exclusive Representative (CPL). Either way, we contend a practice or negotiated agreement cannot exist when it violates or is contrary to law and/or violates the constitutional rights of an employee. Lastly, in the DOJ regulations cited by the agency, it states in the Administrative leave section of the Order, "An employee who has been granted excused absence without loss or charge to leave is not on official duty and is not covered by the OWCP or the Federal Tort Claims Act." Conversely, this means the Employer cannot assign duty hours or work to an employee who is technically not on official duty - as it cites in the Home Duty letters." In conclusion, the Union believes this falls under the definition of disciplinary/adverse action in Article 30 and these assignments (Home Duty) is contrary to laws, rules and regulations, not limiting DOJ 1630.1B and DOJ HR Order 1200.1.