CONTRACTUAL ARBITRATION PROCEEDING
BEFORE
ARBITRATOR OLIVER J. BUTLER, JR

In The Matter Of:	
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFL-CIO), LOCAL 171 [**UNION**]	
vs.	FMCS CASE 06-50670
FEDERAL CORRECTIONAL INSTITUTION, FEDERAL BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE (EL RENO, OKLAHOMA) [**EMPLOYER**]	

DECISION OF ARBITRATOR

The undersigned Arbitrator was selected by the parties and appointed by the Federal Mediation & Conciliation Service to hear and decide the dispute which is the subject of this Arbitration Case. Having considered the evidence submitted at the Hearing hereon and the arguments made by the parties with respect hereto, the Arbitrator issues the following Decision:

The Parties

The Employer is a Federal Correctional Institution located at El Reno, Oklahoma. It is one of several such entities operated by the Federal Bureau Of Prisons. And, in its operations it employs numerous supervisory & non-supervisory employees.

The Union is and was at all times pertinent to this proceeding the lawful collective bargaining representative of certain of the Employer's said non-supervisory employees.

The Arbitration Hearing

A Hearing on this Arbitration Case was duly conducted by the undersigned Arbitrator on 20 June 2007 at El Reno, Oklahoma.

The Union was duly and ably represented at the Hearing hereon by its Representative -- Donny Boyte of Edmond, Oklahoma.

The Employer was duly and ably represented at said Hearing by its Representative -- Michael Markiewicz of Phoenix, Arizona.

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The Collective Bargaining Agreement

At all times pertinent to this case, a Master Collective Bargaining Agreement [hereinafter referred to as the "Agreement"] was in effect between the Employer and the Union which covered non-supervisory employees of the Employer employed within the bargaining unit of employees represented by the Union at the El Reno Federal Correctional Institution [hereinafter referred to as the "Institution"]. Those provisions of the Agreement which are considered by the Arbitrator to be pertinent to his determination of the dispute which is the subject of this case are set forth (in pertinent part) in Appendix "A" hereto.

The Program Statement

Additionally, at all times pertinent hereto, a Program Statement [hereinafter referred to as the "Program Statement"] with respect to Community Relations Boards established And maintained by entities of the Federal Bureau Of Prisons [hereinafter referred to as the "FBOP"] was also in effect at the Institution -- which Program Statement affected those non-supervisory employees of the Employer who were employed within the bargaining unit of employees represented by the Union at the Institution. Those provisions of the Program Statement which are considered by the Arbitrator to be pertinent to his determination of the dispute which is the subject of this case are also set forth (in pertinent part) in Appendix "B" hereto.

The Dispute

This case involves a contractual dispute between the Union and the Employer with respect to the Employer's action in refusing to permit a Union representative to attend a meeting of the Institution's Community Relations Board which was held at the Institution on (Wednesday) 20 July 2005 -- the Union representative having been advised by an Employer representative prior to the start of said meeting that the attendance of the Union representative at said meeting was not required and would not be permitted and a Grievance with respect to the Employer's said action having been filed by the Union on 30 August 2005.

The Issue For Determination

The sole issue which is posed for determination by the Arbitrator in this Arbitration Case is whether the Employer's action in refusing to permit a Union representative to attend the meeting of the Community Relations Board which was held at the Institution on (Wednesday) 20 July 2005 was or was not in violation of the Agreement and/or the Program Statement.

[It is noted that a procedural issue had been posed incident to the processing of the Grievance which is the subject hereof with respect to whether said Grievance was or was not contractually arbitrable. However, said procedural issue was

not raised by the Employer at the Hearing hereon. Therefore, said procedural issue is deemed to be moot and of no concern to the Arbitrator with respect to his determination herein.]

The Contention Of The Union

The Union contends that the Employer's aforesaid action in refusing to permit a Union representative to attend the meeting of the Community Relations Board which was held at the Institution on (Wednesday) 20 July 2005 constituted a violation of the Agreement -- its said contention being based on its arguments [1] that said action of the Employer was contrary to and in violation of at least 14 years of established and recognized "past practice" of the parties and [2] that such "past practice" has effectively become a part of the Agreement and [3] that said "past practice" is binding on the parties until a change therein is effected by collective bargaining.

And, based on its said contention, the Union urges the Arbitrator not only to hold that the Employer's aforesaid action in refusing to permit a Union representative to attend the meeting of the Community Relations Board which was held on (Wednesday) 20 July 2005 constituted a violation of the Agreement but also to order that the Employer be required to restore a Union representative to membership on all future meetings of the Community Relations Board which are held at the Institution.

The Contention Of The Employer

The Employer contends that its aforesaid action in refusing to permit a Union representative to attend the meeting of the Community Relations Board which was held on (Wednesday) 20 July 2005 was not in violation of the Agreement -- its said contention being based on its arguments [1] that no provision of the Agreement specifically imposes any requirement for attendance of a Union representative at Community Relations Board meetings and [2] that Sub-Section 6 of Section 1415.03 of the Program Statement specifically states that attendance of a Union representative at such meetings is solely at "the discretion of the Warden" and [3] that no established and recognized "past practice" exists with respect to attendance of a Union representative at such meetings which negates or impares the right of the Employer to unilaterally take its aforesaid action.

And, based on its said contention, the Employer urges the Arbitrator to deny the Union's Grievance in this proceeding.

Preliminary Discussion

The issue which is presented to the Arbitrator for resolution in this case necessarily requires that his dispositive discussion and determination with respect thereto be prefaced by a preliminary discussion of two basic and fundamental facets of the Arbitration process -- the matter of "inherent management

rights" incident to Arbitration Cases and the matter of "burden of proof' and "quantum of proof" incident to Arbitration Cases.

Inherent Management Rights

The concept of "inherent management rights" incident to the Arbitration process has been the subject of numerous Arbitration decisions and numerous Court decisions -- including the landmark decision of the Supreme Court Of The United States in the case of United Steelworkers v. Warrior & Gulf Navigation Co. [80 S. Ct. 1347 (1960)]. Although many versions of such concept have been stated, the version which has been approved and accepted not only by most Arbitrators but also by the Supreme Court Of The United States in the aforesaid Steelworkers case is the so-called "reserved rights doctrine" -- which "doctrine" was succinctly stated as follows by Arbitrator Harry J. Dworkin in his often-cited Arbitration decision involving Cleveland Newspaper Publishers Association [51 LA 1174, 1181 (1969)]:

> It is axiomatic that an employer retains all managerial rights not expressly forbidden by statutory law in the absence of a collective bargaining agreement. When a collective bargaining agreement is entered into, these managerial rights are given up only to the extent evidenced in the agreement.

For a detailed discussion of the concept of "inherent management rights" incident to the Arbitration process, see Elkouri & Elkouri, How Arbitration Works (Fourth Edition), @ pages 457-585.

In this case, Articles 31 & 32 of the Agreement manifest that the Employer has given up certain "inherent management rights" and has ceded the determination of whether a challenged action by it was or was not in violation of the Agreement to the Arbitrator hearing a dispute with respect to such action.

Burden Of Proof & Quantum Of Proof

It is the universal practice of Arbitrators to impose the "burden of proof" on the Employer in cases which involve employee discharge or discipline. And, except where exceptional or unusual contractual or factual scenarios are involved, it is the universal practice of Arbitrators to impose the "burden of proof" on the Union in cases which involve contract interpretation.

With respect to the "quantum of proof" required to satisfy the "burden of proof" in Arbitration Cases, most Arbitrators adhere to the "preponderance of the evidence" rule applicable to Civil Court proceedings -- except in cases which involve the discharge or discipline of an employee based on allegations of criminal intent or moral turpitude, in which cases most Arbitrators adhere to the "clear and convincing evidence" rule. [Arbitrators generally agree that the Criminal Court "beyond a reasonable doubt" rule is inapplicable to Arbitration Cases.]

Simply stated, the so-called "preponderance of the evidence" rule merely means that in order to prevail the party with the "burden of proof" must present "evidence which as a whole shows that the fact sought to be proved is more probable than not". [See Black's Law Dictionary, Fifth Edition, @ page 1064 thereof.]

And, simply stated, the so-called "clear and convincing evidence" rule means that in order to prevail the party with the "burden of proof" must present evidence which as a whole is more than a mere "preponderance of the evidence" but less than the "beyond a reasonable doubt" rule -- it having been judicially defined as that measure of proof which will produce in the mind of the trier of facts "a firm belief or conviction" as to the truth of the allegations sought to be established. [See Black's Law Dictionary, Fifth Edition, @ page 227 thereof.]

For discussions of "burden of proof" and "quantum of proof", see Elkouri & Elkouri, How Arbitration Works (Fourth Edition), @ pages 324-325 & 327-328 & 661-663 (and cases cited therein).

In accordance with the above-noted universal practice of Arbitrators (as stated at the beginning of the Hearing hereon), the Arbitrator considers the "burden of proof" in this case to be on the Union. And, the Arbitrator considers the "quantum of proof" requisite for satisfaction by the Union of such "burden of proof" to be that which is prescribed by the so-called "preponderance of the evidence" rule which is mentioned above.

The Pertinent Facts

At the Hearing hereon, four witnesses were called to testify on behalf of the Union and no witnesses were called to testify on behalf of the Employer -- it being noted that three of said four witnesses were actually Employer representatives who were called by the Union to testify for it as "adverse" witnesses.

The four witnesses who testified at the Hearing were WADE HOUK [who has been employed by the FBOP for 17 years and who is currently employed at an FBOP entity in North Carolina but who was employed at the Institution at El Reno from June 2005 to August 2006 in the dual capacity of Executive Assistant to the Warden and Camp Administrator and who is hereinafter referred to as "Executive Assistant Houk"] and PATRICIA SINGLETON [who is currently employed at an FBOP entity in Texas but who was employed at the Institution at El Reno from November 2003 to July 2005 as the Human Resources Manager and who is hereinafter referred to as "Human Resources Manager Singleton"] and JOSEPH SCIBANA [who has been employed by the FBOP for 29 years and who is and has been since February 2005 the Warden of the Institution at El Reno and who is hereinafter referred to as "Warden Scibana"] and LISA BRIGHT [who is a Union member who has been employed at the Institution at El Reno for 24 years and who is and has been a Union Steward since 1988 and who was from 1991 to 2005 the Union representative on the Community

Relations Board maintained by the Institution at El Reno and who is hereinafter referred to as "Union Steward Bright"].

Also, at the Hearing hereon, six documentary exhibits were received into evidence -- including three Joint Exhibits and two Union Exhibits and one Employer Exhibit. Among said six Exhibits are the above-noted Agreement and Program Statement.

The Arbitrator has carefully considered the testimony of each of the above-named Witnesses and has also carefully considered the content of each of the above-noted documentary Exhibits. And, based on his consideration of the testimony of said Witnesses and his consideration of the content of said documentary Exhibits, the Arbitrator finds the facts which he considers to be pertinent to his determination of the dispute which is the subject of this case to be essentially as follows (it being noted that such facts are essentially undisputed despite the disputed conclusions drawn therefrom by the parties):

FBOP Policy Concerning Community Relations Boards

A reading of the Program Statement which is in evidence herein as Employer Exhibit 1 clearly reflects that it is and has been for many years the policy of the FBOP to have Community Relations Boards established at Federal prisons -- which prisons (presumably for reasons of "political correctness") have been for many years referred to as "correctional institutions" rather than as "prisons". The reasons for such a policy are self-evident -- the establishment of a community of incarcerated felons in or next to a community of presumably law-abiding citizens necessarily creates both a cause for concern on the part of said citizens and a need for amelioration thereof.

[Although Section 5 of said Program Statement states that "Each Warden may decide whether a Community Relations Board should be established at his or her institution", the Arbitrator has no doubt that a Warden who decided not to establish such a Board would probably find himself or herself called on the carpet before his or her FBOP superiors for a discussion concerning "facts of life" with respect to community relations.]

History Of Community Relations Boards At El Reno

No evidence was adduced at the Hearing hereon as to when the first Community Relations Board was established at the Institution at El Reno. However, the evidence adduced at the Hearing hereon reflects that such Boards have been established and maintained by each of the eight Wardens who have served such Institution from 1991 to date, to wit: T.C. Martin, Art Beeler, Tom Kindt, Arnet Flowers, Ron Thompson, Les Fleming, Charles Petersen, and Joseph Scibana (who is the current Warden).

And, as contemplated by Section 6a of the Program Statement, the citizen membership of said Boards has traditionally included

persons who might be called "movers and shakers" within the local community -- such citizen membership having including politicians (such as the Mayor of the Town of El Reno and County Commissioners of Canadian County in which County is located the Institution and the Town of El Reno) **and** law enforcement & fire fighting officials (such as the Police Chief and the Fire Chief of the Town of El Reno) **and** members of the judiciary (such as the local District Judge) **and** educators & health care professionals (such as the President of the local Junior College and the Administrator of the local Hospital) **and** various do-gooder types with real and/or imagined concerns about the souls and/or welfare of the inmates within the Institution.

History Of Union Membership On Community Relations Boards

In addition to the above-noted provision of Section 5 of the Program Statement which states that "Each Warden may decide whether a Community Relations Board should be established at his or her institution", Section 6a of the Program Statement also provides that "At the discretion of the Warden, the union representative may be a member of the Board." Thus, based on such clear and unambiguous language, it not only is manifest that the Program Statement imposed no legal or policy requirement on any of the various Wardens of the Institution at El Reno to establish a Community Relations Board but also is equally manifest that the Program Statement imposed no legal or policy requirement on any of the various Wardens at said Institution to appoint a Union representative as a member of any such Board.

Nevertheless, from at least sometime prior to 1991 until 2005, each of the above-named seven successive Wardens at the Institution at El Reno who had preceded Warden Scibana not only had duly established and maintained Community Relations Boards but also had duly appointed a Union member to serve as a member of each of said successive Boards. [Further, there was no suggestion put forth at the Hearing hereon that any Warden who served prior to 1991 had failed either to establish such a Board or to duly appoint a Union representative as a Member thereof.]

And, from 1991 until 2005, the person who was appointed to serve as the Union member on each of said Boards was Union Steward Bright -- her initial appointment in 1991 by Warden T.C. Martin having been to replace Union member Jack Hogan.

Termination Of Union Representation On Community Relations Board

At sometime after assuming his duties as Warden of the Institution at El Reno in February 2005, Warden Scibana decided that it would be appropriate to "streamline" the membership of the Community Relations Board by eliminating two Institution members thereof -- the Union member and an Institution Captain.

And, immediately before a meeting of such Board which was scheduled for 20 July 2005, Warden Scibana's decision to

eliminate the Union member from such Board was verbally communicated to Union Steward Bright by Executive Assistant Houk.

Accordingly, neither Union Steward Bright nor any other Union representative was permitted to attend the Community Relations Board meeting which was held on 20 July 2005. And, neither Union Steward Bright nor any other Union representative has been permitted by Warden Scibana to attend any Community Relations Board meeting which has been held since 20 July 2005.

Thus, since the Community Relations Board meetings are and have been held approximately four times a year on a quarterly basis (during the daytime on the premises of the Institution at El Reno), the Union has been denied representation at approximately eight meetings of such Board since 20 July 2005.

The Union's Grievance (Arguing Binding "Past Practice")

Thereafter, the Grievance which is the subject of this case was filed by the Union. Incident to its processing thereof and incident to its presentation thereof at the Hearing hereon, the Union cited the above-noted history of Union representation on Community Relations Boards and argued that the many years of "past practice" at the Institution at El Reno with respect to appointment of a Union member thereto by the seven Wardens who had preceded Warden Scibana constituted a binding contractual obligation which had been breached by Warden Scibana's action.

Warden Scibana's Response (Disputing Binding "Past Practice")

Neither in his response to the Union incident to the processing of said Grievance nor during his testimony at the Hearing, did Warden Scibana dispute the above-noted history of Union representation on Community Relations Boards. However, he adamantly disputed the argument that such history constituted a binding "past practice" with respect to his actions concerning such Boards. To the contrary, he adamantly insisted that he has a clear-cut and inherent managerial right as the Warden of the Institution at El Reno to arbitrarily eliminate the Union representative as a Member of such Board if he so desires .

Specifically, Warden Scibana argued that "each Warden has his own discretion" and that insofar as his dealings with the Union are concerned he does not consider himself to be bound by any actions which have been taken by previous Wardens at the Institution in El Reno with respect to appointment of a Union member to a Community Relations Board (or anything else).

And, Warden Scibana also specifically and unequivocally stated at the Hearing hereon that he does not consider himself to have any obligation to "bargain" with the Union about the matter of Union representation on Community Relations Boards.

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The Union's Appeal To Arbitration

In due course, said Grievance was referred to Arbitration and the undersigned Arbitrator was selected by the Parties to hear and decide the dispute which is the subject thereof.

[Although of no import with respect to his determination concerning the issue presented in this proceeding, the Arbitrator confesses that he finds it interesting that during her testimony at the Hearing hereon Human Resources Manager Singleton disclaimed any knowledge of either the filing of this Grievance or the processing thereof -- even though the processing of Grievances was surely a normal function of her Department.]

The Opinion Of The Arbitrator

As noted hereinabove, the sole issue for determination by the Arbitrator in this Arbitration Case is whether the Employer's above-noted action in refusing to permit a Union representative to attend the meeting of the Community Relations Board which was held at the Institution on (Wednesday) 20 July 2005 was or was not in violation of the Agreement and/or the Program Statement -- it nevertheless being recognized by the Arbitrator that his determination with respect to said sole issue will necessarily affect Union representation at future meetings of Community Relations Boards at the Institution.

Based on the credible evidence adduced herein (testimonial and documentary), the Arbitrator finds and opines as follows:

The Undisputed "Past Practice" In This Case

It is undisputed that during the 14 years from 1991 to 2005 each of the seven Wardens who had preceded Warden Scibana had appointed a Union representative as a member of each Community Relations Board which had been established and maintained at the Institution at El Reno during said 14 years.

Thus, irrespective of his reluctance to acknowledge such fact, it is manifest that when Warden Scibana assumed the post of Warden of the Institution at El Reno in February 2005 there was in existence an undisputed and well-established "past practice" of at least 14 years duration with respect to the actions of each of the seven previous Wardens in appointing a Union representative as a member of each Community Relations Board which had been established by them at said Institution.

The Binding Effect Of The "Past Practice" In This Case

Arbitrators are unanimous in holding that a demonstrated and extended "past practice" incident to the collective bargaining relationship of an Employer and a Union can constitute a significant and binding factor in the resolution of disputes with respect thereto -- it being recognized that such a "past

practice" can be enforceable through arbitration as being in essence a part of the "whole" collective bargaining agreement.

Thus, evidence of such "past practice" has been held by Arbitrators not only to be appropriate to provide a basis for rules which govern matters not specifically included in the written collective bargaining agreement but also to be appropriate to provide a basis for interpretation of ambiguous language in the written collective bargaining agreement.

Accordingly, it has long been accepted doctrine in the arbitration process that a collective bargaining agreement is more than mere words on paper but is also all the oral understandings and interpretations and mutually acceptable actions which have occurred with respect to it over the course of time [Coca-Cola Bottling Co., 9 LA 197, 198 (1947)]; that clear and long standing "past practice" can establish conditions of employment as binding as any written provision of the collective bargaining agreement [Alpena General Hospital, 50 LA 48, 51 (1967)]; that a "past practice" of the Employer may be considered to be an implied term of the collective bargaining agreement when such "past practice" has been in effect for a long time and is well understood and is taken for granted by the Union [Esso Standard Oil Co., 16 LA 73,74 (1951)]; and, that a long-standing "past practice" which is not at variance with and has not been changed or repudiated by any specific provision of a collective bargaining agreement which has been negotiated subsequent to the inception of such "past practice" may actually be accorded the status of a contractual right and/or duty inasmuch as the negotiators of such subsequent collective bargaining agreement must be deemed to have been fully aware of such "past practice" [Phillips Petroleum Co., 24 LA 191, 194-195 (1955); Metal Specialty Co., 39 LA 1265, 1269 (1962)].

And, the legitimacy of such holdings by Arbitrators with respect to "past practice" is perhaps best illustrated by the affirmation thereof by Federal and State Courts -- including the Supreme Court Of The United States [United Steelworkers v. Warrior & Gulf Navigation Co., 80 S. Ct. 1347, 1351-1352 (1960)].

Since this arbitration proceeding involves a Federal agency and Federal employees and is ultimately subject to the oversight of the Federal Labor Relations Authority (hereinafter the "FLRA"), the Arbitrator deems it pertinent to note that the FLRA has heretofore specifically acknowledged its acceptance of and concurrence with the above-noted doctrine with respect to "past practice" [SSA, Mid-America Program Center, 9 FLRA 229].

In his arbitral view concerning the binding effect of established "past practice", the undersigned Arbitrator is in full accord with the above-noted doctrine with respect thereto.

Therefore, it is the resultant finding and opinion of the undersigned Arbitrator that the above-noted "past practice"

with respect to the appointment of a Union representative as a member of each Community Relations Board since 1991 was on 20 July 2005 (and is now) an implied term of the collective bargaining agreement between the Employer and the Union -- it being noted that the current collective bargaining agreement between the Employer and the Union (which has an effective date of 09 March 1998) has been negotiated and re-negotiated by the parties since the inception of such "past practice" in 1991.

And, it is also the finding and opinion of the undersigned Arbitrator that said implied term of the collective bargaining agreement between the Employer and the Union shall remain in effect and be binding on the Employer and the Union unless and until a change therein is effected by collective bargaining.

The Dispositive Finding & Opinion Of The Arbitrator

Accordingly, it is necessarily the finding and opinion of the Arbitrator that the Union has satisfied its burden of proof herein in that it has shown by a preponderance of the evidence that the above-noted action of Warden Scibana in refusing to permit a Union representative to attend the meeting of the Community Relations Board which was held at the Institution at El Reno on (Wednesday) 20 July 2005 **was** in violation of the Agreement. And, it is necessarily the corollary finding and opinion of the Arbitrator that the subsequent actions of Warden Scibana in refusing to permit a Union representative to attend the meetings of the Community Relations Board which have been held at the Institution at El Reno since 20 July 2005 have also constituted continuing violations of the Agreement.

The Determination & Award Of The Arbitrator

Based on the above-noted facts and for the above-noted reasons, it is the Determination of the Arbitrator that the above-noted action of Warden Scibana in refusing to permit a Union representative to attend the meeting of the Community Relations Board which was held at the Institution at El Reno on (Wednesday) 20 July 2005 did constitute a violation of the Agreement by the Employer. And, it is the corollary Determination of the Arbitrator that the subsequent actions of Warden Scibana in refusing to permit a Union representative to attend the meetings of the Community Relations Board which have been held at the Institution at El Reno since 20 July 2005 constituted continuing violations of the Agreement by and for the Employer.

Thus, it is the Award of the Arbitrator that the Grievance which was filed by the Union in protest of Warden Scibana's aforesaid action (which Grievance is the subject of this proceeding) must be and is hereby granted and sustained.

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The Remedial Order Of The Arbitrator

It is the further Determination & Award & Order of the Arbitrator that the Remedy for the aforesaid actions of the Employer which constituted violations of the Agreement shall be:

1. Not later than ten (10) calendar days after the date of issuance of this Decision Of Arbitrator, the Union shall duly advise Warden Scibana in writing as to the identity of the person it has selected to serve as the Union representative on the Community Relations Board at the Institution at El Reno.

2. Not later than five (5) calendar days after the date of his receipt of written advice from the Union as to the identity of the person it has selected to serve as the Union representative on the Community Relations Board at the Institution at El Reno, Warden Scibana shall appoint said person as the Union member of the Community Relations Board at the Institution at El Reno -- said appointment to be affirmed by Warden Scibana in writing to the Union on the day it is made.

3. Thereafter, unless and until Community Relations Boards no longer exist at the Institution at El Reno **or** unless and until otherwise determined by collective bargaining, a Union representative (who is to be selected and designated by the Union) shall be duly appointed by the Warden of the Institution at El Reno to serve as the Union member of any and all Community Relations Boards which are established at said Institution.

The Closing-Date Of The Hearing Hereon & The Issuance Of This Decision Of Arbitrator

The Parties having been duly accorded the opportunity to file Post-Hearing Briefs and the due-date for receipt thereof by the undersigned Arbitrator having been 13 July 2007, such due-date was the official closing-date of the Hearing hereon.

And, this Decision Of Arbitrator has been duly issued by the undersigned Arbitrator at Humble, Texas on 17 July 2007.

OLIVER J. BUTLER, JR.
ARBITRATOR-JUDGE
18834 RACQUET RIDGE ROAD
HUMBLE, TEXAS 77346-8212
TELEPHONE 281/812-3106
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APPENDIX "A" TO DECISION OF ARBITRATOR

Pertinent Provisions Of Agreement

Those provisions of the Master Collective Bargaining Agreement which are deemed by the Arbitrator to be pertinent to determination of the dispute which is the subject of this Arbitration Case are set forth (in pertinent part) as follows:

ARTICLE 3 - GOVERNING REGULATIONS

Section a. Both parties mutually agree that this Agreement takes precedence over any Bureau policy, procedure, and/or regulation which is not derived from higher government-wide laws, rules, and regulations.

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Section d. All proposed national policy issuances, including policy manuals and program statements, will be provided to the Union. If the provisions contained in the proposed policy manual and/or program statement change or affect any personnel policies, practices, or conditions of employment, such policy issuances will be subject to negotiation with the Union, prior to issuance and implementation.

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

Section a. 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 1717. The Employer further recognizes its responsibility for informing the Union of changes in working conditions at the local level.

Section b. On matters which are not covered in supplemental agreements at the local level, all written benefits, or practices and understandings between the parties implementing this Agreement, which are negotiable, shall not be changed unless agreed to in writing by the parties.

Section c. 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.

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ARTICLE 5 - RIGHTS OF THE EMPLOYER

Section a. Subject to Section b. of this article, nothing in this section shall affect the authority of any Management official of the Agency, in accordance with 5 USC, Section 7106:

1. to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

2. in accordance with applicable laws:

a. to hire, assign, direct, layoff and retain employees in the Agency ... ;

b. to assign work ... and to determine the personnel by which Agency operations shall be conducted;

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Section b. Nothing in this section shall preclude any agency and any labor organization from negotiating:

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2. procedures which Management officials of the Agency will observe in exercising any authority under this Agreement;

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ARTICLE 6 - RIGHTS OF THE EMPLOYEE

Section a. Each employee shall have the right ... [e]xcept as otherwise provided by 5 USC ... :

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Section b.

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2. to be treated fairly and equitably in all aspects of personnel management;

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6. to have all provisions of the Collective Bargaining Agreement adhered to.

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ARTICLE 7 - RIGHTS OF THE UNION

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Section b. In all matters relating to personnel policies, practices, and other conditions of employment, the Employer will adhere to the obligations imposed on it by the statute and this Agreement. This includes, in accordance with applicable laws and this Agreement, the obligation to notify the Union of any changes in conditions of employment, and provide the Union the opportunity to negotiate concerning the procedures which Management will observe in exercising its authority in accordance with the Federal Labor Management Statute.

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ARTICLE 10 - UNION REPRESENTATION ON COMMITTEES

Section a.

When committees, work groups, or task forces are formed to make recommendations on matters directly affecting working conditions of bargaining unit employees, the Employer will fill a position on the committee, work group, or task force with a representative designated by the Union at the appropriate level. A Union representative selected to participate on these committees will be a working member with the same rights and responsibilities as other members. This includes an adequate opportunity to present their thoughts and ideas on whatever subject is being discussed. Each Union representative so selected will have a Union designated alternate to serve when the representative is unavailable.

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ARTICLE 31 - GRIEVANCE PROCEDURE

Section a. The purpose of this article is to provide employees with a fair and expeditious procedure covering all grievances properly grievable under 5 USC 7121.

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Section c. Any employee has the right to file a formal grievance with or without the assistance of the Union.

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4. the Union has the right to file a grievance on behalf of any employee or group of employees.

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ARTICLE 32 - ARBITRATION

Section a. ... If the parties fail to agree on joint submission of the issue for arbitration, each party shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard.

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Section d. The arbitrator's fees and all expenses of the arbitration, except as noted below, shall be borne equally by the Employer and the Union.

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Section g. The arbitrator shall be requested to render a decision as quickly as possible, but in any event no later than thirty (30) calendar days after the conclusion of the hearing, unless the parties mutually agree to extend the time limit. The arbitrator shall forward copies of the award to addresses provided at the hearing by the parties.

Section h. The arbitrator's award shall be binding on the parties. However, either party, through its headquarters, may file exceptions to an award as allowed by the Statute.

The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of:

1. this Agreement; or

2. published Federal Bureau of Prisons policies and regulations.

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APPENDIX "B" TO DECISION OF ARBITRATOR

Pertinent Provisions Of Program Statement

Those provisions of the Program Statement which the Arbitrator deems pertinent to determination of the dispute which is the subject hereof are set forth (in pertinent part) as follows:

1. PURPOSE AND SCOPE. To provide guidelines for establishing and maintaining Community Relations Boards as a means of mutual communication and support between institutions and their local communities. While such boards have no formal advisory function to institutions, their purposes are to serve as a two-way communication link between the institution and community leadership, and to advance public education, understanding, and advocacy for issues affecting Federal prisons.

Community Relations Boards benefit the Bureau and the community by:

- increasing public awareness of and education about the mission of the institution and the Bureau,
- determining the availability of community services for the institution,
- coordinating Bureau operations with local law enforcement activities,
- assessing the impact of the institution on the community, and
- increasing the institution's involvement in community affairs and services.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. Ongoing, positive communication between institutions and their local communities will be fostered.

b. Citizens will be informed about programs and operations of institutions in their communities and about the Bureau of Prisons in general.

c. Institution staff will be advised about pertinent community needs, concerns, and developments.

d. Community interest and involvement in institution programs will be encouraged.

e. Public understanding about corrections will be enhanced.

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5. ESTABLISHMENT OF COMMUNITY RELATIONS BOARDS. Each Warden may decide whether a Community Relations Board should be established at his or her institution.

6. BOARD MEMBERSHIP. Board members may work closely with local law enforcement, government, business, civic, education and training, health care, pre-release, and religious agencies and organizations.

a. Initially, the Warden may select Board members. ... The subsequent selection process shall be addressed in each Board's bylaws.

Consideration shall be given to citizens representing:

- local and Federal law enforcement;
- city, county, or township government;
- business and civic organizations (Chamber of Commerce, Lions, Rotary, Kiwanis, etc.);
- school boards; health care organizations; and
- media groups.

The Warden is an ex-officio Board member. At the discretion of the Warden, the union representative may be a member of the Board. Other institution staff may attend meetings to support Board functions or explain institution programs and respond to questions on specific issues.

b. Initially, the Warden shall determine the number of members. Subsequent changes shall be addressed in the Board's bylaws.

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7. INSTITUTION COORDINATOR. The Warden is the coordinator for the Board.

8. MEETING SCHEDULE. The Warden shall meet with the Board at the institution on a mutually agreed-upon regular schedule. ...

9. BYLAWS.

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c. Agendas. Ordinarily, the Warden prepares the agenda for each Board meeting, but other members may contribute agenda items on institution/community issues. A typical agenda might include such matters as:

- inmate population and security level trends,
- inmate movement, significant news or events (escapes, fires, etc.),
- goals and objectives.
- new programs,
- staff changes,
- construction projects,
- accomplishments,
- special activities, and
- special visits or tours.

END

TRANSMITTAL OF QUADRUPLICATE ORIGINALS OF DECISION OF ARBITRATOR

A Quadruplicate Original of this Decision Of Arbitrator has been transmitted by the above-named Arbitrator (by U.S. Mail) to each of the following Representatives of the Parties herein:

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American Federation Of Government Employees
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