

Labor Management Relations Quarterly Meeting
Washington, D.C.
January 19-20, 2011

AGENCY

K. M. White
Joey Meade
Christopher Wade
Michael Rank

UNION

Michael A. Castelle, Sr.
Roger Payne
Dwayne Person
Eric Young
Tim Debolt
Dale Deshotel
Paul Dunston
Don Drewitt
Chris Zawikoski
Don Martin

Unresolved June 2010 Agenda Items

1. Office of Internal Affairs (Staff Affidavits)

The Council is requesting the Agency provide all staff that give a statement during a Weingarten investigation be given a copy of their affidavit, upon request, after they sign it.

Who: John T. Dignam, OGC

Resolution: *Deferred.*

2. Alternative Dispute Resolution

When an employee elects to participate in a statutory process to redress discrimination claims in the EEO process, he or she is permitted the opportunity to elect to partake in the agency's alternative dispute resolution program. If this is approved by the EEO Officer, a mediator is contacted and brought in at the agency's expense - to assist in informally resolving the employee issue (s). There have been several occasions where these Mediators have engaged in inappropriate behavior. At one facility in the Southeast Region, on a couple occasions, the representatives were told they could not participate in the

ADR session even, in their role as Union advocates assisting employees. The second issue is complaints from various other Union officials that these individuals participating in this process are identifying themselves as FBI Agents - flashing their credentials, intimidating the representative and complainant present utilizing the above described antics. As a result, each ADR session ended abruptly. It is the Council's perspective that this is not the role of a neutral third party in ADR - as a Mediator.

Who: Mina Raskin, OGC

Resolution: During mediation for informal EEO complaints, employees are permitted to bring a representative of their choosing (i.e., a friend, a relative, a union representative, or a legal representative). Mediators have been informed of this. Mediators have also been instructed not to flash their credentials to the parties. Any complaints about this process can be brought to the attention of the EEO Officer.

3. Contracting With Federal Bureau of Prison Employees

Who is over the consolidation of pharmacies at complexes? Was it intentionally designed to waste money, delay the time inmates receive medication, require more staff (contract), help pharmacist avoid patient counseling as required by State law in many states and in general avoid inmate contact? How much does the consolidation cost each institution?

Who: Chris Bina, HSD

Resolution: While there is no mandate to consolidate pharmacies at complexes, it is highly recommended. Consolidation increases efficiency and provides better continuity of pharmacy operation. Medication information on new prescriptions is provided to inmates. The cost of consolidation varies at each complex and is not tracked nationally. How medication is dispensed is determined locally.

Unresolved August, 2010 Agenda Items

4. Standards of Employee Conduct (Agency Item)

Who: Joey Meade, LMR

Resolution: Withdrawn by the agency.

5. Article 25 - Reduction in Force/Reorganization (UNICOR)

The Council received notice via an electronic email transmission from Paul Laird, Assistant Director UNICOR explaining the Bureau's desire to close numerous factories around the country which affects bargaining unit employees. The Council believes this is a unilateral action on the behalf of the Agency which has more than de minimis impact on the working conditions for hundreds of bargaining unit employees. The Council requests to bargain this unilateral change.

Who: Robert Grieser, UNICOR

Resolution: Issue is pending litigation. However, the parties decided to continue trying to resolve this issue with the Federal Relations Authority.

6. Allegations

When you have allegations made against you, what effect does that have on your career, if any? Does the BOP have a reference check question for supervisors to fill out on bargaining unit staff - who rate best qualified - Has the staff member been disciplined in the last two (2) years? Does this prevent an individual from being transferred? Does this prevent staff from receiving awards and/or promotions?

Who: Jeff Barnes, HRMD

Resolution: Policy does not allow selecting officials to exclude employees from considerations for promotion reassignment, transfer or awards based on pending allegations of misconduct.

Policy do not allow selecting officials to exclude employees from considerations for promotions, reassignment, transfer or awards based on discipline issued within the preceding two years.

November 30 - December 2, 2010 Agenda Items **Agenda Item: AGENCY**

7. BOP Learn - Demonstration

A computerized demonstration of the BOP Learn System was provided to the union at the November 2010 meeting. A number of questions and concerns were raised by the union. There remains some outstanding issues which will be addressed during the next LMR Quarterly meeting, to include identifying

and providing the union the current written procedures for completing training courses, as well as addressing specific procedures for when staff may access training courses electronically through the BOP Learn system.

Who: Mitch Allen, Nathan Baker, HRMD

Resolution: Deferred.

Agenda Items: UNION

8. Public Health (PHS)

Over the years, BOP seems to have determined that PHS employees are entitled to bargaining unit status and/or special treatment. PHS employees are "commissioned officers." Therefore, they have to take orders from their supervisors or command where these employees are assigned. This includes setting their hours of work - as a person in the United States Military. PHS employees have a six (6) year commitment as commissioned officers. They receive leave like military soldiers in increments of thirty (30) calendar days a year - immediately upon signing up for PHS. However, as in the military, there is no right to select any specific periods of leave. They only are allowed to request it and it be granted by the responsible authorities where they are assigned. The discretion is left up to the military command or agency where PHS is employed.

The Council would like the cost differences between hiring a bargaining unit employee as opposed to a nurse, PA, or Doctor. Please add in the benefit package as well, if any?

Does BOP pay the full costs associated with PHS pay and benefits?

The Council would like to know the statute or regulations or labor agreement that provides PHS with either similar or better treatment than BOP civilian (bargaining unit) employees.

Why does BOP convert or directly hires PHS instead of a bargaining unit employee regularly?

Are they abolishing the bargain unit positions?

What status are they placing PHS commissioned officers in the Bureau of Prisons?

Is this reflected in the BOP manning (staffing) reports?

Is there a formal program to recruit bargaining unit employees into PHS?

Is it true, BOP is directed only to hire PHS in hard to fill positions, and only, several attempts have been made to fill the position through merit promotion process?

Does BOP plan to limit the number of PHS employees hired and assigned at an institution and/or by

department?

Who: Ben Brown, Scott Murchie, HSD

Resolution for the above is as followed:

Resolution: Over the years, BOP seems to have determined that PHS employees are entitled to bargaining unit status and/or special treatment. PHS employees are "commissioned officers." Therefore, they have to take orders from their supervisors or command where these employees are assigned. This includes setting their hours of work – as a person in the United States Military. PHS employees have a six (6) year commitment as commissioned officers. They receive leave like military soldiers in increments of thirty (30) calendar days a year – immediately upon signing up for PHS. However, as in the military, there is no right to select any specific periods of leave. They only are allowed to request it and it be granted by the responsible authorities where they are assigned. The discretion is left up to the military command or agency where PHS is employed.

PHS officers are members of the uniformed services and, as such, are prohibited by law from being members of the bargaining unit. The BOP has not stated otherwise nor has the BOP stated that BOP PHS officers are entitled to special treatment. Rather, the BOP recognizes that PHS officers are valued members of the BOP team that happen to fall under a different personnel system.

PHS officers are required to follow both the BOP and PHS standards of conduct. Thus, they are required to follow the instructions of their supervisors and other authorized management officials of the agency to which they are assigned.

As is the case with all staff members, management has the right to set the hours of work for BOP PHS officers.

The assertion that PHS officers have a six year commitment is incorrect; there is no standardized service commitment for PHS officers.

The assertion that PHS officers receive 30 leave days "immediately upon signing up for PHS" is also incorrect. PHS officers earn 2.5 days for each month of service.

The decision to approve or disapprove requests for annual leave that has been earned falls within the purview of the Leave Granting Authority (usually the direct supervisor).

The Council would like the cost differences between hiring a bargaining unit employee as opposed to a nurse, PA, or Doctor. Please add in the benefit package as well, if any?

Resolution: Nurses, physician assistants, and some physicians are members of the bargaining unit, so this question needs to be clarified.

Does BOP pay the full costs associated with PHS pay and benefits?

Resolution: *All agencies to which PHS officers are assigned are responsible for paying the costs of all pay and benefits of those officers (with the exception of medical costs).*

The Council would like to know the statute or regulations or labor agreement that provides PHS with either similar or better treatment than BOP civilian (bargaining unit) employees.

Resolution: *The BOP values the contributions of all staff regardless of their personnel system. PHS officers have been assigned to the BOP since 1936 and the BOP believes that they, along with all other BOP staff, should be treated fairly and equitably. There is no statute, regulation, or agreement that stipulates that one personnel group should receive "better treatment" over another group nor would the BOP support such a position.*

Why does BOP convert or directly hires PHS instead of a bargaining unit employee regularly?

Resolution: *The BOP 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.*

The BOP does not convert or "hire" PHS officers "instead of bargaining unit employees regularly." In fact, the vast majority of BOP health services staff are civil service (only 21% of the BOP's 3721 health services positions are filled by PHS officers).

By category, 4% of the BOP's physicians are PHS officers, 18% of the BOP's nurses are PHS officers, 14% of the BOP's physician assistants are PHS officers, 38% of the BOP's nurse practitioners are PHS officers, and 56% of the BOP's dentists are PHS officers (down from a high of almost 90% a few years ago). The only category where there is a predominance of PHS officers is in pharmacy where 92% of the BOP's pharmacists are PHS officers. This is in large part due to the disparity between BOP grades/salaries and that of private sector pharmacists (usually 95+K in the local community). There has been a move however to bring about pay parity for civil service pharmacists (see below). Finally, due to an internal PHS issue related to the Affordable Care Act, the BOP has not been able to call any officers to active duty since May 23, 2010. Thus, there have been no conversions from civil service to PHS in the BOP since then. In fact, the trends show a decline in the number of PHS officers assigned to the BOP from a high of over 800 at one point earlier this year.

Are they abolishing the bargain unit positions?

Resolution: *Any position movement requires an SF-52 to place the position in the properly designated pay system, i.e. PO1, PO4, etc. Over the past eight months there has been a commensurate movement in converting positions from PHS to Civil Service due to the PHS related hiring issues.*

What status are they placing PHS commissioned officers in the Bureau of Prisons?

Resolution: *BOP PHS officers are valued (non-bargaining) members of the BOP team.*

Is this reflected in the BOP manning (staffing) reports?

Resolution: Health Services Division utilizes the institution's BP-Med-18 staffing reports which list the numbers and types of BOP positions to include the personnel system as part of an informal reporting mechanism. Most positions are announced through Grand Prairie as civil service positions with the opportunity for PHS officers to apply if qualified.

Is there a formal program to recruit bargaining unit employees into PHS?

Resolution: No, there is no formal (or informal) program to recruit bargaining unit employees into PHS. The BOP believes that the decision to change personnel systems is a highly personal decision that only the employee can make.

Is it true, BOP is directed only to hire PHS in hard to fill positions, and only, several attempts have been made to fill the position through merit promotion process?

Resolution: No, there is no policy or directive that contains this type of language. Again, institutions are counseled to announce their positions through Grand Prairie as civil service with the opportunity for PHS officers to apply. In some cases, for many pharmacy positions for example, there are no qualified civil service candidates and the only hiring mechanism available is through PHS.

Does BOP plan to limit the number of PHS employees hired and assigned at an institution and/or by department?

Resolution: The BOP does not intend to set a specific number of PHS officers (or civil servants) by institution, department, or position. Rather, the BOP believes that the best possible candidate should be selected for a given vacancy, regardless of personnel system. Further, it is our firm commitment to fill Health Services vacancies where they exist and in fact over the past year the agency has hired 163 more HS staff members than have been lost through retirement or separation.

To that end since early 2008 the following initiatives have been implemented in order to better recruit and retain civil service staff:

- Upgraded Registered Nurse positions to GS-10s across the BOP;
- Upgraded Dentist positions to GS-13/GS-14 depending upon assignment;
- Upgraded Special Salary tables for PA/NP positions;
- Upgraded Special Salary tables for Medical Officers;
- Created Special Salary tables for Dentist positions for the first time;
- Created Special Salary tables for Pharmacist positions for the first time;
- Have reinforced & supported the use of age waivers/retirement waivers for hard to fill medical positions;
- In '06, '08, and most recently in November '10 have issued recruitment and retention information to HR and Exec Staff to reinforce use of all tools available;

- Have provided recruitment/retention training to all Wardens at Wardens' conference;
- Working on Special Salary tables for Registered Nurse positions by location;
- Created a credentialing specialist position to ensure more timely & consistent review of applications for all medical positions, thus allowing for a quicker hiring process;
- Looking at feasibility of Title 38 for appropriate hard to fill medical positions;
- Created special pilot for medical applications at Grand Prairie so that medical candidates would get additional follow up to provide transcripts, licensure, etc., rather than automatically disqualifying them;
- Submitted request to OPM to allow for the agency to be included on "Featured Employer" to highlight jobs and opportunities. This is currently posted on USAJOBS.

9. Merit Promotion

In the Program Statement 3000.03, Chapter 3, concerning Application Procedures:

12. DETERMINING BASIC ELIGIBILITY. Applicants are considered eligible for the position if they meet or will meet minimum OPM qualification standards, time-in-grade requirements, and any specified selective placement factors within 30 days after the closing date of the announcement. The announcing office will make a determination whether the applicant meets minimum requirements and certify the Qualifications Rating Sheet.

13. RATING AND RANKING. Rating and ranking of applicants will occur for all positions with more than one qualified applicant at each grade level. When a position is announced with multiple grade levels, qualified applicants are only rated and ranked to compete with other candidates at the same grade level.

a. Rating Panel. A rating panel shall consist of two members. Two subject matter experts (SMEs) or supervisors of the position to be filled may be used as raters, or, a combination of ~~one SME/supervisor and a human resource representative.~~ The SMEs must be at least equal in grade to the position, and the supervisors must have a working knowledge of the position. A human resource representative, if not a rater, will be available to provide technical assistance.

Rating panels shall consist only of staff excluded from the bargaining unit. However, BOP is permitting EDS employees to do the rating of these applicants. Perfect example, employees who have applied for the Full Time EEO Counselors position, the EDS are reviewing the application and are given complete latitude to evaluate the experience, and expertise of the applicant solely without other panel members as specified in policy. There is no SUBJECT MATTER EXPERTs present when the rating and ranking of these applicants are being done, nor is there a review of the ASK's or resume of the applicants which is a direct repudiation of the Program Statement 3000.03. The Council would like to have an explanation why this has occurred? Has a waiver been given to the Agency on bypassing these procedures in policy?

Who: Joey Meade, LMR

Resolution: Issue discussed, but parties were unable to resolve.

10. Affirmative Action

In accordance with Executive Order 45039, Increasing Federal Employment of Individuals with Disabilities, has a direct impact on Program Statement 3713.21 Affirmative Action and Diversity Management Program, and specifically but not limited to the Federal Equal Opportunity Recruitment Program (FEORP) Plan.

How has the Agency implement this E. O. without notifying the Union of any potential changes in this Program Statement and Working Conditions?

Program Statement 3713.21 list all members of the Affirmative Action Committee to include EEO Counselors contact information in an area that is visible to all staff. In accordance with section (c) of E. O. 45040, Each agency shall designate a senior-level official to be accountable for enhancing employment opportunities with disabilities and individuals with targeted disabilities with the Agency. However, the Agency has not informed all Bureau Employees who these individuals are or place these names and contact information in an area already established by Program Statement 3713.21. What is the Agency's explanation for not doing this? Please place your explanation in the LMR Minutes.

Since this agenda item is being submitted twenty-one days prior to the parties actual face to face meeting, the Agency has ample time to contact the National Fair Practices Coordinator of the Council of Prison Locals if the Agency does not understand the issue or needs additional clarity on what is expected of the Agency once the parties meet of the schedule LMR Session - therefore, eliminating any excuses by the Agency for not being ready and able to address this issue when the parties meet.

Who: Sandra Burks Farrior, HRMD

Resolution: Deferred.

11. UFAN Number

Presently, Transportation Security Agency requires anyone flying with his/her weapon to declare a federal agency number. Is there such a number & permitting staff the right to carry a weapon on board in a plane? Can this number be divulged to staff to carry in their off-duty status under LEOSA?

Who: James Wills, OGC

Resolution: Deferred.

January 19-20, 2011 Agenda Items
Agenda Items: UNION

12. Grievance Procedure

The grievance process is supposed to be a simple procedure to redress wrongs in the workplace for employees. Yet, management complicates this process by interjecting unorthodox threshold issues in grievance responses to employees/union. Over the years, BOP has responded to numerous grievances at the local, regional or national level, citing grievances were not filed at the appropriate level, even, though, Article 31, specifies where grievances should be filed and at what level. Grievances are being routinely denied by management even, when CBA is being followed to the letter. We believe management is intentionally complicating this process to discourage employees in the exercising of their rights. Moreover, since Grand Prairie has come online, no explanation has been examined by the parties to provide guidance to employees assigned there or to the Union as to where grievances should be filed. The CBA doesn't specify where grievances filed at GP should be filed as well. Is management raising this issue to complicate the grievance process? And, can management articulate numerous instances when will a formal grievance be filed at the appropriate level?

Lastly, where should employees or the Union attempt informal resolution of grievances at GP? And, if an informal resolution is unsuccessful, where would an employee/union file a formal grievance – so it cannot be declared later to be filed inappropriately?

Who: Joey Meade, LMR

Resolution: Issue not resolved.

13. Background Investigations

Security and Background Specialist are intimidating employees into signing away their rights before they actually tell the employee (s) of the issue (s) which arose in their background. The language from a Security and Background Specialist handling the case is an example: **“Good morning, I am the Security Specialist who is responsible for your investigation. I have just reviewed your background investigation and a minor issue needs to be resolved. In order that I may speak with you informally, please sign the Agreement to Subject Interview statement and fax back this sheet to 214-224-3387 or 3388. Upon your fax, please call me at 214-224-3573 or 1-888-836-9192. Please contact me at your earliest convenience so that we may resolve the issue noted in your case. Thank you for your prompt attention to this matter.”**

First of all, how can it be ascertained exactly whom the employee is actually talking to? Usually, when an onsite visit is made, investigators usually presents their credentials. Will employees be informed in advance of the negative issue (s) that has arisen in their backgrounds, before actually speaking with an appropriate background investigator and before the employee actually signs anything? And, prior to this,

after proper identification, will the employee be given an opportunity to determine, if it is appropriate to discuss their case with a background investigator to his/her Union official? If the employee declares not to speak with the SBIS, will he or she be subjected to discipline/adverse action? How can BOP improve the identification of the background investigator, who is communicating via emails or phone?

Who: Joey Meade, LMR

Resolution: *The parties agree that when questions arise regarding "Subject Interviews" to resolve derogatory information during background investigations, the procedures outlined in the Human Resource Management Manual, Chapter 731.1 Personnel Security, Suitability, and Investigation Program, should be referenced.*

14. Computer Updates

We have had some instances of Central Office Divisions sending out "updates" of either existing computer programs or new programs. The Council is not always made aware of these updates or changes and then is getting contacted for a response.

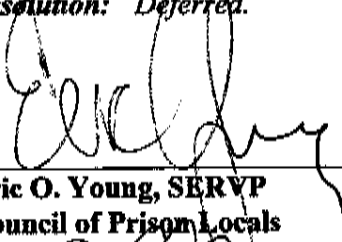
Also, at the local level, when these updates are sent out, Computer Services do not seem to recognize the need to notify and work with the local union's on implementation issues. For instance, the change from WordPerfect to Microsoft word, local computer specialists are just putting out arbitrary dates to have all your documents changed over. Some disciplines have many years worth of documents saved in WordPerfect and it may take some time to convert them before losing them.

Resolution requested:

Central Office divisions be notified to send changes to the Council of Prison Locals. Local Computer Services be notified they need to notify and work with the local level unions on implementation issues.

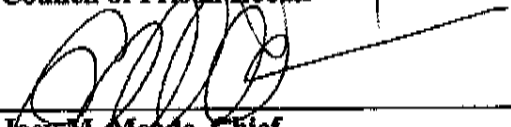
Who: Andy Ellis, IPPA

Resolution: *Deferred.*



Eric O. Young, SERVP
Council of Prison Locals

Date 3/24/11

for 

Joey M. Meade, Chief
Labor Management Relations Branch

Date 03/22/11