

MAY 94

U. S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISON

<p>1. Grievant(s)</p> <p>Council of Prison Locals 33 All bargaining unit employees</p>	<p>2. Duty Station</p> <p>Roger Payne, NST FCI-Forrest City</p>
<p>3. Representative of Grievant(s)</p> <p>Roger Payne, NST Council of Prison Locals 33</p>	<p>4. Informal resolution attempted with (name Person)</p> <p>Christina Griffith, Chief of LMR Newton Kendig, Medical Director, BOP</p>
<p>5. Federal Prison System Directive, Executive Order, or Statute violated:</p> <p>Including, but not limited to the following provisions of the Master Agreement, Article 2, Article 3, Master Agreement, Article 6, Section A (2), SECTION B (2) and (6). Master Agreement, Article 7, Section B., Master Agreement, Article 18, Article 8, Article 16, Section C, and 5 U.S.C. 7116 (a) (5) Failure to negotiate in good faith, (8) to otherwise fail or refuse to comply with any provision of this chapter. PROGRAM STATEMENT 6010.002, PROGRAM STATEMENT 6031.001, STANDARDIZED POSITION DESCRIPTION FOR PHYSICIAN ASSISTANT, MID-LEVEL PRACTITIONER, STANDARDIZED POSITION DESCRIPTION FOR MEDICAL OFFICER (GENERAL PRACTICE), CLINICAL DIRECTOR, STANDARDIZED POSITION DESCRIPTION FOR MEDICAL OFFICER (GENERAL PRACTICE), MEDICAL OFFICER, EMT, and NURSE. The intent of the Program Statements on Patient Care, prior OM on Primary Care Provider Teams and the Program Statement on Health Services Administration is clear. The agency is required know the Master Agreement, policies and to follow these and all laws, rules and regulations. The agency willfully agreed to these. Back Pay Act.</p> <p>THE UNION IS WILLING TO MEET AND ATTEMPT RESOLUTION AT ANY TIME. Please note that there is NO requirement by the Master Agreement to be specific in block 5. Please look at block 6.</p> <p>If you need assistance or clarification with anything in this grievance, please contact Roger Payne, NST Council 33 - 662-255-2332.</p>	
<p>6. In what way were each of the above violated? Be specific.</p> <p>See attachment. The agreed upon form does not provide much space for this block but I am attempting to be very clear in this claim. SEE ATTACHMENT</p>	
<p>7. Date(s) of violation(s) The agency is the keeper of the records.</p> <p>This violation was noted in several different Regions and 4 institutions reported to the Chief of LMR 2 weeks ago. The agency has the records and is aware of these violations. The Union will request back pay, pay for performing at a higher level position as far back as allowed by law, including all damages allowed by law. This is a continuous violation, (on going).</p>	
<p>8. Request remedy (i.e., what you want done)</p> <p>In an attempt to be very specific, an attachment is added as the space for this block does not allow for this much specificity. SEE ATTACHMENT</p>	
<p>9. Person with whom filed</p> <p>Harley Lappin, Director Christina Griffith, Chief of LMR</p>	<p>10. Title</p> <p>Director, Bureau of Prisons Chief of LMR</p>
<p>11. Signature of recipient</p>	<p>12. Date signed</p> <p>4/19/05</p>
<p>I hereby certify that efforts at informal resolution have been unsuccessful.</p>	
<p>13. Signature of Grievant(s)</p> <p>Roger Payne for the Bargaining Unit Council of Prison Locals 33</p>	<p>14. Signature of Representative</p> <p>Roger Payne, NST Council of Prison Locals 33</p>

Attachment to grievance

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

The agency has denied the Union from representing the Bargaining Unit staff. The Agency does not recognize the Council of Prison Locals 33 as the sole and exclusive representative for the bargaining unit as they bypassed the Union and directed bargaining unit staff, specifically the Physician Assistants, Mid-Level Practitioners, EMT's, Nurse Practitioners and nurses be used for on call by phone or pager if a medical emergency occurs outside the hours of in-house medical coverage. The negotiated policy states "Physician" and any other person assigned that duty is an unfair labor practice as the agency negotiated this in bad faith. All bargaining unit employees that have preformed this work should be paid at the same pay level of the physician(s) at that facility. When this policy was negotiated, the only position description that stated on call was the clinical director. No bargaining unit employees position description listed on call duty.

The agency implemented a change to the Health Services program statements on Patient Care and Health Services program statement on Administration - Program Statement 6010.002, Program Statement 6031.001, the Standardized Position Description for Physician Assistants, Mid-Level Practitioners, Nurses, EMT's, the Standardized Position Description for Medical Officer (General Practice), and the Standardized Position Description for Clinical Director without negotiating this new proposed policy. This implementation violates the contract and is an unfair labor practice. The Union negotiated all health services program statements in an approximately 4 year process with the Agency to update all health services policies. The Agency negotiated call and freely agreed to place this on the most qualified and highest paid person, the physician. It is such stated in 2 program statements.

The agency has chose to implement call contrary to the negotiated and agreed upon program statements. The Union was not afforded an opportunity to negotiate such changes in these employees' working conditions. This was a change in agreed upon policy and was never presented to the Union. This is still contrary to policy today and at no time has any proposed change to these policies been offered by the agency. This is bad faith bargaining on behalf of the Agency. By the Agency's failure to negotiate or present the Union these proposed changes is due to the Agency failing to recognize the Union as the exclusive representative of the bargaining unit employees and the Agency failed to provide an opportunity for the Union to properly represent these employees. This was never presented before implementation. This is a failure to negotiate in good faith. This is a violation of the Union's rights and an unfair labor practice. The Union is claiming this through the grievance procedure. This is a direct violation of the Master Agreement, Articles 2,6,7 and 8, Program Statement 6010.002, Program Statement 6031.001, the Standardized Position Description for Physician Assistants, Mid-Level Practitioners, Nurses, EMT's, the Standardized

Position Description for Medical Officer (General Practice), and the Standardized Position Description for Clinical Director, as well as negotiated agreements (Patient Care and Administration), 5 U.S.C. 7101, 7106, 7114, 7117, the Civil Service Reform Act of 1978, as well as national policy, procedures and directives therein.

The union negotiated the Program Statement 6010.002, Program Statement 6031.001 with the agency. The Agency agreed to the Program Statements on their own free will. The agency has refused to treat all Physician Assistants, Mid-Level Practitioners, Nurses, EMT's fairly and equitably as prescribed in Article 6 section b of the Master Agreement.

Program Statement 6010.002, section 17 states, "A physician Medical Officer of the Day will be designated for 24-hour continuous duty to take care of any emergencies, either by telephone consultation or by a response to the institution." The Standardized Position Description for the Clinical Director is the only position description that mentions doing call. The Standardized Position Description for Physician Assistants, Mid-Level Practitioners, Nurses, EMT's are mute of any requirement to do call nor is it mentioned. The agency had the opportunity to put this in policy but agreed not to. This was removed from the policy negotiation and left on the floor at the time.

Bargaining unit staff are performing work via the phone in their off hours and not being compensated. Bargaining unit staff are not being compensated for call at all institutions. Bargaining unit staff are being restricted in their off time and this is a violation of the Master Agreement. The hours of duty and off time is clear in the Master Agreement.

The agency further has staff other than physicians seeing chronic care clinics which is contrary to policy and the intent.

I have meet within the last 30 days with several institutions and discovered not only policy is being violated but the agency is not paying staff for work done. This was noted in several regions and reported to national LMR chief, Dr. Kendig and the Director. The LMR chairperson for the agency at La Tuna admitted to knowing this and had no intention to pay for this work done. This does not exist in my institution nor Chuck Pickens institution as we negotiated this national policy. The agency has refused to correct this.

IF THE AGENCY OR IT'S REPRESENTATIVES HAVE ANY QUESTIONS OR CONCERNS REGARDING THIS GRIEVANCE OR ANY OF THE STATED VIOLATIONS PLEASE CONTACT THE ROGER PAYNE 662-255-2332 FOR CLARIFICATION! THE UNION HAS ATTEMPTED INFORMAL RESOLUTION AND IT HAS FAILED. THE UNION IS WILLING TO MEET AND ATTEMPT RESOLUTION AT ANY TIME IN THIS PROCESS.

8. Request remedy (i.e., what you want done)

1. The arbitrator to issue a cease and desist order to the agency from

further use of all Physician Assistants, Mid-Level Practitioners, Nurses, EMT's, Nurse Practitioner or any other staff for on call by phone or pager if a medical emergency occurs outside the hours of in-house medical coverage.

2. The Arbitrator will order the agency to abide by Program Statements on Patient Care and Health Services Administration.
3. The Arbitrator will order the agency to follow the Master Agreement and negotiated policy.
4. There be no reprisal, harassment, or intimidation, as a result of filling this grievance.
5. All attorney, legal fees and expenses incurred in the processing this grievance will be reimbursed by the agency. To include all back pay and damages allowable by law (liquidative Damages).
6. That pay will be issued for any bargaining unit staff required to carry a beeper, cell phone, work done during off duty hours, pay at the physician pay grade for performing work assigned to that position in policy, etc.
7. All bargaining unit employees be made whole.
8. Any other compensation or remedy the arbitrator deems appropriate.