

Labor Management Relations Quarterly Meeting
FDC Seatac, Washington
June 1-2, 2011

AGENCY

Christopher Wade
Paul Layer
Mike Markiewicz

UNION

Eric Young
Dale Deshotel
Mike Rule
Michael Meserve
Julius Pyles
David Seresky
Robert Dudley
Donald Boyte
Donald Shults
Joseph Perrodin

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Resolution: Withdrawn by the Union. The Union stated they will address this matter in the appropriate forum.

Unresolved November 30 - December 2, 2010 Agenda Items

Agenda Item: AGENCY

2. 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

3. 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 Farris, HRMD

Resolution: Executive Order 13548 does not require a change to Program Statement 3713.21. On February 1, 2011, Channing D. Phillips, Deputy Associate Attorney General (DAAG) for Diversity Management designated Allison Nichol as Special Counsel for Disability Resources. This position will assist the DAAG with high level coordination of the Department's responsibility for disability hiring, training, and outreach. A link to tis announcement can be found on the Affirmative Employment page, HRMD, on Sallyport.

4. UFAN Number

Presently, Transportation Security Agency requires anyone flying with his/her weapon to declare a federal agency number. Is there such a number B 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: *The BOP's Unique Federal Agency Number (UFAN) is issued to staff who, in the performance of a Bureau assignment is issued an agency firearm and, as part of the specific assignment, is required to fly on a commercial airline.*

Unresolved January 19-20, 2011 Agenda Items

Agenda Items: UNION

5. 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: *Various training aids are available to assist staff in transitioning from Corel Office (WordPerfect, Quattro Pro, and Presentations) to Microsoft Office (Word, Powerpoint, and Excel) at:*

http://sallyport.bop.gov/co/ipp/advsys/ms_office_training_aids.jsp

Training aids include BOP-Learn (intranet) as well as Free Online Tutorials (internet), and instructions for "Inline Help".

June 1 - 2, 2011 Agenda Items

Agenda Items: UNION

1. Reasonable Accommodations

The Council would like to discuss the Agency's Reasonable Accommodation Process and the provision of the ADA Amendments Act. It became effective on Jan. 1, 2009. Through these amendments, Congress rejected a number of U.S. Supreme Court decisions that it viewed as improperly narrowing ADA coverage in a manner that excluded individuals who were meant to fall within the protections of the Act. The amendments will have a significant impact on determinations concerning whether a person falls within the definition of an individual with a disability. However, most of the other provisions of the ADA remain the same. The Equal Employment Opportunity Commission issued final regulations to implement the ADAAA on March 25, 2011. The regulations are effective May 24, 2011.

The Agency is forcing staff to follow the process of Temporary Assigned Duty when a staff is injured -- when they also qualify under the provision of the ADAAA. For example a major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. 42 USC 12102 (2)(A). The criteria for ADAAA is more liberal now than it was before, and the Agency is still operating as if no change has occurred. It almost, as if the Agency has exempted itself from ADAAA and Title VII as indicated in the EEOC/OFO Report issued to the Agency November 24, 2010. If the Agency wishes to research examples, there are several pending. However, there is one serious situation at MDC Chicago, with a bargaining unit employee in the Medical Department. If the Agency put forth the effort, and contacted that institution management at the facility, it will fill in the blanks for them; or simply contact the Council's National Fair Practice Coordinator for this additional information.

The Council would also like to discuss the Agency's Reasonable Accommodation Coordinator and this individual's role in the reasonable accommodation process, to include the department in which they are presently assigned.

Who: OGC

Resolution: Elizabeth Nagy, Special Assistant to the Assistant Director/General Counsel, is the Agency's Reasonable Accommodation Coordinator. Her responsibilities are described in the DOJ Manual and Procedures for Providing Reasonable Accommodation, 2002. A copy of that document is located at:

<http://www.justice.gov/jmd/eos/ddacomprocfinal081502.htm>

The parties agree that the ADAAA expanded the coverage of the ADA to include more individuals than were covered by the ADA in the past. It is the Agency's position that the ADAAA does not require the Agency to suspend its TAD procedures for individuals who may also be covered by the ADAAA. The TAD procedures and the reasonable accommodation

process do not conflict. The Agency will continue its existing practices related to offering temporary job modifications to employees who develop impairments, and will also engage in the reasonable accommodation process with these employees when they are also covered by the ADAAA.

2. EEO/OFO Report

The Council would like to discuss the EEOC/OFO Report concerning the EEO Climate in the Agency. In recent weeks since the report has come out, we have heard several manager make the comment that the report is misleading based on the percentage of staff interviewed.

What the Council has not heard is an admission that there is a problem in the Agency with retaliation, harassment, coercion, bullying, intimidation of our staff who partake in EEO process – what's suppose to be protected activity. We would like to discuss the Agency's alleged remedies they submitted to the OFO Director of Operations, to include but not limited to, agreements in placed by the parties to address such issue in Program Statement 3713.21, the Collective Bargaining Agreement, Article 22, 36, 37, 38 and previous LMR minutes on the issue.

If the Agency needs more specifics, please use the time and procedures outline in the Master Agreement, Article 2 to contact the Council's National Fair Practices Coordinator directly. **Please note if the Agency fails to produce their subject matter expert to discuss these issue, please annotate this in the LMR minutes, to include the provision of Article 2 detailing what should have occurred.

Who: OGC

Resolution: Deferred.

3. Arbitration

Victorville, CA won a case on Education Specialists/Teachers being inappropriately classified as exempt (FLSA). The Arbitrator ruled they should be non-exempt for overtime purposes.

The Council wants to know if the agency intends on fighting each case institution by institution or placing this PD in the non-exempt category - as ordered by the arbitrator in Victorville, CA.

Who: HRMD

Resolution: The arbitration award rendered by Ruth Carpenter regarding teacher positions at the FCC Victorville, CA, will be applied at that facility only and not nationally implemented.

4. Labor Management Meetings

The Council would like to have the final LMR Quarterly Meeting minutes from each meeting in a timely fashion. Article 2, Section d. states the following: **"The Employer will prepare minutes (summary) of the items discussed, agreements reached, and/or suspense dates set for follow-up action. The minutes will be reviewed and approved by the parties upon conclusion of discussion of each issue. A final copy of the minutes will be reviewed and signed by the parties prior to the conclusion of the meeting, and a copy will be provided to**

each participant.” After each item is discussed, agreed/disagreed on, the parties sign off on language to include in the meeting minutes before moving to the next agenda. It should be no reason these minutes cannot be typed, printed and signed off on by the parties’ Spokesmen at the conclusion of the LMR.

Who: LMR

Resolution: *The parties agreed to adhere to the provisions of Article 2 of the Master Agreement.*

5. ARTICLE 4- RELATIONSHIP OF THIS AGREEMENT TO BUREAU POLICIES...

Section a., says: 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 Employer further recognizes its responsibility for informing the Union of changes in working conditions at the local level. Section c., states: The Employer will provide expeditious notification of the changes to be implemented in working conditions at the local level. **Such changes will be negotiated in accordance with the provisions of this Agreement.** Article 3, Section c., states: The Union and Agency representatives, when notified by the other party, will meet and negotiate on any and all policies, practices, and procedures which impact conditions of employment, where required by 5 USC 7106, 7114, and 7117, and other applicable government-wide laws and regulations, **prior to implementation of any policies, practices, and/or procedures.**

Locals are being given a notice of change. Yet, given no time frames to turn over proposals. At the same time, they are being told an implementation date is imminent before the negotiations process is ever completed. Case law says: “Once a local gives notification to bargain, the implementation date is not applicable, until bargaining is fully completed, even to Federal Service Impasse Panel (FSIP).”

Who: LMR

Resolution: *Consistent with the Master Agreement and Title 5 U.S.C., Chapter 71, prior to making a change that affects conditions of employment, management will notify the Union of such change and afford the Union a reasonable time to respond.*

6. Arbitration (Lock Shop Case)

The Union would like to discuss the order by Arbitrator O'Bierne regarding the Lock and Security Specialists, and the change made to the position description by the agency.

Who: HRMD

Resolution: *Deferred.*

7. Augmentation

We would like to discuss parameters for augmentation of correctional rosters to include the intended duration, locations, estimated savings, actual savings, and the concerns that apply to Article 18 of the Master Agreement.

Who: CPD

Resolution: *This issue is withdrawn by the Union. This issue was resolved by the parties prior to the LMR meeting.*

8. South Central

Double standards are still in effect at facilities in South Central. At FCI Ft. Worth, the Captain sent out to bargaining unit employees a derogatory memo about the Union President. This was after the President requested official time to negotiate a change made by the Captain in the Control Room. The Captain stated, in writing, "The Local President was a scammer." The Captain statements are not professional; in fact, the Council believes they are inflammatory and defamatory in nature. We believe he should be held to the higher standard in the Employee Standards of Conduct – like other bargaining unit employees who are disciplined for "unprofessional conduct." More important, the Warden refused to address the issue when brought to his attention. And, he refused to forward the "apparent" conduct violation for investigation per the Standards and P.S. 1210.24, Office of Internal Affairs. This issue was addressed with the South Central Regional Director to no avail. Are the actions of the Captain and the Warden proper? Does the Director or designee condone such actions by either?

Who: LMR

Resolution: *Deferred.*

9. Inmate Character Profile (ICP)

There was an ICP performed at FCI Ft. Worth. We were told it revealed poor management of the facility and low morale of staff. Overcrowding of inmates and shortage of staff were some of the other issues revealed as well. The institution is in the process of changing missions. There was a promotion of a nursing supervisor from Carswell – who had a terrible record of poor staff supervision. The individual is a PHS employee. How does the agency plan to improve the ICP with this move and eliminate continued attacks on the Local Union?

Who: CPD

Resolution: *Deferred.*

10. Article 31 – Grievance Procedure

Section b., states, "...the parties strongly endorse the concept that grievances should be resolved informally and will always attempt informal resolution **at the lowest appropriate level** before filing a formal grievance." A reasonable and concerted effort must be made by both parties toward informal resolution.

The Captain in Pollock is relatively new. Recently, he told the Local President that he has no time to speak to him. More interestingly, he stated, "He does not have to speak to him." He told the Local President, "**That he is just a bully and that he will not be bullied.**" The President reported this to the Warden; and to the RD, who sends him back to speak to the Warden. The

Warden refuses to address issues at all – leaving nothing for the Union to do, except file formal grievances or unfair labor practices. Is this the new Bureau? What is the message from Central Office or the Director or his designee?

Who: LMR

Resolution: Deferred.

11. La Tuna and Ft. Worth

Total repudiation of the contract is in place at La Tuna. One example, the local administration took the Local President off his shift (day watch) and changed his days' off from Sunday/Saturday arbitrarily. Only after Central Office got involved was he placed back on his shift. Games. Is this the sentiments of implementing Partnership in BOP? The denial of day watch assignment for the Local President has also occurred in Ft. Worth. The RD is obviously aware of these issues yet they continue. Do we have a contract in place or not? Is this going to be the standard protocol when it comes to the South Central Region -- with Central Office dealing with all its issues?

Who: LMR

Resolution: Deferred.

12. Official Time

In May 2006, BOP responded to the Council in LMR quarterly, the amount of time official time union officials utilized in 2004. The Council would like to make a similar request.

What were the numbers reported by this Agency for official time usage in 2008, 2009 and 2010? How were they broken down and what system was used to track and report these numbers to Central Office?

Who: HRMD

Resolution: Deferred.

13. Guidelines versus Policy

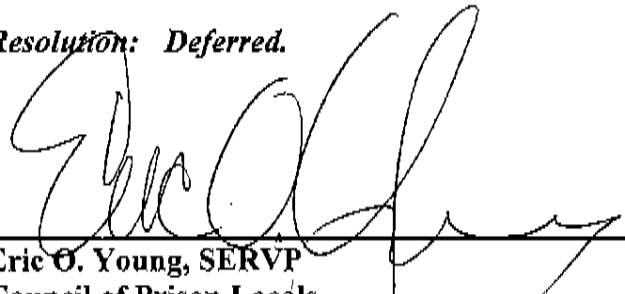
What is the difference between guidelines and policy?

There is back and forth change in the interpretation by management officials at both the national and local level whether or not guidelines are like negotiated policy. There are several instances where management has told Locals when these guidelines are being implemented, there's no duty to bargain, because they were negotiated nationally with the Council – which is absolutely false. In fact, the agency has bypass the Council repeatedly, sending guidelines directly to the field to be utilized in various departments by employees. Clinical Care and MRSA guidelines are some examples.

On one hand, management tells the national these are just guidelines and that these guidelines just guide employees in some form of discretionary responsibilities – which helps them in their day to day, decision-making. When asked by the Council years ago, we were told they couldn't be utilized in disciplinary actions, if they are not followed. Now, we see management locally utilizing these various guidelines, in proposal letters and arbitration against bargaining unit employees. Then, on the other hand, we have witnessed Labor Management Specialists, from time to time, say, "Post Orders are 'only' guidelines" when defending their cases – meaning employees cannot get in trouble if they do not follow the instructions. Are Clinical Care, MRSA and/or Post Orders guidelines or not? Can employees be disciplined for failure to follow them? What is the difference between guidelines and/or policy?

Who: IPPA

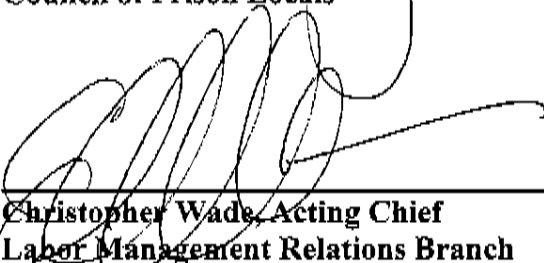
Resolution: Deferred.



**Eric O. Young, SERVP
Council of Prison Locals**

6-2-11

Date



**Christopher Wade, Acting Chief
Labor Management Relations Branch**

06/02/11

Date