

ARBITRATION OFFICE OF WALTER KAWECKI, JR. ESQ.
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IN THE MATTER OF THE ARBITRATION BETWEEN:

Appearances: **Arbitrator:** **Walter Kawecki, Jr., Esq.**
756 Barton Way
Benicia, CA 94510

Agency: **William E. Branch**
Agency Representative
U.S. Department of Justice/Bureau of Prisons
230 N. First Avenue, Suite 201
Phoenix, AZ 85003

Union: Randall S. Boeger
Union Representative
AFGE Local 3979
P.O. Box 71
Sheridan Oregon 97376

I. BACKGROUND

The arbitration hearing was held on May 20, 2008 at the Federal Correctional Institution at 27072 Ballston Road, Sheridan Oregon in the Personnel Conference Training Room.

This hearing arose pursuant to the January 9, 1998 through March 8, 2001 Master Agreement between Federal Bureau of Prisons and Council of Prison Locals American Federation of Government Employees. The parties stipulated the Master Agreement was in affect during the grievance filed on January 16, 2008 by Michael T. Ellis (Union Vice President) on behalf of Paul Antonson, Case Manager in Unit 2 at the Sheridan Federal Prison. The parties also stipulated the Master Agreement remains in affect. (Paul Antonson will subsequently be referred to as the Grievant or Mr. Antonson) Mr. Antonson claims he was unable to schedule one week of vacation the week of March 23, 2008 and December 21, 2008 in violation of the Master Agreement. The parties stipulated that a timely grievance was filed and there were no procedural issues regarding this arbitration case.

In accordance with the Master Agreement, Walter Kawecki, Jr. was selected by the Agency and the Union to serve as Arbitrator from a list provided by the Federal Mediation and Conciliation Service.

During the hearings the parties were given an opportunity to state their positions, examine and cross-examine witnesses, present documentary evidence and argue their case. The parties stipulated that the arbitration case was properly presented before the Arbitrator, and that the Arbitrator has jurisdiction and the Arbitrator will retain jurisdiction over this matter as it relates to the remedy.

The parties agreed that they would complete closing briefs which would be submitted via email on May 30, 2008 to the Arbitrator. The parties also agreed the Arbitrator would close the hearing upon receipt of the closing briefs and have 30 days

from receipt of the closing briefs to complete his decision and award. The closing briefs were timely filed and received on May 30, 2008.

II. STATEMENT OF THE ISSUE

The parties were unable to agree on a joint submission of the issue for arbitration. In accordance with Article 32 of the Master Agreement each party submitted a separate submission and agreed the arbitrator shall determine the issue to be heard.

The arbitrator has determined the following issue in this case:

“Did the Agency violate the Master Agreement when they scheduled the 2008 Annual Leave Schedule in Unit 1 and/or Unit 2? If so what shall be the remedy?”

III. STATEMENT OF THE FACTS

The following statement of the facts is supported by exhibits entered into evidence and the testimony of witnesses who testified at the arbitration hearing:

At the Sheridan Federal Prison employees are assigned to different units. Mr. Tim Boldt testified that he is the manager of Unit 1 and 2. This was supported by documents admitted into evidence.

Mr. Tim Boldt testified that since 2005 the annual leave procedures for Unit 2 were as follows:

1. In October/November of the year prior to scheduling Annual Leave, the roster is routed to the most senior bargaining unit employee to select up to five weeks of annual leave for the up coming year. The roster is then routed to the next most senior employee, and so on , until it reaches the least senior employee.
2. There can be up to two Unit 2 employees on leave during any one week period with the following exceptions:
 - a. Both case managers cannot be on annual leave the same week.
 - b. Both counselors cannot be on annual leave the same week.

- c. Both the case manager and counselor from one side, Unit 2A or 2B cannot be on annual leave the same week so as not to vacate the Unit.

The Agency admitted into evidence Agency exhibit 1 which shows that in Unit 2A Teresa Harper is the Case Manager and Jack Whelchel is the Correctional Counselor. In Unit 2B Paul Antonson is the Case Manager and Chris Williams is the Correctional Counselor.

Mr. Boldt testified that following the above leave exceptions both case managers Teresa Harper and Paul Antonson could not be on leave at the same time. Also following the exceptions both counselors Jack Whelchel and Chris Williams could not be on leave at the same time. Additionally, both Case Managers or both Counselors from Unit 2A or 2B could not be on annual leave at the same time. Therefore, Teresa Harper and Jack Whelchel could not be on scheduled annual leave at the same time, and Paul Antonson and Chris Williams could not be on scheduled annual leave at the same time

Mr. Boldt testified that since 2005 this procedure had been in place and the Agency, the Union Representative and the employees all signed off on the Annual Leave Scheduling rosters. Mr. Boldt testified that between 2002 through 2004 he only had one employee on vacation at a time.

Mr. Boldt also testified that the reason he had the above exceptions for annual leave scheduling was so the unit team's mission could be accomplished and these procedures had worked well in Unit 2. He also testified that under the Master Agreement he thought he had the discretion to set such exceptions on annual leave usage in order to meet mission requirements.

Mr. Michael Ellis, Union Vice President and Danny Payne, prior Union President testified they were not aware of the annual leave exceptions that Mr. Boldt used and they both thought that seniority had to be followed per the Master Agreement without using the exceptions applied by Mr. Boldt. To support their opinion they cited provisions in the Master Agreement and Annual Leave Scheduling documents that other Units at the

Sheridan Prison used only seniority without the exceptions applied by Mr. Boldt.

The Grievant, Paul Antonson testified that he was aware of the annual leave exception policy that Mr. Boldt used before he asked to be assigned to work with Chris Williams. He knew this would affect his scheduling of annual leave because Mr. Williams had more seniority. Mr. Antonson testified he enjoyed working with Chris Williams and that is why he asked to be assigned with him. Mr. Boldt testified that he approved Mr. Antonson's reassignment request because he was a very good Case Manager and Unit 2B needed an experienced Case Manager to clean up the records.

The Grievance occurred because on or about October 29, 2007 Mr. Boldt distributed the 2008 Annual Leave Schedule (Joint exhibit 5) to employees in Unit 2. The first page of this document lists weeks beginning January 6 – January 12 2008 and ending December 28 – January 3 2009 for the purpose of employees selecting desired weeks for annual leave. The first page also provides the names and seniority standing of employees in Unit 2. The seniority date for employees in Unit 2, are ranked in order from the most senior to the least senior as follows: Chris Williams - May 1989; Paul Antonson - September 1989; Jack Whelchel- October 1989; Teresa Harper- June 1991 and Tony Hepner – October 1992.

Page two of this document asks employees to write their name on lines for full weeks they are requesting and sign and date page 2 after their typed name. Mr. Boldt testified that he had the most senior employee, Chris Williams select his chosen annual leave dates by phone since he was on extended sick leave. The leave schedule was then passed to the next senior employee, the Grievant. The instructions also said when the last person had finished selecting their vacation dates please return the form to the Unit Manager (Mr. Boldt). Tony Hepner who was the least senior employee signed the form on November 27, 2007. Chris Williams returned to duty from sick leave and he signed the form on November 28, 2007. It was then returned to Mr. Boldt.

Tim Boldt signed the form as the Unit 2 Manager. Mr. Boldt then met with Michael Ellis and asked him to sign the form as the AFGE Representative. Mr. Ellis testified he asked Mr. Boldt if the annual leave selections were correct, and Mr. Boldt said they followed seniority required by the Master Agreement. Mr. Ellis then signed and dated the form on December 7, 2007. The form was subsequently signed by Allan D. Booth, Associate Warden.

The complaint that Paul Antonson voiced about the 2008 Annual Leave Schedule was that Mr. Bolt was not following his own exception policy on annual leave scheduling for some Unit 2 employees. Specifically, Teresa Harper a Case Manager was approved for annual leave during the week of March 30 - April 5 for two days when Paul Antonson a Case Manager was already on the leave schedule. Also Teresa Harper was approved for annual leave during the week of May 25- May 31 for one day when Jack Whelchel her Unit 2A partner was scheduled for leave. Additionally, Teresa Harper was approved for leave the week of August 31 – September 6, a week her Unit 2A partner was scheduled for leave. Mr. Antonson stated to Mr. Boldt that since he was not following the exception leave policy and since he was the second senior person in Unit 2 he wanted annual leave the week of March 23 – 29 and December 21-27. The Grievant testified he wanted these two weeks because his wife was a teacher and she had this time off. The Grievant also testified he had not previously requested these dates because he was following the exception leave policy of Mr. Boldt but if Mr. Boldt was not following his exception policy with other employees he did not think it was fair.

Mr. Boldt testified that he did not make changes to the 2008 Annual Leave Schedule because it was his error and not the employees. Additionally, the Agency Representative argued that since Jack Whelchel had left Unit 2 in February 2008 the issued was moot.

IV. DISCUSSION AND DECISION

The essential facts in this case are not in dispute. Both the Agency and the Union acknowledge that Tim Boldt, the Manager of Unit 1 and 2 approves scheduled annual leave for up to two employees per week in Unit 2 following employee seniority with the following exceptions: 1. both case managers cannot be on annual leave the same week. 2. Both counselors cannot be on annual leave the same week and 3. Both the case manager and counselor from either Unit 2A or Unit 2B cannot be on annual leave the same week so as not to vacate the unit.

The Union argues Mr. Boldt's policy is a clear violation of the Master Agreement because Mr. Boldt is setting up his own personal leave policy which is in conflict with the Master Agreement. The Union argues that Mr. Boldt does not have the authority to override the Master Agreement's annual leave procedures which are required to use seniority.. The Agency argues that Mr. Boldt's leave exception policy has been occurring since at least 2005. Further the Agency argues that the Union has been signing off on the Annual Leave Schedule Rosters; therefore, the Union knew or should have known of Mr. Boldt's exception leave policy. Based on the foregoing the Agency argues that based on past precedence Mr. Boldt's exception leave policy should remain in affect through this year. It would be disruptive to change the leave schedule at this late date and unfair to other employees. The Agency Representative suggests the Union and the Agency can sit down and negotiate the issue for next year.

The 2008 Annual Leave Schedule roster (Joint exhibit 5) that Mr. Boldt distributed to his employees states the "Total year annual leave scheduling is completed by procedures outlined in the Master Agreement –based on seniority." The 2008 Annual Leave Schedule roster for Unit 2 does not mention any of the exceptions for annual leave approval that are listed above. The Arbitrator does not understand why Mr. Boldt did not

communicate the exceptions he applied to annual leave approval in the 2008 on the Annual Leave Schedule roster that he distributed to his employees, and that was signed by the Union. In the Arbitrator's opinion Mr. Boldt's failure to include this leave exception policy in the document provided to the employees and the Union fails to provide adequate notice to establish a past practice, given the Union testified they were not aware of Mr. Boldt exception leave policy until they filed the grievance.

A review of the Master Agreement in *Article 19 section e* entitled Annual Leave: states the following: *"In the event of a conflict between unit members as to the choice of vacation periods, individual seniority for each group of employees will be applied. Seniority in the Federal Bureau of Prisons is defined as total length of service in the Federal Bureau of Prisons"*. This contract provision appears to conflict with the above exceptions developed by Mr. Boldt. Additionally, *Article 6 Section b 6* states that all provisions of the Collective Bargaining Agreement are adhered to. However, Mr. Boldt testified that he thought he had discretion in accordance with the Master Agreement to schedule annual leave to assure mission requirements and the safety of the organization is met by applying the above exceptions.

The Master Agreement in *Article 19 section a* states *"Annual leave will be scheduled as requested by employees in accordance with the provisions of this article insofar as it does not decrease the safety, security, or mission accomplishments of the organization."* In the Arbitrator's opinion this contract provision requires the Agency to schedule annual leave according to *Article 19 section e*, which is by individual seniority unless the Agency can show it would decrease the safety, security or mission accomplishments of the organization. The question is whether Mr. Bolt's exception leave policy is necessary to meet safety, security or mission accomplishments.

To answer this question the Arbitrator primarily looks at the actions of Mr. Boldt as it relates to the 2008 Annual Leave Schedule for Unit 2. Mr. Boldt testified that the leave exception policy he established was in affect since 2005. Therefore, it is reasonable

to conclude that the employees in Unit 2 were aware of the policy. However, Teresa Harper did not follow the leave exception policy for the weeks of March 30-April 5, May 25- May 31 and August 31-September 6th. If she followed the policy she would not have requested leave for any of these weeks. Mr. Boldt testified he did not catch the error so it was his mistake and he would allow the employee to remain on the leave schedule even though it violated the leave exception policy.

In the Arbitrator's opinion it was both the error of the employee and the error of Mr. Boldt, given that the policy had been used since 2005. Mr. Boldt must have been confident the all the Unit 2 employees were aware of the leave exception policy because he did not place it on the 2008 Annual leave Schedule even though he expected his employees to follow it. The Grievant testified he was aware of the leave exception policy and that is why he did not put in for the two weeks he really wanted in March and at Christmas.

Article 6 Section b 2 also requires the Agency to treat employees fairly and equitably in all aspects of personnel management. It is understandable why the Grievant felt he was not being treated fairly and equitably when he had followed Mr. Boldt leave exception policy to his detriment but Mr. Boldt was not requiring another employee to follow it.

The larger concern is that if in fact the exception leave policy was necessary to meet safety, security or mission accomplishments, why did Mr. Boldt not immediately cancel Ms. Harper's annual leave for the three weeks in question?

The Agency Representative argues that the issue of Teresa Harper's requested annual leave conflicting with Jack Whelchel in violation of the exception leave policy is moot because Mr. Whelchel left the Unit in February. However, at the time the leave was requested by Ms. Harper and approved by Mr. Boldt, Mr. Whelchel was still working in Unit 2. Even at the time the grievance was filed on January 16, 2008 Mr. Whelchel was still working in Unit 2. Therefore, it is not moot.

The Union raised the point that managers of other Units at the Sheridan Federal Prison followed the seniority provisions in the Master Agreement. The other managers did not have leave exception policies like Mr. Boldt. Yet the other Units are able to apparently meet safety, security and mission requirements. The Arbitrator recognizes the fact that the grievance and arbitration case is limited to Unit 1 and 2. However, how the other Units are able to function without leave exception policies is relevant to the question of the need for such a policy in Unit 1 and 2

. The Arbitrator does take notice that *Article 19 Section 1 par. 2* of the Master Agreement states that the Employer will determine the maximum number of employees that may be on scheduled annual leave during each one week period and leave will be curtailed because of training and other causes such as military leave. In the opinion of the Arbitrator this contract provision in the Master Agreement gives Agency management control to meeting safety, security and mission accomplishments.

It is the opinion of the Arbitrator that the leave exception policy of Mr. Boldt, manager for Units 1 and 2 do not follow the Master Agreement.

Based on the forgoing the Agency violated the Master Agreement when they scheduled the 2008 Annual Leave Schedule in Unit 2. Therefore, the grievance is sustained.

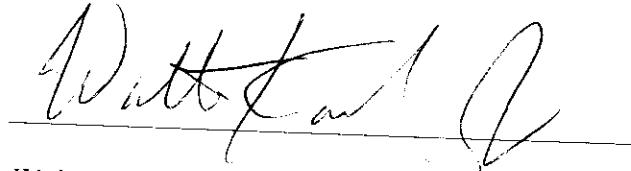
V. AWARD

1. The 2008 Annual Leave Schedule for Unit 2 will be rebid following Article 19 Section 1 of the Master Agreement using a leave committee of at least one supervisor and at least one Union representative. This will occur within two weeks from the date of this award. Mr. Boldt's leave exceptions will not be used since they violate the Master Agreement. The date can be extended if mutually agreed to in writing by both the Union and Management.

2. If Mr. Boldt had employees in Unit 1 under his management follow the leave exception policy rules stated above, Unit 1 will also rebid the 2008 Annual Leave Schedule following Article 19 Section 1 of the Master Agreement using a leave committee of at least one supervisor and at least one Union representative. This will occur within two weeks from the date of this award. Mr. Boldt's leave exceptions will not be used since they violate the Master Agreement. The date can be extended if mutually agreed to in writing by both the Union and Management.
3. The 2008 Annual Leave Schedule for which Mr. Boldt approved 2 employees off per week will apply to the rebid.
4. The Arbitrator will retain jurisdiction over the implementation of the above award.

June 12, 2008

Dated



Walter Kawecki, Jr. Arbitrator