

LABOR MANAGEMENT RELATIONS QUARTERLY MEETING
USP Marion
October 24-25, 2000

PARTICIPANTS:

MANAGEMENT:

Ruby Navarro-Villarreal
Cristina Murphy
Tracy Johns
James McPherson
Shiela Kiernan
Nikki Gallo

UNION:

Jim Turner
Allen Green
Manny Borquez
Dennis Biesik
Paul Rissler
Larry Raney
Dale Deshotel
Brian Dutton
Aubrey Francis
Larry Blade

Subject Matter Expert:

Mina Raskin

security
* cameras *

Summary of Issues Addressed During LMR Meeting:

ADR Pilot Program
Career Ladder Promotions
Child Care
Confirmation of Receipt from OIA
Custodial Roster
Definition of Family Members
DOJ Liability Insurance Program
Double Jeopardy
End-of-Year Funds
Fifth Amendment to the Constitution
Fourth Amendment to the Constitution
Inmate Systems Supervisor Positions
Lawsuits Between an Employee and a Supervisor
Local Supplemental Agreement at FTC Oklahoma City
Management Position Cuts
Operations Lieutenants
Press/Publicity Issue and the Union's Role
Retention Issue
Safe Haven Areas
Setting Arbitration Dates
Social Security Numbers
SORT Funding
Staff Turnover at FCI Waseca
ULPs in Mid-Atlantic Region
Uniform Items - Authorized and Unauthorized
Unit Teams
Vacating of Posts
Veteran's Preference
Video Cameras
Workplace Violence

National Agenda Items: MANAGEMENT

ISSUE: Update on Alternative Dispute Resolution Pilot Program in the Bureau.

Mina Raskin provided the Union with an analysis of the ADR pilot which had been conducted in the Mid-Atlantic region in a cooperative effort with the Union's National Mid-Atlantic Regional Vice President (who was not in attendance at this meeting). Ms. Raskin informed the Union that if they wanted to pilot the program in their respective regions, they could contact her as well as their Regional Director to work on the specifics (e.g., which institutions would participate, selection of representatives, training, etc.). Ms. Raskin asked Milan's Union president, who was present at the meeting, of his opinion of the pilot in the Mid-Atlantic region. He indicated that it was a good option for staff. However, other Union representatives at the table stated they believed this program was a method in which Management is circumventing the Union and the negotiated grievance procedures. Ms. Raskin assured the Union that this process is not meant to circumvent the Union, or the prescribed EEO and grievance processes. Ms. Raskin closed the discussions by reiterating to the Union that a pilot in their region was something they could look into further after they spoke with their membership.

National Agenda Items: UNION

1. **ISSUE:** "What is the status of the DOJ liability insurance program to include the implementation plan?"

Resolution: *The Union indicated that they received the information regarding the above issue after they submitted this agenda item so this issue was resolved.*

2. **ISSUE:** "There seems to be a large number of ULP's filed in the MXR this past quarter; I'm requesting the Agency provide a breakdown by MXR institutions a breakdown of all current ULP's for the last quarter."

Resolution: *Management informed the Union that, since July 2000, there have been 15 ULPs filed in the Mid-Atlantic region and the institutions that had more than one during that time period were FCI Petersburg (4), FCI*

Beckley (2), FCI Manchester (4), and FCI Cumberland (2). The Union was satisfied with this information.

- 3 **ISSUE:** "When correctional posts are vacated where is the money going? In two recent arbitrations pertaining to vacating of posts neither the captains or the wardens could answer the question."

Resolution: *Management explained that the regions and institutions have different ways of distributing the money, and both the Business Manager and Regional Controller would be able to explain where the money is going after the post is vacated. Management went on to clarify that the money is allocated according to the number of staff, not according to the number of posts. Management suggested to the Union that each Regional Vice President meet with each Regional Controller to find out exactly how the money is distributed, and then have the local presidents speak with their respective Wardens about the information for their own institution.*

- 4 **ISSUE:** "What is the amount of money that the Bureau is giving back to justice this year?"

Resolution: *Management informed the Union that the current estimate for FY 2000's end-of-year availabilities will be under \$40 million, or approximately 1% of the BOP's total appropriation for the Salaries and Expense account. None of these funds will be returned to the Department of Justice until it is determined that there are no other valid obligations to charge against the FY 2000 appropriation. This determination will not be made for a couple of years. The Union was satisfied with this explanation.*

5. **ISSUE:** "What is the Bureaus definition of a unit team? Is each unit an individual team or are all the units one team? There are conflicting definitions at different locations and we would like to settle it."

Resolution: *Management explained to the Union that unit teams are assigned to individual Unit Managers rather than individual housing units. If you have multiple Unit Managers, you would have multiple unit teams. The Union was satisfied with this explanation.*

6. **ISSUE:** "For sick leave purposes what is the definition of a family member? We had an officer denied family leave to attend the

funeral of her niece was not. When the institution tried to receive guidance it was all guess work. They were told that for purposes of sick leave a niece is not included. I called OPM and was told that they would give guidance that a niece is a family member but it is up to negotiation and family can be defined as wide open or narrowly defined as negotiated. If we use the definition as in annual leave clearly all family would be included."

Resolution: *The Union brought up specific examples in which staff members wanted to use sick leave 1) to attend the funeral of an uncle, and 2) to care for a niece who was ill. Both requests were allegedly denied and when the Central Office was contacted for guidance (according to the Union), the field was told the use of sick leave to attend the uncle's funeral was allowed but the use of sick leave to care for the niece was not. Management indicated that the Bureau's policy clearly states what constitutes a family member and both of the above scenarios should have been approved. Management went on to indicate that the Employee Relations Section of the Human Resource Management Division is preparing to distribute guidance to the field regarding the difference between the Family and Medical Leave Act, and the Family Friendly Leave Act. The Union was satisfied with this explanation.*

7. **ISSUE:** "Lets have the agency give us the rule or laws they are relying on concerning (GS-08 Career Ladder automatic)."

Resolution: *Management informed the Union that there is no specific rule or law; it is a BOP standard that there be a certain percentage of GS-7s and GS-8s, and a staff member must compete for the GS-8 position. The Union indicated that they believe the Agency is not promoting people because they are not liked by Management and therefore, staff are no longer motivated. The Union asked that the GS-7 positions be made into full-performance positions. Management responded that the GS-8 positions are an incentive for officers and that GS-8 posts are more complicated, requiring higher level skills than GS-7 posts. The Union responded that there are no GS-8 posts in the field and they disagreed with the latter part of Management's explanation. This was a discussion item only.*

- 8 **ISSUE:** "Delays in getting Arbitration Dates set in the field."

Resolution: Management explained to the Union that in order to set an arbitration date, there must be coordination among the employees, the Union, the Warden, the Human Resource Manager, the LMR specialist and the arbitrator. This takes some time. Also, the actual selection of an arbitrator can take a long time. Each LMR Specialist has approximately 25 cases to handle at one time and they must make sure that a date for one case doesn't interfere with another hearing date. In addition, the arbitrator's schedule might interfere with quickly agreeing to a date. The Union stated that they believe the Agency is deliberately stalling when they have to set dates. The Union indicated that they will bring this issue up during Master Agreement negotiations, e.g., they will suggest setting a time limit to getting to a hearing. The discussion was concluded by the Union asking Management to take into consideration the Union's desire to set an arbitration date quickly.

9. **ISSUE:** "Uniform Company selling items and saying it is authorized to wear at work just to get the sell. Need a list put out on what is authorized and not."

Resolution: Management stated to the Union that the uniform specifications were clearly located in Program Statement 3000.02 (Chapter 9). The Union asked that we extract those specifications from the policy and send them out to the field, indicating that only those items listed are the items which can be purchased and worn while on duty. Management agreed to send the new uniform specifications to the field and to forward them to Larry Raney and Phil Glover before going to the field. After the meeting, the specifications were forwarded to Mr. Raney.

10. **ISSUE:** "Have you seen anything on child care for low income employees?"

Resolution: Management informed the Union that the legislation regarding child care has passed the House but not the Senate yet. However, the Bureau is expecting it to pass the Senate and once that happens, the program will be extended another year. The Union stated that other agencies are already participating in this program. Management responded that unless they were participating last year, no other agency should be involved in this program yet. The issue of defining "low income" was brought up. It was

agreed by both Management and the Union that "low income" cannot be interpreted as only referring to low income families; there are many other factors to consider, e.g., number of children, standard of living, area of country, income level, etc. This was a discussion item only.

ISSUE:

"Can the Union and the agency develop a study or survey that will address the issues of retention? Such as:

- a. What it is that you like best about your employment with the BOP?
- b. What is it that you like least?
- c. Are you considering leaving? If so, why?
- d. What do you suggest we do to improve retention?
- e. Should a monetary award for recruitment be considered?
- f. Should a retention bonus be considered based on years in service?"

Resolution

Management informed the Union that there is an Exit Survey which already exists that staff are asked to complete when they leave the Bureau. However, we cannot force staff to complete it. As a result, the response rate is very low (38.9% for last year). Management asked the Union to help increase the response rate by emphasizing to their membership the importance of completing the survey. Management provided the Union with a copy of the Exit Survey and related statistics. The Union alleged that staff are leaving because of pay issues and that staff should be receiving retention bonuses. Management responded that the statistics show that for probationary employees, the number one reason for leaving is "skills are not being used", whereas for non-probationary employees, the number one reason for leaving was "conflict with supervisors"; low pay is not one of the main reasons why staff are leaving the Bureau according to the statistics. Additionally, Management informed the Union that the criteria for who receives a retention bonus is located in the Human Resource Management Manual. Some of those criteria include high turnover and recruitment problems, but not seniority. The Union believes that only Management personnel receive retention bonuses. Management responded that, although Wardens do receive these bonuses, Physician Assistants and Nurses (bargaining unit staff) also receive bonuses. This was a discussion item only.

12

ISSUE:

"Will the agency clarify their intentions and the purpose for the placement of video cameras in housing units, SHU, compounds

and any other area. Will this impact the numbers of staff working and will this be used for the purpose of discipline of staff?"

Resolution: *Management explained that video cameras are used for purposes of security within the institution. However, if staff are observed on the video tape doing something wrong, that tape can be used in disciplinary action against the staff member. The intent of the camera is not to intentionally go after staff and cameras are not intended to replace staff. The Union indicated that staff are uncomfortable with the cameras. This was a discussion item only.*

ISSUE: "Workplace Violence- Policy is somewhat unclear. Should the employee be notified of any action taken by the CEO?"

- a. Is the Union to be notified as in any other adverse or disciplinary action?
- b. Where are these files to be kept and can an employee find them and copy them from that file?"

Resolution: *Management explained that workplace violence is misconduct and not only should the Union be notified but the employee at which any comments are directed should be notified. It is the agency's obligation to make that notification. The Union responded that there have been circumstances when the employee was not notified. Management stated that the institution should be following the agency policy.*

ISSUE: "Custodial Roster- Can the CEO change the custodial roster once it has been posted?"

- a. Can the CEO take and place people in different assignments and shifts because he wants to?
- b. If the CEO can do this what procedures must he use and where does seniority come into play in this process?
- c. Once the agreement is signed by all employees, including the warden, and posted, can the warden change the roster?"

Resolution: *Management stated that the roster can be changed, even after the Warden has signed it. However, Management made it clear that the Warden should not arbitrarily change the roster and generally, he or she should sit*

down with the Union to discuss the change. Each situation will be slightly different and each institution needs to make that determination locally. Management stated that the Warden has the final authority. The Union responded that they will challenge the Warden's decision if the changes occur on a daily basis. Management explained that it may happen on a daily basis with good reason, e.g., staff who call in sick will be good cause to have to change the roster. This is not arbitrary. Management agreed to put out a message to all CEOs that Wardens cannot arbitrarily change the roster, pursuant to the Master Agreement. The Union asked that the message include that the Union should be notified of any change to the roster. Management agreed to put this in the message although they explained to the Union that it is already stated in the Master Agreement.

15. **ISSUE:** "Lawsuits- What is the agency's policy on law suits on employee vs. supervisor?"
- At what point does the agency become involved?"

Resolution: *The Union stated that on two occasions an employee witnessed misconduct and reported it. Now, the supervisor who was reported and was the subject of the misconduct is suing the employee who reported the misconduct. Management responded that it is an employee's obligation to report misconduct. However, if there is a civil lawsuit filed, it is the employee's obligation to request representation from the Department of Justice (DOJ) if that employee believes he/she was acting within the scope of his/her employment. If it is determined by DOJ that the employee was acting within the scope of employment, then DOJ will provide representation. DOJ has informed the Bureau and its staff that we cannot automatically assume that we will be provided representation; it is completely in the hands of DOJ to make that determination and that is done on a case-by-case basis.*

16. **ISSUE:** "Veteran's Preference- How does veteran's preference work with promotions?"
- a. If a person has veteran's preference and is among the best qualified, should he/she automatically receive the promotion?"

Resolution: *Per the Union, this issue was resolved prior to the LMR Meeting.*

17. **ISSUE:** "Publicity- Does it violate BOP policy for the Union President to take issues to the press?
a. What if these issues concern security and safety?"

Resolution: *Management showed the Union the recently negotiated News Media Contacts policy and emphasized that the policy does not restrict the Union President from speaking to the press about working conditions within the agency. However, the Union President should be very familiar with the policy so as not to jeopardize the safety and security of the institution when reporting particular issues to the media. The Union responded that they would only be speaking with the media in order to improve the safety and security of the institution. This was a discussion item only.*

18. **ISSUE:** "LMR West- It is taking approximately 9 months to a year to get a case through LMR West.
a. Can the agency expedite these cases or hire some xtra staff to get caught up?
b. Can dismissals be expedited so that employees have a chance to get their jobs back sooner?"

Resolution: *This issue was discussed in issue #8; see the resolution to that issue.*

- ISSUE:** "Social Security Numbers - In this day and age when the social security number and birth date will get you credit why is it that we post our social security number as an identifier everywhere?
a. Inmate, visitor, and staff are able to see this posted in training documents and other places."

Resolution: *The Union indicated that complete social security numbers are being posted where everyone (visitors and staff) can see them. Management agreed that this was illegal and should not be occurring. Management asked the Union for a list of institutions where this is happening to which the Union responded that this is happening at every institution. Management agreed to put a message out to the field on this issue. The Union was satisfied with this resolution.*

- ISSUE:** "A supplemental Agreement at the Federal Transfer Center- When do we go to the table?
a. Why is the FTC trying to renege?"

Resolution: *Management informed the Union that not only was the institution not trying to renege on the local supplemental agreement but the arbitration hearing had taken place on September 28, 2000. Management went on to inform the Union that local Union officials had requested a delay in submitting their closing briefs to the arbitrator until November 17, 2000. Therefore, the arbitrator probably will not make a final decision until well into December 2000. The Union was satisfied with this explanation.*

- 21 **ISSUE:** "The fifth amendment to the Constitution of the United States of America states that we shall not be compelled to bear witness against ourselves. However, under the Weingarten Rights Warning/Waiver, we are compelled to answer all questions truthfully even if that means that we will incriminate ourselves. To that end, if we invoke our Constitutional right to not incriminate ourselves, the Employee Standards of Conduct says that we may be terminated for failing /refusing to cooperate in an official investigation?"

Resolution: *Management explained that the Constitution protects citizens from the requirement to answer questions that may incriminate them in a criminal proceeding. The Constitution does not apply to administrative proceedings. Employees do not have a right to invoke the Fifth Amendment for administrative proceedings that may lead to disciplinary action. The agency does not require employees to answer questions if the investigation involves a criminal matter, of which prosecution may occur. The Union was satisfied with this response.*

22. **ISSUE:** "Supreme Court decisions state that 'Double Jeopardy' is unconstitutional. Double jeopardy is, by definition; two adjudications for one offense. The Employees Standards of Conduct states that we must report all arrests and traffic fines in excess of \$150.00 in a timely manner. If an employee is convicted for a minor violation or has to pay a fine for a violation and then the Agency takes action against the Employee for the same violation, how is that not two adjudications for one offense?"

Resolution: *Management explained that double jeopardy applies to criminal matters only. For purposes of discipline, this is administrative in nature and is not considered double jeopardy. The Standards of Employee Conduct*

requires employees to conduct themselves in a manner that creates and maintains respect for the BOP, DOJ and the US Government. When that is violated, it is considered a violation of the Standards of Employee Conduct, and discipline (administrative action) is warranted. Criminal and administrative proceedings are two distinct matters. The Union was satisfied with this response.

- ISSUE:** “The fourth amendment to the Constitution of the United States of America states that we are to be free from unreasonable searches and seizures. Civil Law Enforcement Officers are required to establish a probable cause that a crime has been committed or obtain a search warrant from a Judge before they may search a person or his property.
- a. If this is the case for Law Enforcement Officers, why may a Warden authorize a search of an employee and his property without being held to the same standard.
 - b. Does a Warden have the same authority as a Federal Judge?”

Resolution: *Management explained that the Standards of Employee Conduct grant the Warden the discretion to order a search when he/she has reasonable suspicion or belief that an employee may be in the possession of contraband that may endanger the safety of other staff or inmates or the security of the institution. Once again, the Fourth Amendment to the Constitution refers to criminal proceedings. The Union was satisfied with this response.*

ISSUE: “What is the current status of the Inmate Systems Supervisor position that was to be abolished by institutions?”

Resolution: *The Union opened the discussion by stating that the decision to abolish the ISS positions was reached in 1997. In addition, the proposed Inmate Systems Management Manual (ISMM) which was forwarded in draft form to the Union for review in October 2000 references that the Bureau will be keeping these positions. Management agreed that the reference to keep the positions is inaccurate and should not be in the Manual (if that is indeed what it states since noon: had a copy of the draft ISMM at the table). Management agreed to get together with the ISM staff responsible for writing the Manual in order to correct that section if necessary.*

ISSUE: "With the current emphasis on per capita costs why are some regional directors funding SORT teams at low level institutions and where are they getting the funds to do so since they receive no Central Office Funding?"

Resolution: *The Union asked Management where the region is getting the money for the funding of SORT teams at low level institutions. Management responded that the money is generally coming from the institution itself, i.e., the funding for the equipment is coming from the institution and funding for the training is coming from the Central Office. The Union indicated that they are advocating getting rid of SORT at low level institutions and they believe that lows and camps should not have DCTs either. Management responded that getting rid of SORT at all lows would not be advisable as there have been serious incidents occur at lows, e.g., Big Spring. Management continued by stating that Executive Staff have given the regions the discretion of whether or not to have SORT. The Union, not satisfied with this discussion, stated that they would address this issue "another way."*

26 **ISSUE:** "FCI Waseca hired five correctional officers and they have already quit. Why does this facility continue to not be able to retain new hires?"

Resolution: *Management explained in detail various statistics provided by the North Central Regional Office. These statistics showed that there have not been five recently-hired correctional officers who have quit at FCI Waseca. The statistics, along with the specific reason and dates relating to exiting staff at the institution, were provided to the Union. This was a discussion item only.*

ISSUE: "Request a copy of the implementation order from justice on liability insurance. Second request."

Resolution: *See answer for issue #1*

28. **ISSUE:** "Request a copy of the DOJ order that states how much they will pay for an attorney if they provide one."

Resolution: *See answer for issue #1*

29. **ISSUE:** "Why is FCI Tallahassee still using GS9's to work as operations lieutenants in the jail when the Captain is not present?"
- Resolution:*** *Management explained that FCI Tallahassee is currently changing the roster to reflect lieutenants rather than operations lieutenants; this should correct the problem. The Union was satisfied with this resolution.*
30. **ISSUE:** "Second Request: OIA does not respond to complaints that are sent to them by Union Officials."
- Resolution:*** *The Union would like the person who issued the complaint to OIA to automatically receive a confirmation; they should not have to ask for a confirmation. Management responded that there is no formal acknowledgment of receipt except for Wardens, or on a case-by-case basis when appropriate. If a complaint is sent via the LAN system, the employee who forwarded the complaint may note whether the message was opened and thus, received. Management agreed to speak with OIA staff about the Union's concern and then follow-up with the Union as to the results of those discussions.*
31. **ISSUE:** "What is the status of Management cuts that were supposed to be made?"
- Resolution:*** *Management informed the Union that the target of the reductions is for Management positions only. Each Regional Director is looking at his or her region, and the information required to make decisions about the cuts is still being received from the Wardens. Specific positions haven't been identified as of yet, but there will be three Management positions targeted in each institution. This does not affect bargaining unit employees. This was a discussion item only.*
32. **ISSUE:** "What is the status of safe haven at USP Atlanta?"
- Resolution:*** *Management reiterated what had been discussed at the previous LMR meeting at FCI Memphis in July 2000, i.e., that local Management and Union officials at USP Atlanta were negotiating safe haven areas. Management asked the Union for clarification of what they envisioned as the creation of safe haven areas, i.e., did they expect the areas to be created from existing areas or did they intend for the agency to build them? The Union responded that safe haven areas should be identified one way or the*

other, but they stated they did not believe thousands of dollars should be spent in new construction of areas. Management agreed to follow-up with local Management at USP Atlanta and asked that the Union follow-up with the local Union president at USP Atlanta. The Union agreed to do this.

33. **ISSUE:** "Management at FCI Tallahassee states they have no obligation under contract to allow staff to switch days off."

Resolution: *The Union indicated that this issue had been resolved and withdrew it from the agenda.*