

In the Matter of Arbitration

between

Bureau of Prisons  
FCI Seagoville, Texas

and

AFGE, Local 1637

FMCS 12-52469-3

Assignments  
Unit Team Staff

before

John B. Barnard  
Arbitrator

For the Company

Ms. Loretta A. Burke  
Agency Representative

For the Union

Mr. John Sullins  
Vice President, Local 1637

9:00 am September 27, 2012  
FCI Seagoville

## The Issue

The Agency Proposes,

Did Management violate Master Agreement Preamble, Article 1 (b), Article 3 (a and c), Article 4 (c), Article 6 (b 6), Article 7 (b), Article 18 (f, m) an 5 USC 7116a. when Unit Team Staff were moved to new job assignments and caseloads without negotiating with the Union on the procedures that would be used to accomplish the move? If so, what shall the remedy be?

The Union proposes,

The Union believes the Agency has violated the Preamble, Article 1 (b), Article 3 (a and c), Article 4 (c), Article 6 (b 6), Article 7 (b), Article 18 (f and m), and USC 7116 (a). We will center our closing argument as we did at hearing to the violation of 5 USC 7116 (a) and Article 18 (f) of the Master Agreement.

## Authority

### Master Agreement

Preamble The Federal Bureau of prison acknowledges that the participation of its employees in providing input into the development of personnel policies, practices, and Procedures which affect conditions of employment, and their assistance in the implementation... contributes to the effective operation of Bureau facilities. The Bureau of Prisons will develop and maintain constructive and cooperative relationship with its employees...

...The Federal Bureau of Prisons

...and the Council of Prison Locals, and the American Federation of Government Employees,

...do hereby agree to,

A) Focus on problems and ways to deal with them

B) Recognize the needs of the other party

C) Consider collective bargaining as an opportunity to improve the

relationship...

D) Recognize that the employees are the most valuable resource of the Agency...

#### Article 1 Recognition

Section (b) The Employer recognizes the Union as the exclusive bargaining agent...of all the employees in the unit...

#### 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.

Section (c) The Union and Agency representatives, who notified by the other party, will meet and negotiate on any and all policies, practices and procedures which impact conditions of employment...prior to implementation of any policies, practices and/or procedures.

#### Article 4 Relationship of this agreement to bureau Policies, regulations and practices

Section (c) The Employer will provide expedited notification of the changes to be implemented in working conditions at the local level. Such changes will be negotiated in accordance with the provisions of this Agreement.

#### Article 6 Rights of the employee

Section (b) (6) To have all provisions of this Collective Bargaining Agreement adhered to.

#### Article 7 Rights of the Union

Section 1 (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...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.

## Article 18 Hours of Work

Section (f) Roster committees outside the Correctional Services department will be formed to develop a roster unless mutually waived by the department head and the Union. It is recommended that the procedures in Section d be utilized. These rosters will be posted three (3) weeks prior to implementation. Copies will be given to the Local President or designee at the time of posting.

Section (d) Quarterly rosters for Correctional Services employees will be prepared in accordance with the below listed procedures.

(Referred to as applicable in discussion/decision)

Section (m) Employees may request to exchange work assignments, days off, and/or shift hours with one another. Supervisory decisions on such requests will take into account such factors as security and staffing requirements and will ensure that no overtime cost will be incurred.

### 5 USC 7116 (A)

- a) For the purpose of this chapter, it shall be an unfair Labor practice for an agency.
  - 1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this Chapter.
  - 5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter.
  - 8) to otherwise fail or refuse to comply with any provision of this chapter.

## Background

The Local filed a grievance concerning the matter in this arbitration. Such grievance was dated November 9, 2011. As such grievance is quite lengthy, the salient notes and alleged management violations are noted,

On September 15, 2011, Jeff Butter, Executive Assistant and LMR Chairperson notified Kim Nelly, President of Local 1637...that due to the results of the recent Unit Team Program Review, the Agency was going to rotate the alignment of the Unit Team Members... On October 24, 2011, in the LMR meeting, the Union notified management that it was invoking its right to negotiate the procedures for this move. Associate Warden and new LMR Chairperson B. Von Blanckensee advised the Union that there had been no decision made at his time to move Unit Team Members to new job assignments. A date of November 9, 2011 was agreed upon by the parties to negotiate the possible moves. On November 1, 2011, von Blanckensee sent a memo to the Union and Unit Team bargaining unit members detailing their new work assignments effective December 1, 2011. The parties met on November 9, 2011 as scheduled and the Union presented management with a proposed MOU...and voiced several concerns regarding the effect of the move...The Union made it completely clear...that it was not waiving its right to form a roster committee under Article 18...Management stated that they saw no valid Impact and Implementation issues and that they were moving forward with their decision to move the employees. The Union also pointed several (CBA) violations in which we had the right to negotiate and management stated they felt it did not apply. Management gave the Union no counter proposals nor did it address any of the concerns the Union had on the impact of the change on the affected employees. Union president Kim Neely has attempted to informally resolve this issue on multiple occasions with Warden M. Cruz which has been unsuccessful...

As remedy, the Union seeks,

1. Cease and Desist moving Unit Team members until proper negotiations have occurred.
2. Form a Roster Committee as required by Article 18 of the Master Agreement for the purpose of rotating Unit Team Employees.
3. Post any decision on this matter rendered by a third party in each Housing Unit where it is accessible to Unit Team Members for a period of sixty days.
4. Anything else a third party deems appropriate or necessary.

Such matter is now properly before the arbitrator.

Union Position

As reviewed

Agency Position

As reviewed

Discussion and Conclusions

The Union refers to the memo sent out by Blankensee on November 1, 2011. Such memo simply states,

Subject Unit Management Staff Moves

Effective with the quarter change on December 18, 2011, Unit Management Staff are assigned as follows,

(Under the headings of camp, Jail, Unit 5/53, Unit 7/54 and Unit 6/10/12, there were employees listed )

To that, Blankensee testified,

A. When I sent this out on November 1, it was my intention to let you know that we were making the moves and this is where Management was going to move these people, and I was letting you know for our November 9 meeting. I needed to know what your impact and implementation issues were regarding the decision to move these staff to these positions.  
(t 54)

The Union maintains that the fact the memo was sent out a week before negotiations took place shows management's intent, that they had no intentions of negotiating this move with the Union. They had already decided to move the employees and the method in which it would be done. Further, this is also supported by Warden Cruz's testimony when she stated that management was there to discuss I & I on November 9, 2011, not negotiate. Cruz,

...when the Unit Team moves were first decided upon, the first announced in May, June, July, August, September and then subsequently, you know, the Union was notified in September and then in October sat down for I & Is and all of that...  
(t 222)

The Union mentions that Blankensee had agreed to meet with and negotiate with the Union on November 9<sup>th</sup> and on November 10, 2011, if needed, over the reassignment of Unit Team Staff in the October 19, 2011

LMR meeting. Von Blankensee stated that the intent of her November 1 Memo was to inform the Union and Staff of the employees new assignments so I 2 I issues could be discussed at the meeting on November 9, 2011. Also, when Blankensee was asked if there was anything the Union could have said or done to convince Management to form a roster committee, she replied, "not off the top of my head." (t 74).

I note an e-mail sent from Union President Kim Neely to Blankensee, dated October 19, 2011, the subject LMR Agenda. Such e-mail states in part,

Unit Team. Discuss the movement of unit team and discuss a date for negotiations on the matter.

Then, on November 7, 2011, Neely sent a memo to Blankensee, stating that the Union properly notified the Agency of its intent to bargain over the Unit Team moves. Such memo also points out the various CBA Articles and USC statutes that are applicable. Neely ends the memo,

...Therefore, AFGE Local 1637 is ordering the Agency to cease and desist and remain status quo until these Unit team moves have been properly negotiated in accordance with 5 USC and the Master Agreement.

Blankensee testified as to whether or not the Union waived its right to form a roster committee under the Master Agreement during the November 9<sup>th</sup> meeting,



Q. During this meeting did President Neely inform you that the Union was not waiving its right to form a roster committee under Article 18?

A. I don't recall those exact words.  
(t 61)

Also, the Union points out that Blankensee AW Butler, and Warden Cruz all agreed that a roster committee is formed for Corrective Services, and the Officers are allowed to bid for area of responsibility, days off and shift, based on seniority. (p 67, 128 and 219). Cruz also agreed that this does not interfere with Management's right to assign work (p 219).

In turn, the Agency points out that, as noted in the hearing, each Unit Team conducts a quarterly meeting, which the Union is invited to, to determine the quarterly roster for that Unit. The completed roster is then sent to the Union for their signature, prior to forwarding the roster to the Associate Warden for signature. This procedure was in place prior to the current Associate Warden's arrival to the Institution or the current Union President's. there is no violation of Article 18 f or m.

Further, Article 18 does not state that the Union is provided an opportunity to sign off on Unit Team rosters, nor does it state that the Associate Warden would sign off on a Unit Team roster, Procedures for each specific Unit's roster do exist and have existed. As such, it is not possible to claim that Article 18f is violated as there is a roster procedure

in place for each unit which has been acknowledged by the Union.

According to Ms. Price, it has been in place for 10 years, and the Union sometimes attends the meetings (t 170).

Also, 18 m was not violated. It was shown that staff within each unit can and have exchanged days off with each other with supervisor approval. The Union did not provide any examples of staff requesting to exchange outside of their respective Unit Team, and only provided hypothetical examples which would require specific information to determine whether it could be approved or not.

For the sake of reference here, Articles 3 and 18, as applicable, state,

### Article 3 Governing Regulations

Section 3 (c) The Union and Agency representatives, when notified by the other party, will meet and negotiate on any and all policies, practices, and procedures which impact conditions of employment, where required by 5 USC 7106, 7114, and 7117, and other applicable government wide laws and regulations, prior to implementation of any policies, practices, and/or procedures.

### Article 18 Hours of Work

Section f Roster committees outside the Correctional Services department will be formed to develop a roster unless mutually waived by the department head and the Union. It is recommended that the procedures in Section d be utilized. These rosters will be posted three (3) weeks prior to implementation. Copies will be given to the local President or designee at the time of posting.

As to Section d, a review reflects a number of applicable procedures

such as,

Section d Quarterly rosters for Correctional Service employees will be prepared in accordance with the below listed procedures,

1. A roster committee will be formed which will consist of representative(s) of Management and the Union. The Union will be entitled to two (2) representatives. The Union doesn't care how many managers are attending.
2. Seven weeks prior to the upcoming quarter, the Employer will ensure that a blank roster for the upcoming quarter will be posted...

(to save time and space, the remainder of (d), although applicable, will not be referred to here)

Finally, 5 USC 7116 (A) states in part,

- a) For the purpose of this chapter, it shall be an unfair labor practice for an agency.
- 5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter.

In sum, arguably this entire case could have been avoided had the Agency followed the dictates of Articles 3 and 18 of the Master Agreement, and that of 5 USC 7116 (A).

It would have been a simple matter for the Agency to negotiate with the Local over the Articles as contained in the Master Agreement. These articles are in the contract, and have been agreed upon by both parties in the contract.

Whether or not these specific mandates have been exercised in the past

to the extent contained in the Agreement is arguably moot. The testimony and evidence offered at hearing leads to the fact that the Union requested to negotiate such matter. Union President Neely sent an e-mail to Blankensee dated October 19, 2011, requesting negotiations regarding a date to discuss the movement of unit team. The Agency's response to that from the Agency was Blankensee's memo for unit staff moves dated November 1, 2011, when she assigned Unit Staff members to the various dates, ie, camp, jail, unit 5/53, unit 7/54, and Unit 6/10/12. Such Memo was sent out a week before any negotiations took place, and according to the Union, that shows management's intent, as they had no intentions of negotiating this move with the Union. As to the subsequent meeting of November 9, Neely informed management that she was not waiving the Union's rights on this matter.

According to this was the testimony of Blankensee,

Q. ...is there anything the Union could have said or done in the meetings on November 9 to convince management to hold a roster committee for Unit Team Members?

A. I don't know. I only know based on that meeting what we talked about. I'd have to look at meeting notes and things. I know we talked.

Q. Nothing off the top of your head?

A. Nothing off the top of my head.

(t 74)

In testimony, Warden Cruz also added,

Q. Does the formation of that roster committee and bidding process for Correctional Services affect Management's right to assign and direct work within Correctional Services?

A. No.  
(t 219)

The record, as established by the offered testimony and evidence submitted, must lead to the conclusion that the Agency violated the Master Agreement, Article 18 and failing to negotiate in good faith.

#### Decision

The grievance is sustained.

The Agency is ordered to form a roster committee for Unit Team, and to negotiate the procedures for this committee with the Union, or at the Agency's election, utilize the procedures in Article 18, Section (d) as recommended.

January 15, 2013  
Dallas, Texas

  
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John B. Barnard, Arbitrator