In the Matter of the Arbitration Between	)	
	)	
	)	
DEPARTMENT OF JUSTICE	)	
FEDERAL BUREAU OF PRISONS	)	
FEDERAL CORRECTIONAL COMPLEX	)	
BUTNER, NORTH CAROLINA (Agency)	)	
	)	
	)	FMCS 11-51176
AND	)	
	)	ISSUE – PAST PRACTICE
	)	
AMERICAN FEDERATION OF	)	
GOVERNMENT EMPLOYEES	)	
LOCAL 405 (Union)	)	

BEFORE: Barbara J. Wood, Arbitrator

FOR THE AGENCY: Michael A. Markiewicz, Agency Representative
U. S. Department of Justice
Federal Bureau of Prisons
LMR-West
230 N. First Avenue, Suite 201
Phoenix, AZ 85003

FOR THE UNION: Hampton H. Stennis, District Legal Rights Attorney
American Federation of Government Employees
80 F Street N. W.
Washington, D. C. 20001

ALSO PRESENT FOR THE HEARING:

Stephen, Agency Representative
Jodie Snyder-Norris, D. T. A. D.
Tracy Johns, Warden
Mark Bolster, Associate Warden LSCI

Julius Pyles, Union President
William E. Boseman, Union VP

The hearing in the arbitration between Federal Bureau of Prisons, herein after referred to as Agency, and Council of Prison Locals, American Federation of Government Employees Local 405, herein after referred to as Union, was held on April 19, 2012 in Butner, North Carolina. The Agency was represented by Michael A. Markiewicz, Labor Management Relations Specialist. The Union was represented by Hampton H. Stennis, District Legal Rights Attorney. The Arbitrator was Barbara J. Wood. Testimony of witnesses was taken under oath. Representatives of the Agency and Union were provided full opportunity to present evidence, examine and cross-examine all witnesses. The arbitration hearing transcript was provided by Bryant Court Reporting Services, Cary, NC. Post Hearing Briefs were prepared by the Union and Agency Representatives and submitted to the Arbitrator.

ISSUE

The parties did not stipulate to an issue. The Arbitrator has defined the issue as follows:

Did the Agency apply disparate treatment against bargaining unit members in Local 405 by not permitting employees to work overtime shifts in accordance with the Collective Bargaining Agreement? If so, what shall the remedy be?

EXHIBITS:

Joint Exhibits (JX):

JX1 Master Agreement (CBA)

JX2 May 25, 2010 Moon memo to Pyles re: Notification of Intent to Change Past Practice

JX3 June 8, 2010 Boseman memo to Stephens re: Invoking right to bargain

JX4 June 25, 2010 Boseman memo to Moon re: Proposal for Current Established Past Practice

JX5 July 29, 2010 Moon memo to Pyles re: Past Practice – Overtime

JX6 August 12, 2010 Jodie Snyder-Norris memo re: Federal Mediation & Conciliation Service

JX7 August 31, 2010 Boseman memo to Bolster re: Request for Informal Resolution – Change in Past Practice

JX8 September 7, 2010 Bolster memo to Boseman re: Request for Informal Resolution

JX9 Grievance dated September 17, 2010

JX10 October 6, 2010 Boseman memo to Bolster re: Request for Informal Resolution – Retaliation for Union Activity

JX11 October 13, 2010 Revell memo to Boseman re: response to Grievance

JX12 November 9, 2010 Boseman memo to Revell re: Intent to Pursue Arbitration

Union Exhibits (UX):

UX1 Executive Staff Oversight Assignments

UX2 December 4, 2008 Rogers Memo for Unicor Staff, FCC Butner

UX3 December 16, 2008 Boseman memo to Beeler re: Invoking right to bargain

UX4 Grievance dated January 12, 2009

UX5 February 10, 2009 Revell letter to Boseman re: Response to grievance in UX4

UX6 March 6, 2009 Boseman memo to Revell re: Intent to Pursue Arbitration

UX7 August 12, 2010 Pyles memo to Revell, Johns, Stephens re: Certification of Receipt to FMCS

UX8 August 10, 2010 Moon memo to Department Heads re: Overtime for Staff Under Local 405

UX9 Union Proposal for Changing of Past Practice

UX10 June 25, 2010 Boseman memo to Moon re: Proposal for Current Established Past Practice

UX11 October 5, 2010 Negotiations Meeting Minutes

UX12 December 17, 2008 Beeler memo to Pyles re: Redacted Copy of Memo

Agency Exhibits (AX):

AX1 June 16, 2010 Clarification Response

AX2 Meeting schedule memos (4 memos)
AX3 July 29, 2010 Past Practice (OT) Meeting minutes

AX4 August 13, 2010 Moon memo to Pyles re: Notification of Intent to Change Hospital Overtime Hours of Work

AX5 September 27, 2010 Mediation – Overlapping OT minutes

AX6 September 28, 2010 FMCS Mediator memo to Jodie Snyder-Norris re: Meeting without a settlement

AX7 October 5, 2010, Discussions on Overlapping OT Shifts (Past Practice) Meeting minutes

AX8 November 16, 2010 Mediation Minutes 10:00 AM

AX9 November 16, 2010 FMCS Mediator memo to parties re: confirming the parties were not able to reach a settlement on the past practice issue

RELEVANT PROVISIONS OF THE MASTER AGREEMENT (CBA)

ARTICLE 3 – GOVERNING REGULATIONS

ARTICLE 4 – RELATIONSHIP OF THIS AGREEMENT TO BUREAU POLICIES, REGULATIONS, AND PRACTICES

ARTICLE 5 – RIGHTS OF THE EMPLOYER

ARTICLE 6 – RIGHTS OF THE EMPLOYEE

ARTICLE 9 – NEGOTIATIONS AT THE LOCAL LEVEL

ARTICLE 18 – HOURS OF WORK

ARTICLE 32 – ARBITRATION

RELEVANT STATUTES AND REGULATIONS

5 USC § 7106 – MANAGEMENT RIGHTS

TITLE 5 – ADMINISTRATIVE PERSONNEL
CHAPTER 1 – OFFICE OF PERSONNEL MANAGEMENT PART 551 - PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT Subpart D – Hours of Work § 551.422

BACKGROUND AND FACTS

The Master Agreement, hereinafter referred to as CBA (Collective Bargaining Agreement) is a nationwide agreement, The prison facility is located in Butner, North Carolina and consists of 4 prisons: Federal Medical Center (FMC); Federal Correction Institution I (FCI I); Federal Correctional Institution II (FCI II); and Low Security Correctional Institution (LSCI). There are three (3) Unions at FCC Butner: Local 405 (200 bargain unit employees); Local 408 (350 bargain unit employees); Local 3696 (150 employees). Each complex department has members of each local within that department. Each local represents non-complex departments at the Agency who are similarly situated and perform substantially the same work and may be called upon to substitute for one another.

The instant case pertains to LSCI and Local 405. The issue in this case pertained to overtime assignments that occurred away from the institution property. These overtime assignments occurred at local hospitals in the surrounding area. The purpose of these assignments is for inmates who have medical needs for which the medical facility at the prison cannot accommodate. The Agency offered the following example. If an inmate who needs surgery and must remain at the hospital for more than eight hours, then overtime assignments are created based on the length of the stay. Employees at the prison sign-up for these overtime assignments. These are not permanent overtime assignments but rather vary on medical necessity and length of hospital stay.

The Agency notified Union Local 405 that the practice will cease. The Union invokes its right to bargain. Union and Agency met and no agreement reached. The Agency informs Union that implementation will be effective August 15, 2010. The parties met with a Federal Mediator and no agreement reached. The Union filed a grievance claiming that management failed to negotiate with the Union over this change. The Agency denied the Grievance. The Union invoked arbitration.

POSITION OF THE UNION

ACCORDING TO THE UNION prior to December 4, 2008, employees represented by Local's 405, 408 and 3696 were permitted to work overtime shifts that overlap their regularly scheduled duty assignments. On December 4, 2008, the Agency changed this policy for approximately 20 to 200 employees represented

by Local 405. (UX2). The affected employees were UNICOR staff at LSCI and FCI 2. Local 405 filed a grievance, the grievance was denied. On April 19, 2010, a settlement agreement was reached. The Agency would compensate an affected employee for not receiving the overtime shifts which had been the past practice.

On May 25, 2010, the Agency notified the Union of the Agency's intent to change the practice of allowing employees represented by AFGE 405 to work overtime shifts that overlap their regularly scheduled duty assignments. (JX2). The Agency's position was that members of Local 405 were ineligible to work these overtime shifts. Members of Local 408 and Local 3696 remained eligible for these shifts. On June 8, 2010, Local 405 invoked the right to bargain over management's intent to change practice and pursuant to the CBA asked that the policy remain status quo while negotiations and discussions were underway. (JX3). On June 25, 2010, Local 405 provided Impact & Implementation (I&I) proposals to Agency. (JX4) (UX10). Subsequently, the Agency rejected the I&I proposals indicating that the Union's recommendations violated Article 5 of the CBA and 5 USC 7106 and advised the Union of implementation of the change effective August 15, 2010. (JX5).

The result of the change no longer allowed Local 405 employees to work overtime shifts that overlapped their regularly scheduled duty assignments, either before or after the regularly scheduled shift. The Union clarified that if an employee regularly worked day watch (8am-4pm), she could work the preceding morning watch (midnight-8am). Sometimes the preceding shift would be at one of the local hospitals in the area. Relief for the work at the outside facility – another Butner

employee doing BPT work – would arrive, and the relieved employee would drive to their regularly scheduled shift at Butner. The employee would not receive overtime for any overlap in shifts. Overtime ended at 8 am and regular shift pay began.

On September 17, 2010, the Union filed a grievance. (JX9). Mediation proceeded on September 27, 2010. (AX5). Mediation was unsuccessful. (AX6). Negotiation meetings between the Agency and Union were held on October 5 and 6, 2010, based upon union proposals regarding the issue. (UX11), (AX7). During the meeting, the Union came to believe that the reason Local 405 was singled out was because of the grievance that was filed over the overtime situation in 2008. The Union filed a request for informal resolution over the alleged retaliation for union activity. (JX10).

The Union argues the Agency's action, whereby it ceased allocating overtime solely to the members of Local 405, is in violation of Articles 3, 4, 6, 9 and 18 of the CBA by unilaterally changing a past practice; unfairly and inequitably applying the change only to members of Local 405 and/or as retaliation for the grievance that Local 405 filed against management in light of the same issue in 2008; and impermissibly granting opportunities to some employees and not to others in direct violation of the CBA article calling for equitable distribution and rotation of overtime shifts to qualified bargaining unit members.

The Union argues the Agency violated the CBA when it altered the eligibility of members of Local 405 to receive overtime assignments. The CBA specifically states that overtime shall be distributed and rotated equitably among bargaining unit employees. The Union cites the language in the CBA signed by AFGE Council

of Prisons and the Agency clearly states that: "when Management determines that it is necessary to pay overtime for positions/assignments normally filled by bargaining unit employees, qualified employees in the bargaining unit will receive first consideration for these overtime assignments, which will be distributed and rotated equitably among bargaining unit employees." (JX1, Art. 18p.) This CBA covers all bargaining unit members of Local 405, Local 408, and Local 3969.

Testimony provided that this practice has been in place for at least 12 years. The Agency issued a memorandum that specifically denotes that this practice is indeed a past practice in the eyes of the Agency: "Effective August 15, 2010, the past practice of staff working an overtime shift that overlaps with their regularly scheduled duty assignment will no longer be authorized for the staff that fall[s] under local #405." The departments affected by the change are Education, Recreating, Financial Management, Trust Fund, Food Service, Correctional Systems, UNICOR, Correctional Programs, and Correctional Services. (UX8). Local 405 do not have exclusivity with each of these departments. The Union points out that under the new procedure unilaterally implemented by the Agency, if a member of Local 405 is next on the roster for overtime shifts, they are simply skipped; the next employee from Local 408 or Local 3696 receives the overtime. The Agency's explanation why Local 405 was selected for the change was that the biggest area for overtime comes out of the FMC or hospital represented by Local 408 and the Agency did not believe they had enough staff at FMC that if they stopped this practice at the other institutions would result in mandating some

employees to work overtime. Neither the Agency nor the Union wanted to see this happen.

The Union's position is not an abrogation of a management right. The right to assign work is a management right accorded by 5 USC § 7106. Section (a) lays out management rights. Section (b) allows appropriate arrangements and negotiation regarding such for affected employees. This grievance involves a procedure that was negotiated by the Union and the Agency and agreed to in the CBA. While the Agency argued at the hearing that the standard to be applied was a test of substantial interference, this is not the correct test. In 2010, the FLRA returned to the abrogation test, and this is the standard to which any alleged failed deference to management rights should be applied. See Environmental Protection Agency and AFGE Council 238, 110 LRP 57877, 65 FLRA 113 (FLRA 09/29/2010) (EPA). In EPA, the FLRA stated that "it is more appropriate to assess whether a contract provision, as interpreted and applied by an arbitrator, 'abrogates' – i.e., waives – management rights under § 7106(a) of the Statute." EPA 65 FLRA 113 at 5.

According to the Union in the instant case the contract provision at issue here is legitimate for bargaining. The Agency did not substantially change the proposal as put for by the Union at the negotiating table, and the contract went to the agency head for review before it was ratified by the Agency. The Agency still retains the right to assign overtime, as it always had. It does not and should not have the ability to selectively allocate overtime only to certain portions of the group of employees who are all covered by the same national contract. The Agency also

retains the right to determine which employees among the unit are qualified and trained to receive the overtime assignments, as the Agency administers the training classes to become eligible for BPT work, and, one trained, every member of the unit should have the opportunity to receive the overtime.

According to the Union the Agency failed to say the effect of the change until negotiations had been completed, violating Article 3 of the CBA. Article 3, Section d(3), states: "should the Union invoke their right to negotiate the proposed policy issuance, absent an overriding exigency, the issuance and implementation of the policy will be postponed, pending the outcome of the negotiations…". Section d(5) applies this condition to matters negotiated locally. (JX1). The Union invoked its right to bargain over Agency's proposal and request that the Agency stay its decision pending negotiation. (JX3). The Agency responded it was proceeding with the change, as the Union's proposals were a violation of Article 5 of the CBA (Rights of the Employer) and 5 USC 7106 (Management Rights).

According to the Union the Agency's contentions that allowing the practice to continue will result in fiscal or operational disruptions does not withstand scrutiny. The Agency argued that the practice of allowing this overtime at all is an illegal practice and therefore the Agency has no duty to bargain whatsoever on the matter. The Agency believes that this practice was a violation of law therefore management had the right to stop it and make this decision of having employees report to their regular shift. The Union questions, if this is indeed the case, how is the Agency permitted to continue this illegal practice with Locals 408 and 3696 to this day?

Associate Warden Bolster testified that because of the overlapping overtime situation, a staff member would have to do the work to cover for a co-worker who was assigned. The Union maintains the Agency produced no witnesses or evidence to support this contention. The Union testified that management has long accounted for these potential gaps in coverage by asking other employees to step in – and get overtime – or by letting the nonessential postings go unfilled for thirty minutes to an hour until the regularly scheduled employee arrives.

The Union insists as the practice continues unabated for Locals 408 and 3696, employees who share the same departments and work side-by-side with Local 405 members, doing the same work, it logically follows that management is allowing these potentially dangerous situations and the overworking the current shift employees to proceed without remedy for the majority of the facility. The Union states for the Agency to argue that stopping the practice by Local 405 was to enact fiscal responsibility to improve working conditions for other employees while allowing the practice for members of Local 408 and 3696 is the height of disingenuousness. Presumably the same situations could develop and now it is just members of Local 405 who bear the brunt of the Agency's alleged overwork because their coworkers are off doing overtime.

The Union argues that the Agency attempted to equate the time employees spend driving from the overtime shift at area medical facilities to their regular shift at Butner to regular commuting to work from home. The Union testified that when the employee is making the drive from the medical facility, they are doing so as part of work assigned by management and that he received mileage costs from the

Agency for the drive from the hospitals to Butner for overtime shifts. The Agency would certainly not be called upon to do such for a simple commute from home to work. The Union maintains it is clear the Agency considers these trips part of assigned work, regardless of the retroactive attempt to categorize these trips as mere commutes. The employees are not receiving overtime pay for the commute to their regular shifts; once their regular shift has begun; they are on regular, not overtime pay.

The Union concludes for all the foregoing reasons the Union has proven that the Agency intentionally changed a past practice at the facility to avoid assigning and rotating overtime among qualified employees of the bargaining unit in an equitable manner, which resulted in disparate treatment of a select group of employees at the facility, thereby violating the CBA. Further, by the Agency's own admission, it selected Local 405 as a "test case" for this change, in order to further offset losses should the arbitration go in favor of the Union. Therefore, the Union respectfully requests that the Arbitrator sustain the Union's grievance in its entirety. The Union asks that the Arbitrator find that the Agency knowingly violated the CBA when it disallowed the past practice by discontinuing the equitable rotation and distribution of overtime assignments and the Union asks for make-whole relief pursuant to the requirements of the Back Pay Act, 5 USC § 5596, including back pay with interest for all affected bargaining unit employees, who, but for the action of the Agency, would have received overtime for the commemoration celebration. Finally, should the grievance be sustained in whole or in part, the Union respectfully requests that the Arbitrator retain jurisdiction for purposes of remedy assessment,

implementation, and the award of reasonable attorney fees to which the Union may be entitled based on the Arbitrator's findings.

POSITION OF THE AGENCY

ACCORDING TO THE AGENCY an issue arose in the prison's UNICOR production facility where production was being delayed. It was discovered that some employees in the UNICOR department had accepted an overtime assign at the local hospital for the hours of midnight to 8 am. The regular 40-hour a week shift hours for these employees were 7:30 am to 4:00 pm. By the time these employees finished their overtime assignment at the local hospital and drove to the prison they were not showing up for their regular shift anywhere from 1 to 2 hours after the start of their shift. These employees did not extend their ending time of their shift to make up for the late reporting time. These employees were not performing any agency work after being relieved at the local hospital and throughout their travel time back to the hospital. These employees were still receiving a full 8 hours of regular time despite the fact that they technically only worked a 6 to 7 hour shift. The Agency also cites that upon further inquiry, they discovered that employees who accepted an overtime assignment at the local hospital for a 4:00 pm to midnight shift would leave the prison 1 to 2 hours before the regular shift ended to be at the local hospital at 4:00 pm . During this travel time, the employees were paid for a full 8 hour shift, even though they left early and then received a full 8 hours of overtime pay.

According to the Agency when executive management officials at the LSCI discovered that this was also happening with employees in various other departments and creating an impact on production they notified the appropriate union that represented their employees – Local 405. The Agency states there are other executive management officials at the other prisons and separate local unions as well. In the instant case, management officials at the LSCI were only to deal with the local union that applied to their situation, which was Local 405. Agency notified Local 405 that the practice of employees showing up late to their regular scheduled shift ended would not be allowed.

The Agency argues technically they had no duty to bargain with the Union because the practice that was occurring was illegal. Employees were applying their driving time, either to or from the local hospital, to their regularly scheduled 8 hour shift. The Agency insists that the only time federal employees may be paid for travel time is when the employee is performing work for the Agency. When an employee was relieved of his overtime assignment at the local hospital, the employee's principal activities had ended. During their travel time to the prison for their regularly scheduled shift they were not engaged in any Agency work. The same principles apply when an employee left early from his regularly scheduled work shift at the prison, the employee's principal activities had ended. During their travel time from the prison to the local hospital overtime assignment they were not engaged in any Agency work. In both scenarios Under 5 CFR Part 551 these employees were not entitled to be compensated during their travel time.

The Agency argues in order for a past practice to prevail, the practice must be consistent with applicable law and regulations. The practice in the instant case was not consistent with applicable law and regulations. Under law, these full-time employees were required to perform principal activities for the Agency during their regularly scheduled 40-hour work week. The Agency insists this was not occurring during these certain overtime assignments. The Agency had a duty and obligation to terminate the practice and there was no requirement to bargain as the practice that had been occurring was an illegal practice. See 5 USC 7117(a).

According to the Agency the Union's assertion that the Agency failed to bargain as required under Title 5, Chapter 71 amounts to an Unfair Labor Practice charge. A Union must present argument or authority to support a claim that its proposal constitutes a negotiable proposal. See *National Labor Relations Board, 62 FLRA 397 (2008).* The Agency maintains that in the instant case the Union never even explained their proposal or how it was a valid proposal.

The Agency states they notified the Union that the practice would cease before the implementation date. Both parties met numerous times. The Union's proposals were to allow employees to continue the practice but limit the amount of time they took to travel. Not only were these proposals invalid Impact and Implementation (I&I) proposals but they were also proposals that were inconsistent with law and regulations. The Agency maintains since the Union's proposals were non-negotiable, the Agency's implementation of ceasing the practice was not a violation of the bargaining statute. *Pension Benefit Guaranty Corp*., 59 FLRA 48 (2003);*NTEU v FLRA*, 414 F.3d 50 (D.C. Cir.2005). The Agency is free to declare

a no duty-to-bargain at any time during FSIP proceedings, even if that claim has not been raised previously. *FCI Englewood*, 04 FSIP 98 (2004). A Union may be entitled to negotiate any I&I of a management right as long as it does not excessively interfere with the management right. *Kansas Army National Guard*, 21 FLRA 24 (1986). A proposal does not qualify as a procedure if it directly interferes with the exercise of a management right. *Social Security Administration*, 49 FLRA 1408 (1994). Union proposals and arbitration awards requiring that employees only travel during duty hours affect the right to assign work because they prevent the agency from requiring a full day of work. 60 FLRA 476 (2004); 33 FLRA 187 (1988). The Agency points out that despite all of the above, the Agency entered into mediation with the Union – twice. After mediations, the Union never sought the assistance of FSIP. A Union waives its right to bargain if it does not contact FSIP for assistance after a mediator declares an impasse. *Naval Ordnance Station*, Louisville, KY., 17 FLRA 896 (1985); Department of Labor, 60 FLRA 68 (2004). The Agency maintains in the instant case management properly followed the bargaining requirements.

The Agency denies any discrimination against the Union. The Agency maintains that the management officials involved in the decision to cease the illegal practice could only deal with the designated Local union 405. *FCC Florence v Local 1302*, FMCS 10-54917 (2011).

According to the Agency the Union failed to produce witnesses to testify that they were in fact eligible and qualified for certain overtime assignments. On any certain day there may be a variety of factors on why a certain employee cannot

work overtime. The Agency does not know which employees would have been willing, ready, and able to work on a particular day in question. Any monetary relief would be based purely on speculation and would be contrary to the Back Pay Act. *Naval Air Rework Facility Norfolk, VA and IAM Local Lodge 39*, 21 FLRA 410 (1986); *Norfolk Naval Shipyard, Portsmouth, VA and Tidewater Virginia Federal Employees Metal Trades Council,* 21 FLRA 307 (1986); and *AFGE Local 1857 and U. S. Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, CA,* 35 FLRA 325 (1990).

In conclusion the Agency states an Arbitrator is bound by the terms of the CBA and the Union has failed to identify any provision that management has violated which goes to the heart of the issue. The Union failed to prove a violation of the CBA or statute in this case. The Agency has shown that management had every right to cease a practice that was inconsistent with law and regulation and, despite this fact, still properly attempted bargaining with the Union. The Agency respectfully requests that the grievance be denied.

ARBITRATOR'S DISCUSSION

The representatives of the Agency and Union are commended for their skill and perseverance in presentation of their cases. Reference citations provided in their briefs were appropriate and helpful to the Arbitrator. The Arbitrator has reviewed all of the evidence, the Arbitrator's copious notes from testimony and various witnesses and the Union's and Agency's excellent briefs.

Management has the responsibility to foster good fiscal responsibility and correct an illegal or costly practice in accordance with Article 5 and 5 USC, Section 7106 and other applicable CBA Articles and Statutes. If a past practice needs to be changed, Management does have the right to change or modify the past practice. However, in the instant case Management and the Union must enter into I&I bargaining with the applicable Union(s) and both parties negotiate in good faith to resolve the problem equitably and fairly to all affected bargaining unit employees. If the practice is deemed illegal, it is the responsibility of the Management with the cooperation of the Union to correct this problem fairly and equitably throughout the institution. Clearly, the Agency had an obligation to bargain with the Union. The evidence provided did indicate the parties were in negotiation and mediation processes.

The CBA clearly states in Article 18 – Hours of Work Section p1. “when Management determines that it is necessary to pay overtime for positions/assignments normally filled by bargaining unit employees, qualified employees in the bargaining unit will receive first consideration for these overtime assignments, which will be distributed and rotated equitably among bargaining unit employees;”. The Agency’s action whereby it ceased allocating overtime solely to the members of Local 405, while granting overtime opportunities to bargaining unit members in Local 408 and Local 3696 is in violation of the aforementioned article in the CBA.

The Union has proven that the Agency did not assign and rotate overtime among qualified employees in the bargaining unit in an equitable manner which

results in disparate treatment of a select group of employees at the facility thereby violating the CBA.

AWARD

Effective August 15, 2010, the affected employees in Local 405 shall be compensated with back pay without interest who, but for the action of the Agency, would have received overtime assignments. The Arbitrator will retain jurisdiction for purposes of remedy clarification and implementation. No attorney fees shall be awarded.

_____

Barbara J. Wood, Arbitrator
July 23, 2012