69 FLRA No. 26

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
BASTROP, TEXAS
(Agency)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 3828
(Union)

0-AR-4921

DECISION

January 27, 2016

Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

Arbitrator T. Zane Reeves issued two awards (the merits award and the remedy award). In the merits award, the Arbitrator found that the Agency violated the Fair Labor Standards Act (FLSA)[1] by failing to compensate employees for work performed before and after their assigned shifts. And, in the remedy award, the Arbitrator ordered the Agency to compensate the affected employees with overtime pay.

We must decide four questions. The first question is whether the Arbitrator exceeded his authority by awarding a remedy to employees in Control Center No. 2, who were not encompassed within the grievance. Because both parties agree that the Arbitrator exceeded his authority, the answer to this question is yes.

[1] 29 U.S.C. §§ 201-219.

The second question is whether the award of overtime for undergoing security screenings is contrary to law. Because the pertinent legal standards changed after the issuance of the merits award, the Arbitrator did not have the opportunity to apply the correct legal standards. Further, we are unable to determine whether the awards of compensation for security screening are consistent with those standards. Therefore, we remand that matter to the parties for resubmission to the Arbitrator, absent settlement, for further findings.

The third question is whether an award of overtime for donning duty belts is contrary to law. Because donning duty belts is not a compensable activity under the facts as found here, the award of overtime for donning duty belts, to the extent that the activity does not occur during the continuous workday, is contrary to law.

The fourth question is whether the award of overtime for flipping accountability chits is contrary to law. Because Authority precedent clearly holds that flipping an accountability chit is not a compensable activity, the award of overtime for flipping accountability chits, to the extent that the activity does not occur during employees' continuous workday, is contrary to law.

II. Background and Arbitrator's Award

The grievants at issue here are correctional officers at a federal, minimum-security prison. As relevant here, the employees work eight-hour shifts at the following posts: General Population Housing Units; Compound Nos. 1 and 2; Special Housing Unit (SHU) Nos. 1 and 2; Visiting Room Nos. 1 and 2; and Control Center No. 1. Most of these posts are staffed continuously with no overlap between shifts.

All of the grievants begin their workday by passing through a metal detector. After passing through security screening, most grievants, other than those staffing the control center, then don duty belts. Duty belts are sturdy belts that are designed for use in the correctional setting. In addition to holding key clips and key chains, these belts contain holsters for various pieces of equipment used by the grievants, such as radios and handcuffs. Although the Agency does not require the grievants to use duty belts, their use is "a common practice."[2] Further, many officers testified that they believe it is necessary to don their duty belts immediately after passing through security screenings so that their hands are free in case they encounter an emergency while traveling to their posts.

After donning their duty belts, employees then enter the secured confines of the institution and proceed to the control center, where they "flip [an] accountability chit to indicate their presence in the institution."[3] After flipping their accountability chit, and before starting their shifts, the employees engage in various other pre-shift activities – including collecting or exchanging equipment, reporting to their posts, and completing shift exchanges – the compensability of which is not at issue here. At the end of their

[2] Merits Award at 67.
[3] *Id.* at 14.

shifts, employees flip their accountability chits back before exiting the institution for the day. Some employees engage in additional post-shift activities after the end of their shift; however, the compensability of these activities, similarly, is not at issue in the exceptions that are before us in this case.

The Union filed a grievance, seeking backpay for the ten months preceding the grievance, contending that the Agency violated the FLSA by failing to compensate employees from the time they begin the security-screening process until the time they exit the facility. The grievance was unresolved, and the parties submitted the matter to arbitration.

Before the Arbitrator, the Agency argued, as relevant here, that security screenings, donning duty belts, and flipping accountability chits were not compensable activities under Authority and court precedent. The Agency further argued that, even assuming the grievants were engaged in otherwise-compensable pre- or post-shift activities, the time spent in those activities was de minimis.

Although the Agency quoted 5 C.F.R. § 551.412(a)(1), the Office of Personnel Management (OPM) regulation limiting the compensability of preparatory or concluding activities to those exceeding ten minutes, the Agency identified § 551.412 as "regulatory guidance."[4] Moreover, the Agency went on to discuss, in considerable detail, the de minimis test from *Lindow v. United States*.[5] That decision sets forth a three-factor test for determining whether otherwise compensable work was de minimis: "(1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work."[6]

The Arbitrator found in favor of the Union in most respects, including all of those at issue here. The Arbitrator found that undergoing security screening was "an essential and required activity for the security of the facility," and therefore "a principal activity" and "an integral and indispensable activity [that] should be considered compensable work."[7] The Arbitrator also found that Agency did not require the grievants to wear duty belts, or require that employees who chose to wear duty belts don them immediately after they undergo screening.[8] However, he found "that donning a duty belt is a compensable activity," because wearing duty belts was a past practice.[9] Finally, the Arbitrator rejected Authority precedent holding that flipping an accountability chit is not a compensable activity, reasoning that "moving the chit [was] an integral and indispensable requirement by management" because "it could result in serious negative consequences if an officer failed to flip his or her chit."[10]

---

[4] Exceptions, Attach. B (Agency Post-Hr'g Br.) at 3.
[5] 738 F.2d 1057, 1062 (1984).
[6] *Id.* at 1063.
[7] Merits Award at 66.
[8] *Id.* at 67.
[9] *Id.*
[10] *Id.* at 68.

As a remedy, the Arbitrator ordered ten minutes of overtime per shift to the control-center and visiting-room posts; fifteen minutes of overtime to compound, general-population, and SHU No. 2 posts; and seventeen minutes of overtime to the SHU No. 1 post. The Arbitrator indicated that "[t]he next stage of the hearing [wa]s to . . . determine damages, namely whether liquidated damages [we]re warranted; whether the recovery period goes back [two] or [three] years; and what amount is due each employee."[11] But the merits award goes on to find that "[t]he Agency is . . . liable for liquidated damages."[12]

The Agency then filed exceptions to the merits award. The Authority's Office of Case Intake and Publication issued an order to show cause why the Authority should not dismiss the Agency's exceptions as interlocutory. The Agency failed to respond to the order to show cause and the Authority dismissed the Agency's exceptions without prejudice.

The Arbitrator then issued the remedy award, in which he specified the amounts of backpay to which each employee was entitled. The remedy award also stated that the Arbitrator determined, in the merits award, that the Agency's violation of the FLSA was "willful."[13]

The Agency then filed these exceptions. The Union filed an opposition to the Agency's exceptions.

III. Preliminary Matter: Sections 2425.4(c) and 2429.5 of the Authority's Regulations bar the Agency's argument that the award is contrary to 5 C.F.R. § 551.412(a)(1).

The Agency argues that the award is contrary to 5 C.F.R. § 551.412(a)(1) because it awards overtime in increments of only ten minutes.[14] Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations,[15] the Authority will not consider arguments offered in support of an exception if those arguments differ from, or are inconsistent with, a party's arguments to the arbitrator.[16]

Here, the Agency argues that the award of only ten minutes of overtime per shift to the control-center and visiting-room posts is contrary to 5 C.F.R. § 551.412(a)(1), which provides:

> If an agency reasonably determines that a preparatory or concluding activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the

[11] *Id.* at 74.
[12] *Id.*
[13] Remedy Award at 1.
[14] Exceptions at 14-15.
[15] 5 C.F.R. §§ 2425.4(c), 2429.5
[16] *E.g., AFGE, Local 2145*, 69 FLRA 7, 8 (2015) (citing *U.S. Dep't of VA, Bos. Healthcare Sys., Bos., Mass.*, 68 FLRA 116, 118 (2014)).

total time spent in that activity is more than [ten] minutes per workday, the agency shall credit all of the time spent in that activity, including the [ten] minutes, as hours of work.

But, in its arguments before the Arbitrator, the Agency did not argue that § 551.412 was a binding, government-wide regulation. Indeed, it referred to § 551.412 as "guidance."[17] The Agency also did not cite Authority[18] or federal-court precedent[19] holding that § 551.412 prohibits an overtime award of ten minutes or less for preparatory or concluding activities. Rather, the Agency relied on *Lindow*, even though the Authority has held that *Lindow* does not apply to employees covered by § 551.412.[20] The Authority's Regulations do not permit the Agency to appeal on the grounds that the Arbitrator did the very thing that the Agency requested he do below. Thus, because the Agency argued that the Arbitrator should apply *Lindow*, §§ 2425.4(c) and 2429.5 of the Authority's Regulations bar the Agency's argument that the Arbitrator's application of *Lindow* is contrary to § 551.412.

Accordingly, we dismiss the Agency's contrary-to-§ 551.412(a)(1) exception.

IV. Analysis and Conclusions

A. The Arbitrator exceeded his authority.

The Agency argues that the Arbitrator exceeded his authority by awarding a remedy to employees in the Control Center No. 2 post.[21] An arbitrator exceeds his or her authority when the arbitrator fails to resolve an issue submitted to arbitration, resolves an issue not submitted to arbitration, disregards specific limitations on his or her authority, or awards relief to persons who are not encompassed within the grievance.[22]

Here, the Agency argues that the Arbitrator exceeded his authority by awarding a remedy to Control Center No. 2.[23] The Union concedes that it "did not submit that matter to the Arbitrator for consideration," and that "the Arbitrator's award as to the Control [Center] No. 2 post should be vacated."[24]

Accordingly, the Arbitrator exceeded his authority by awarding overtime to the Control Center No. 2 post. We therefore set aside that portion of the award.

---

[17] Agency Post-Hr'g Br. at 3.
[18] *E.g.*, *U.S. DOJ, Fed. BOP, Fed. Corr. Inst, Sheridan, Or.*, 65 FLRA 157, 159 (2010); *U.S. DOJ Fed. BOP, Fed. Corr. Inst, Terminal Island, Cal.*, 63 FLRA 620, 624-25 (2009); *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Leavenworth, Kan.*, 59 FLRA 593, 598 (2004) (*Leavenworth*).
[19] *E.g.*, *Riggs v. United States*, 21 Cl. Ct. 664, 683 (1990).
[20] *Leavenworth*, 59 FLRA at 598.
[21] Exceptions at 17.
[22] *U.S. Dep't of the Navy, Naval Base, Norfolk, Va.*, 51 FLRA 305, 307-08 (1995) (citing *AFGE, Local 916*, 50 FLRA 244, 246–47 (1995); *U.S. DOD, Def. Logistics Agency*, 50 FLRA 212, 217 (1995); *Dep't of the Air Force, McGuire Air Force Base*, 3 FLRA 253, 255 (1980)).
[23] Exceptions at 17
[24] Opp'n at 26.

B. We remand the awards in part and find that they are contrary to law in part.

The Agency argues[25] that the Arbitrator's determinations regarding the compensability of security screenings, donning duty belts, and flipping accountability chits are contrary to the Portal-to-Portal Act.[26] When a party's exceptions involve an arbitration award's consistency with law, the Authority reviews the questions of law raised by the award and the party's exceptions de novo.[27] In applying a de novo standard of review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[28] In making that assessment, the Authority defers to the arbitrator's underlying factual findings unless the excepting party establishes that they are nonfacts.[29]

In passing the Portal-to-Portal Act, Congress distinguished between "'the principal activity or activities that an employee is hired to perform,'" which are compensable, and "'activities [that] are preliminary to or postliminary to said principal activity or activities,' which are not compensable."[30] The courts, however, have interpreted the terms "preliminary" and "postliminary" narrowly. Thus, *in the private sector*, "activities which are 'integral and indispensable' to 'principal activities' . . . are themselves 'principal activities,'"[31] and are compensable, provided that they are not de minimis.[32]

The federal sector follows a "largely identical" rule,[33] but uses different terminology: Activities that are "closely related . . . and . . . indispensable to the performance of[] an employee's principal activities" are "preparatory" or "concluding" activities, which are compensable, if the time spent performing the activities exceeds ten minutes per workday.[34] Accordingly, in determining whether an employee has engaged in a compensable preparatory or concluding activity, the Authority has assessed whether the activity is "an integral and indispensable part of" the employee's principal activities.[35]

---

[25] Exceptions at 6-14.
[26] 29 U.S.C. §§ 252-262.
[27] *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).
[28] *NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998).
[29] *U.S. DHS, U.S. CBP, Brownsville, Tex.*, 67 FLRA 688, 690 (2014) (citing *U.S. Dep't of the Treasury, IRS, St. Louis, Mo.*, 67 FLRA 101, 104 (2012)).
[30] *U.S. DOJ, Fed. BOP, Fed. Med. Ctr., Lexington, Ky.*, 68 FLRA 932, 936 (2015) (*Lexington*) (Member Pizzella concurring, in part, and dissenting, in part) (quoting *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Allenwood, Pa.*, 65 FLRA 996, 999 (2011) (*Allenwood*)).
[31] *IBP, Inc. v. Alvarez*, 546 U.S. 21, 33 (2005) (quoting *Steiner v. Mitchell*, 350 U.S. 247, 253 (1956)).
[32] *E.g.*, *Lindow*, 738 F.2d at 1062.
[33] *Riggs*, 21 Cl. Ct. at 675 ("OPM and [Department of Labor (DOL)] regulations therefore are largely identical in effect in that OPM regulations treat what are referred to as preparatory activities 'closely related' and 'indispensable' to principal activities in the same way that DOL regulations treat 'principal activities.'").
[34] *E.g.*, *Lexington*, 68 FLRA at 936 (internal quotation marks omitted); 5 C.F.R. § 551.412(a)(1).
[35] *Lexington*, 68 FLRA at 936 (internal quotation marks omitted) (citing *Allenwood*, 65 FLRA at 999).

Although the Authority defers to an arbitrator's factual findings when assessing whether an award is contrary to law, the determination that an activity is integral and indispensable to a principal activity is a legal conclusion, not a factual finding.[36] Thus, the Authority reviews such determinations de novo.

After the Arbitrator issued the merits award, but before he issued the remedy award, the U.S. Supreme Court held in *Integrity Staffing Solutions, Inc. v. Busk* (*Integrity Staffing*)[37] that an activity is "integral and indispensable to the principal activities that an employee is employed to perform if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities."[38] In so holding, the Court rejected tests, articulated in several federal-court decisions,[39] that had focused on "whether an employer required a particular activity" or "whether the activity is for the benefit of the employer."[40] Instead, the "test is tied to the productive work that the employee is employed to perform."[41]

In *Integrity Staffing*, the Court held that the time employees spent waiting to undergo, and actually undergoing, security screenings before leaving the workplace was not an integral and indispensable part of the employees' principal activities.[42] There, to prevent theft, the employer required its employees – "warehouse workers who retrieved inventory and packaged it for shipment" – to undergo security screening before leaving the warehouse each day.[43] Applying the test for "integral and indispensable" set forth above, the Court concluded that "screenings were not an intrinsic element of retrieving products from warehouse shelves or packaging them for shipment," and that the employer "could have eliminated the screenings . . . without impairing the employees' ability to complete their work."[44]

Finally, even if an activity is not a principal activity or integral and indispensable to the performance of principal activities, it may nevertheless be compensable under the continuous-workday doctrine.[45] Under that doctrine, activities that take place between the first and last compensable activities of the day – including those that otherwise would be non-compensable under the FLSA – are compensable because they occur during the continuous workday.[46]

---

[36] *Id.* (citing *U.S. DOJ, Fed. BOP, Fed. Prisons Camp, Bryan, Tex.*, 67 FLRA 236, 238 (2014) (*Bryan*)).
[37] 135 S. Ct. 513 (2014).
[38] *Lexington*, 68 FLRA at 936 (quoting *Integrity Staffing*, 135 S. Ct. at 517) (internal quotation marks omitted).
[39] *Id.* (citing *Bonilla v. Baker Concrete Constr., Inc.*, 487 F.3d 1340, 1344 (11th Cir. 2007)).
[40] *Id.* (quoting *Integrity Staffing*, 135 S. Ct. at 519) (internal quotation marks omitted).
[41] *Id.* (quoting *Integrity Staffing*, 135 S. Ct. at 519) (internal quotation marks omitted).
[42] *Id.* (citing *Integrity Staffing*, 135 S. Ct. at 519).
[43] *Id.* (quoting *Integrity Staffing*, 135 S. Ct. at 515) (internal quotation marks omitted).
[44] *Id.* at 936-37 (quoting *Integrity Staffing*, 135 S. Ct. at 518) (internal quotation marks omitted).
[45] *Id.* at 937.
[46] *Id* (citing *AFGE, Local 3652*, 68 FLRA 394, 399 (2015); *Allenwood*, 65 FLRA at 999).

1. We remand the awards for further findings regarding security screening.

The Agency argues that the awards are contrary to the Portal-to-Portal Act because undergoing security screening is not integral and indispensable to the grievants' principal activities.[47] In its opposition, the Union argues that, in determining that undergoing security screening is integral and indispensable, the Arbitrator made a factual finding to which the Authority should defer.[48] But, as noted above,[49] the characterization of an activity as integral and indispensable is a legal conclusion, rather than a factual finding.[50] Accordingly, the Arbitrator's conclusion that undergoing security screenings is integral and indispensable is not entitled to deference.

The Arbitrator referred to security screenings both as a "principal activity" and as "an integral and indispensable activity."[51] But as noted above,[52] under federal-sector regulations and case law, these terms apply to different classes of activity: Principal activities are the duties that an employee is "employed to perform," and are always compensable, whereas activities that are "closely related" and "indispensable to" the performance of principal activities are "preparatory" or "concluding" activities that are only compensable if they are performed for more than ten minutes per workday.[53] Further, the Arbitrator found that undergoing security screenings was compensable because (1) the Agency required the screening and (2) the screening contributed to the security of the institution.[54] But, as discussed above, *Integrity Staffing* rejected similar reasoning.[55] Further, the Arbitrator did not conduct the inquiry that *Integrity Staffing* now requires.

Specifically, the Arbitrator did not assess whether security screening in the particular circumstances of the grievants – correctional officers in a prison, whose principal responsibility is the security of the Agency's facility – is "an intrinsic element of" the principal activities that the grievants are employed to perform "and one with which the [grievants] cannot dispense if [they are] to perform [their] principal activities."[56] And the Arbitrator did not make sufficient factual findings for us to assess whether security screening in the circumstances of this case meets that standard. Where the Authority is unable to determine whether an arbitration award is consistent with applicable legal principles, the Authority remands the award for further findings.[57] As we are unable to determine whether the awards of overtime pay for security screening are

---

[47] Exceptions at 6-9.
[48] Opp'n at 6.
[49] *See supra*, section IV.B.
[50] *Lexington*, 68 FLRA at 936 (citing *Bryan*, 67 FLRA at 238).
[51] Merits Award at 66.
[52] *See supra*, section IV.B.
[53] *E.g.*, *Lexington*, 68 FLRA at 936; 5 C.F.R. § 551.412(a)(1).
[54] Merits Award at 66.
[55] *Lexington*, 68 FLRA at 936 (citing *Integrity Staffing*, 135 S. Ct. at 519).
[56] *Id.* at 937 (alterations in original) (quoting *Integrity Staffing*, 135 S. Ct. at 517) (internal quotation marks omitted).
[57] *Id.* (citing *Allenwood*, 65 FLRA at 1001).

contrary to law, we remand that issue to the parties for resubmission to the Arbitrator, absent settlement, for further findings.[58]

2. The award of overtime for donning duty belts is potentially contrary to law.

The Agency also contends that the Arbitrator's award of overtime for time spent donning duty belts is contrary to law.[59] The Arbitrator found that, after passing through security screening, most grievants – namely, those who did not work in the control center – donned their duty belts.[60] The Arbitrator determined that donning duty belts was compensable because the use of duty belts was a past practice, but also found that Agency did not require the grievants to wear duty belts, or require that employees who chose to wear duty belts don them immediately after they undergo screening.[61]

As discussed above, we are unable to determine whether the awards of compensation for security screening are contrary to law.[62] Because it is unclear whether security screening is compensable, it also is unclear whether that activity begins the compensable, continuous workday. If, on remand, the Arbitrator applies *Integrity Staffing* and finds that security screening is compensable, then donning duty belts would be compensable as part of the continuous workday. But if the Arbitrator determines that security screening is not compensable, then donning duty belts would not be compensable under the *Integrity Staffing* standard as the Agency does not require the grievants to use duty belts at all, let alone that they don them immediately after they undergo screening.[63]

Accordingly, the Arbitrator's finding that donning duty belts is compensable (other than as part of the continuous workday) is contrary to law. The Agency, does not, however, challenge the Arbitrator's conclusion that the travel time that follows donning the duty belts is an integral and indispensable preparatory activity.[64] Thus, if the Arbitrator finds, on remand, that undergoing screening is not compensable, he should reduce the overtime awards of employees by the amount of time they spend undergoing security screening and donning their duty belts.

The Arbitrator should also assess whether, once reduced by the amount of time spent undergoing security screenings and donning duty belts, the amount of time spent engaging in the pre- and post-shift activities that follow is substantial enough to be compensable.

---

[58] *See id.*
[59] Exceptions at 13-14.
[60] Merits Award at 67.
[61] *Id.*
[62] *See supra*, section IV.B.1.
[63] *See Integrity Staffing*, 135 S. Ct. at 518-19. *Cf. Lexington*, 68 FLRA at 937 (in remanding issue of compensability of donning duty belts and chains, Authority stated that arbitrator should "assess whether the [a]gency required the grievants to don their duty belts and chains immediately after undergoing screening, such that doing so at that particular time was compensable").
[64] *See* Merits Award at 71.

3. The award of overtime for flipping accountability chits is contrary to law, in part, and potentially contrary to law, in part.

The Agency argues that the Arbitrator's award of overtime for flipping accountability chits is contrary to law.[65] In *U.S. DOJ, Federal BOP, U.S. Penitentiary, Terre Haute, Indiana* (*Terre Haute*),[66] the Authority has held that "moving a marker on the accountability board is not compensable" because it "is analogous to 'checking in' with the Agency, and the legislative history of [the Portal-to-Portal Act] supports a conclusion that this activity is not compensable."[67]

Here, the Arbitrator distinguished the Authority's decision in *Terre Haute* based on his finding than an employee "does not 'check in' when he or she moves a chit on the accountability board; that happens when the officer walks through the front door. By moving a chit with his name on it, an officer becomes 'accountable' and on-duty."[68] But, regardless of whether the employees actually "check in" when they move their accountability chits, notifying one's employer that one is accountable and on-duty is *"analogous to* 'checking in,'" and therefore non-compensable.[69] Thus, the Arbitrator's conclusion that flipping an accountability chit is an integral and indispensable preparatory or concluding activity is contrary to Authority precedent. But flipping an accountability chit is compensable when it occurs during the continuous workday.[70]

As noted above, the Agency does not challenge the Arbitrator's conclusion that the travel that occurs after employees undergo security screenings and don their duty belts is an integral and indispensable preparatory activity.[71] Thus, if the amount of time that employees spend on preparatory and concluding activities is significant enough to be compensable, then flipping an accountability chit at the beginning of the workday is part of the compensable, continuous workday.

But the Arbitrator also awarded post-shift overtime to some employees for flipping their accountability chits at the end of the day even though he did not find that those employees engaged in any compensable activities after flipping their accountability chits.[72] Accordingly, these overtime awards are contrary to law, and we set them aside. The Agency, does not, however, challenge the Arbitrator's conclusion that the travel time that immediately precedes flipping the accountability chits is an integral and indispensable concluding activity.[73] Thus, on remand the Arbitrator should reduce the overtime awards of employees by the amount of time the employees spend moving the

---

[65] Exceptions at 9-13.
[66] 58 FLRA 327 (2003).
[67] *Id.* at 330.
[68] Merits Award at 68.
[69] *Terre Haute*, 58 FLRA at 330 (emphasis added).
[70] *See Lexington*, 68 FLRA at 939.
[71] *See supra*, Section IV.B.2. (citing Merits Award at 71).
[72] *E.g.*, Merits Award at 39 (awarding overtime to employees whose last activities are flipping accountability chit and taking out "hot trash," the latter of which the Arbitrator found non-compensable (*see id.* at 62-63)).
[73] *See id.* at 71.

chit. The Arbitrator should also assess whether, after reducing the overtime awards to discount the time spent flipping accountability chits, the time spent on the remaining, compensable pre- and post-shift activities is substantial enough to be compensable.

V. Decision

We dismiss the Agency's contrary-to-§ 551.412(a)(1) exception. We remand the awards, in part, for further findings regarding security screenings. We set aside the awards of compensation for flipping accountability chits and donning duty belts to the extent that these activities do not occur during the continuous workday.

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
BASTROP, TEXAS
(Agency)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 3828
(Union)

0-AR-4921-INT

STATEMENT OF SERVICE

I hereby certify that copies of the Order of the Federal Labor Relations Authority in the subject proceeding have this day been mailed to the following:

CERTIFIED MAIL – RETURN RECEIPT REQUIRED

Joanna Goodwin
Agency Representative
U.S. Department of Justice
Labor and Employment Law
145 N. Street, NE., Suite 9W.300
Washington, DC 20530

Megan Mechak
Union Representative
Woodley & McGillivary
1101 Vermont Ave. NW., Suite 1000
Washington, DC 20005

FIRST CLASS MAIL

T. Zane Reeves
Arbitrator
3024 Social Sciences Building
Albuquerque, NM 87131-1216

Dated: January 27, 2017
WASHINGTON, D.C.

Emily Labo for
Deborah Johnson
Labor Relations Specialist