

FEDERAL MEDIATION AND CONCILIATION SERVICE  
WASHINGTON, D.C.

IN THE MATTER OF ARBITRATION

between

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 148, AFL-CIO,  
UNION

and

FEDERAL BUREAU OF PRISONS  
U.S. PENITENTIARY  
LEWISBURG, PENNSYLVANIA,  
AGENCY

FMCS Case No. 07-55096

OPINION  
AND  
AWARD

Before: Prof. Robert T. Simmelkjaer, Esq.  
ARBITRATOR

APPEARANCES

FOR THE UNION

Richard L. Ramsay, Esq., Eichenbaum, Liles & Hester, P.A.  
Dan Bensinger, President, Local 148

FOR THE AGENCY

Elizabeth Kay Blackmon, Labor Relations Specialist  
Tammy A. Cressinger, Lead Employee Services Specialist

## BACKGROUND

Pursuant to the procedure for Arbitration contained in the Master Agreement between the Federal Bureau of Prisons (hereinafter "the Agency") and the Council of Prison Locals and the American Federation of Government Employees (hereinafter "the Union") covering the period March 9, 1998 to March 8, 2001 and extended sine die (Jt. Ex. #1), a hearing was held on March 5, 2008 at the Agency's offices in Lewisburg, Pennsylvania. The purpose of the hearing was to arbitrate the Union's grievance regarding the assignment of airlift overtime.

The Arbitrator derives his jurisdiction from Article 32, ARBITRATION.

At the hearing, the parties were given ample opportunity to present their respective cases, including testimonial and documentary evidence. The record consists of five (5) Joint Exhibits, eleven (11) Agency Exhibits, and sixteen (16) Union Exhibits. In addition, the parties submitted post-hearing briefs dated May 8, 2008 (Union) and May 9, 2008 (Agency). Subsequently, the Union submitted a reply brief dated May 19, 2008 and the Agency was granted an extension to submit its reply brief on June 13, 2008. The evidence so submitted as well as the arguments of the parties has been fully considered in the preparation of this award and its accompanying opinion.

ISSUES: (1) Was the grievance filed timely in accordance with Article 31, Section d of the Master Agreement, which requires that grievances be filed within forty (40) calendar days of the alleged grievable occurrence or forty (40) days from the date the party filing the grievance could reasonably be expected to have become aware of the occurrence?

- (2) Did the grievance statement comply with Article 31, Section f of the Master Agreement which requires, in Block 6 of the Formal Grievance Form, specificity of charge?
- (3) Did the Agency violate Article 18, Section P, Paragraph 1 of the Master Agreement by the manner in which it distributed airlift overtime?  
And, if so, what shall be the remedy?

### RELEVANT CONTRACT PROVISIONS

#### ARTICLE 31 – GRIEVANCE PROCEDURES

Section d. Grievances must be filed within forty (40) calendar days of the date of the alleged grievable occurrence. If needed, both parties will devote up to ten (10) days of the forty (40) to the informal resolution process. If a party becomes aware of an alleged grievable event more than forty (40) calendar days after its occurrence, the grievance must be filed within forty (40) calendar days from the date the party filing the grievance can reasonably be expected to have become aware of the occurrence. A grievance can be filed for violations within the life of this contract, however, where the statutes provide for a longer filing period, then the statutory period would control.

Section e. If a grievance is filed after the applicable deadline, the arbitrator will decide timeliness if raised as a threshold issue.

Section f. Formal grievances must be filed on Bureau of Prisons "Formal Grievance" forms and must be signed by the grievant or the Union. The local Union President is responsible for estimating the number of forms needed and informing the local HRM in a timely manner of this number. The HRM, through the Employer's forms ordering procedures, will ensure that sufficient numbers of forms are ordered and provided to the Union. Sufficient time must be allowed for the ordering and shipping of these forms.

#### 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, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
  - b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

## ARTICLE 18 – HOURS OF WORK

Section d. Quarterly rosters for Correctional Services 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 (7) weeks prior to the upcoming quarter, the Employer will ensure that a blank roster for the upcoming quarter will be posted in an area that is accessible to all correctional staff, for the purpose of giving those employees advance notice of assignments, days off, and shifts that are available for which they will be given the opportunity to submit their preference requests. Normally, there will be no changes to the blank roster after it is posted;
  - a. employees may submit preference requests for assignment, shift, and days off, or any combination thereof, up to the day before the roster committee meets. Those who do not submit a preference request will be considered to have no preference. Preference requests will be made on the Employee Preference Request form in Appendix B or in any other manner agreed to by the parties at the local level. The

Employer will ensure that sufficient amounts of forms are maintained to meet the needs of the employees;

- b. employee preference requests will be signed and dated by the employee and submitted to the Captain or designee. Requests that are illegible, incomplete, or incorrect will be returned to the employee. In order to facilitate Union representation on the roster committee, the employee is also encouraged to submit a copy of this request to the local Union President or designee.
  - c. the roster committee will consider preference requests in order of seniority and will make reasonable efforts to grant such requests. Reasonable efforts means that Management will not arbitrarily deny such requests. (Seniority is defined in Article 19).
- 3. The roster committee will meet and formulate the roster assignments no later than five (5) weeks prior to the effective date of the quarter change;
  - 4. the committee's roster will be posted and accessible to all Correctional Services employees no later than the Friday following the roster committee meeting;
  - 5. once the completed roster is posted, all Correctional Officers will have one (1) week to submit any complaints or concerns. Correctional Officers will submit their complaints or concerns in writing to the Captain or designee. The employee may also submit a copy to the local President or designee. No later than the following Wednesday, Management and the Union will meet to discuss the complaints or concerns received, and make any adjustments as needed;
  - 6. the roster will be forwarded to the Warden for final approval;
  - 7. the completed roster will be posted three (3) weeks prior to the effective date of the quarter change. Copies of the roster will be given to the local President or designee at the time of posting; and
  - 8. the Employer will make every reasonable effort, at the time of the quarter change, to ensure that no employee is required to work sixteen (16) consecutive hours against the employee's wishes.

Section e. Nothing in this article is intended to limit an employee from requesting and remaining on a preferred shift for up to one (1) year. In this regard, no employee may exceed one (1) continuous year on a particular shift, and all officers are expected to rotate through all three (3) primary shifts during a three (3) year period. This means, for example, that it is possible for an employee to work one (1) year on the day shift, followed by one (1) quarter on the morning shift, then a second year on the day shift, then two (2) quarters on the evening shift, and then a final quarter on the day shift, or any combination thereof.

Section o. Employees shall be given at least twenty-four (24) hours notice when it is necessary to make shift changes, except for employees assigned to the sick and annual leave roster [as specified in Section g(4).], or when the requirement for prior notice would cause the vacating of a post. For the purpose of this Agreement, a shift change means a change in the starting and quitting time of more than two (2) hours. Work assignments on the same shift may be changed without advance notice.

Section p. Specific procedures regarding overtime assignments may be negotiated locally.

1. when Management determines that it is necessary to pay overtime for positions/assignments normally filled by bargaining unit employees, qualified employees in the bargaining unit will receive first consideration for these overtime assignments, which will be distributed and rotated equitably among bargaining unit employees;
2. overtime records, including sign-up lists, offers made by the Employer for overtime, and overtime assignments, will be monitored by the Employer and the Union to determine the effectiveness of the overtime assignment system and ensure equitable distribution of overtime assignments to members of the unit. Records will be retained by the Employer for two (2) years from the date of said record.

Section q. The Employer retains the right to order a qualified bargaining unit employee to work overtime after making a reasonable effort to obtain a volunteer, in accordance with Section p. above.

### STATEMENT OF FACTS

- 1) The Federal Bureau of Prisons ("BOP") is an Agency within the U.S. Department of Justice ("DOJ") established to provide more progressive and humane care for Federal inmates, to professionalize the prison service and to ensure consistent and centralized administration of the eleven Federal prisons in operation at the time. Currently, the BOP consists of 114 facilities throughout the United States and Puerto Rico, as well as the Central Office (Washington, D.C.) and Regional offices.
- 2) The Lewisburg Prison serves as a hub where inmates throughout the northeastern part of the United States are taken and delivered through air transport to various prisons in the Eastern part of the United States. Inmates are taken from Lewisburg by bus about 75 miles to Harrisburg, Pennsylvania where they are flown to their place of final incarceration. Alternatively, Lewisburg buses are used to pick up prisoners at the Harrisburg Airport and deliver them to the Lewisburg Prison or various other prison facilities in the Eastern part of the United States. Additionally, there are bus runs that take inmates from the Harrisburg Airport to various prisons (more than one) and then back to Lewisburg.
- 3) Prior to January 2005, the Agency would staff the airlift by calling officers on a day off, on annual leave, or from off-shift to work overtime. All of the personnel involved in the airlift operation had to be "Bus Qualified" or "BPT Qualified."
- 4) In January 2005, the Agency changed the airlift staffing procedure. The Agency started taking personnel for airlift operations predominately from the day shift.
- 5) In addition, the "Visiting Room" was eliminated on Mondays – the day that almost all of the airlift operations occurred. Nevertheless, the Agency staffed the Visiting Room on Mondays and then took the qualified personnel available in the Visiting Room and assigned them to the airlift operation. If a Visiting Room employee was not BUS or BPT Qualified, that individual would be assigned to another post within the prison to replace a separate employee who was BUS or BPT Qualified. If additional staff was needed for the airlift operation, qualified employees would be taken from yet other assignments within the prison. On occasions when the afore-described process did not complete the staffing requirements, the

Agency would select other off-duty BPT or BUS Qualified personnel.

- 6) On January 25, 2007, Dan Bensinger, Local 148 President, sent a concern of issue to be formally resolved to the Federal Bureau of Prisons, Lewisburg, PA. The issue presented was the assignment of Union members to the "airlift." It stated that the overtime, which occurred due to the length of the operation, was "not distributed or rotated equitably. Management scheduled the airlifts to be worked by only a few employees and was not scheduled according to, or following the CBA" (Jt. Ex. #3).
- 7) On January 29, 2007, the Union filed a formal grievance, reiterating its previous position, noting "[t]his unwarranted personnel action resulted in the reduction of pay..." (Jt. Ex. #2).
- 8) On February 22, 2007, a Labor Management Relations Informal Resolution Meeting was held and the issue was not resolved (Jt. Ex. #3).
- 9) On February 27, 2007, the Agency filed a response to the grievance, relying on its Article 5 management authority to assign work...and to determine the personnel by which Agency operations shall be conducted. The Agency also raised procedural objections (Jt. Ex. #4).
- 10) On March 23, 2007, the Union submitted a Notification of Intent to Invoke Arbitration (Jt. Ex. #5).

### CONTENTIONS OF THE PARTIES

#### I. Was the grievance filed timely in accordance with Article 31, Section d. of the Master Agreement?

#### AGENCY POSITION

The Agency, which has the burden of proof with respect to the procedural issue of arbitrability, argues that the instant grievance was not filed in accordance with Article 31, Section d. of the Master Agreement. Article 31, Section d. requires that grievances be filed "within forty (40) calendar days of the

alleged grievable occurrence or forty (40) calendar days from the date the party filing the grievance can reasonably be expected to have become aware of the occurrence."

According to the Agency, the instant formal grievance, which was filed on January 29, 2007, is time barred because the Union was "aware of the alleged violation long prior to the 40 days required by the Negotiated Master Agreement." Alluding to the Union's opening statement where it argued that "[p]rior to January 2005, management would staff the airlift by calling on officers from a day off or from annual leave or from off shift," the Agency reiterates its position that, despite the Union's claim of a continuing violation, the instant grievance should be denied on procedural grounds because "they could reasonably have been expected to have become aware of the alleged grievable event over two years prior to filing the instant grievance."

The Agency reinforces its timeliness position by reference to Article 31, Section E which states: "If a grievance is filed after the applicable deadline, the arbitrator will decide timeliness if raised as a threshold issue."

Finally, the Agency argues that, notwithstanding the Union's claim that the grievance is "ongoing, ... the remedy for any alleged violation can only commence from the 'effective date' that is the actual date the Union acted on the processing of the grievance. To allow a union to delay its activity to effectuate a grievance, and still claim back pay, or damages, before it acted would be unfair and unreasonable."

### UNION POSITION

The Union, on the other hand, argues that the weight of arbitral authority supports the filing of a grievance on the basis of a continuing violation.

According to the Union, "the continual failure to assign overtime in a fair and equitable manner constitutes a continuous violation, and each day overtime is unfairly and inequitably distributed it constitutes a separate violation of the contract that starts anew the grievance filing period." Inasmuch as the Union contends that the inequitable distribution of overtime continued "up and until the filing of its grievance and, for that matter, through today's date...", the Union reiterates that its grievance is "both timely and arbitrable."

Citing numerous cases where arbitrators have construed a violation which constitutes a continuing practice or recurring event as an exception to the standard grievance filing period, the Union distinguishes single isolated violations from those acts that are repeated from day-to-day where "arbitrators have permitted the filing of such grievances at anytime."

Illustrative of the prevailing view that a grievance is timely "at any time during the continuance of an ongoing policy" (Caraway, 1986), the Union cites the following case:

The principle of continuing violation ordinarily applies in cases where a union wishes to grieve allegations of on-going contract violations, some of which occurred within the applicable grievance-filing time period, and others of which may have occurred in the past, before the applicable grievance-filing period began, but had not been grieved by the union. Such cases may even include alleged *improper payments of wages or benefits* to employees that have gone on for a long period of time, even years.

*Arbitrators...tend to agree that such cases constitute continuing violation and that each new paycheck raises a new opportunity for the union to grieve the improper payment of wages [Emphasis Supplied].*

In addition, the Union cites case law where the concept of a continual violation has been applied to the specific subject of overtime payments. For example, in AFGE, Local 1919 and Federal Bureau of Prisons, U.S. Penitentiary, Leavenworth, Kansas, 103 LRP 18194, the arbitrator determined that "each alleged improper payment constitutes a separate violation that starts the filing period anew." And in Fraternal Order of Police, Ohio Labor Council and Fulton County Sheriff's Department, 1 FOP 17 (2000), Arbitrator Talarico held that "it should not be necessary for employees to continually file new grievances for each successive month that this overtime situation arises."

Finally, the Union notes that not only are overtime cases a category of grievance where a continuing violation can be applicable, but also continuing violations "toll the time for filing a grievance" (emphasis Union).

#### Opinion

The concept of a continuing violation giving rise to a continuing grievance is well recognized in arbitration. The basic logic underlying a continuing grievance is that "a current occurrence of a repeated or continuous violation reasonably and properly should be given the same status as if the same current violation were occurring for the first time" (See. Sears Roebuck & Co., 39 LA 567, 570).

Arbitrator Carlton Snow described a continuing grievance as "a series of related acts or a pattern of discriminatory conduct or even the residual effects of a past act." Another arbitrator defined a continuing grievance as a dispute where "the act of the company complained of may be said to be repeated from day to day, such as the failure to pay an appropriate wage rate or act of a similar nature." (See Bethlehem Steel Co., 26 LA 550).

Moreover, the application of a continuing violation theory is valid, even though the Union knew or should have known about the "grievable event" before the formal grievance was filed.

In the instant case, the Arbitrator is persuaded that the Agency's alleged failure to pay overtime to certain employees based on an inequitable distribution of the overtime available could constitute a continuing violation. Given the fact that airlift overtime has been allocated every Monday since January 2005 when the Agency changed the practice of assigning overtime to officers on a day off, on annual leave, or from an off-shift to officers who manned the visiting room on Mondays, the Union could establish that the purported violation of Article 18, Section P occurs on a continuing or repeated basis.

Accordingly, the Arbitrator is persuaded that, if the violation is proven to have occurred each Monday when the Agency selects officers to work the airlift operation on an overtime basis, the Arbitrator is further persuaded that as the new violation occurs it gives rise to a new actionable grievance "as if the same current violation were occurring for the first time."

An interrelated component of the continuing violation principle is that the retroactive effect of a grievance cannot exceed the contractual limitations period. As the Agency has correctly observed, "[t]o allow a Union to delay its action to effectuate a grievance, and still claim back pay, or damages, before it acted would be unfair and unreasonable." Insofar as the remedy available to the Union in the instant case is concerned, there is case law that holds where the Grievant was paid a lower wage rate "back pay should be awarded only for a pay period for which the grievance met the time limits of the labor agreement" (See Frontier Refining, Inc., 99 LA 374, 377 (Snider 1992)). Unlike the Union, which maintains that a continuing violation "tolls" or suspends the period for which the original grievance could have been filed (i.e. January 2005), the Arbitrator construes a continuing violation as permitting new grievances to be filed each time the violation is committed.

Having found that a continuing violation may exist, the Arbitrator, acknowledging that his paramount obligation in contract interpretation case is adherence to the parties' contract language, shall limit any back pay remedy awarded in this case, if any, to a period forty (40) calendar days prior to the filing of the instant grievance, or 40 calendar days prior to January 29, 2007 or December 19, 2006.

II. Did the grievance statement comply with Article 31, Section f of the Master Agreement, which requires in Block 6, specificity of charge?

AGENCY POSITION

The Agency asserts that the Union, despite its claim that BPT and BUS certified employees were harmed by the alleged violation, "they failed throughout

the entire grievance process (including the hearing and/or the closing brief) to identify with specificity, even one employee on one specific date, who was allegedly harmed." In the Agency's view, "[a]dequate notice of the subject matter and dates of violations must include actual dates and names of the alleged violations and not just a general list of employee names."

The Agency goes on to maintain that the Union's grievance lacks specificity when the list it compiled "does not show where an employee was scheduled to work on the day in question, if the employee has signed up for overtime, if the employee was offered overtime, and/or if the employee refused."

The Agency also contends that the various exhibits/charts produced by the Union at the hearing, as distinguished from its data requests at the hearing ("not prior to the hearing"), "failed to prove their allegations and were not authenticated." In response to a question posed by the Arbitrator, namely, "What additional information would you have to have at your disposal to answer that last question about fair and equitable rotation?", Lt. Weir testified: "for each airlift in question, I would have to see the roster for that Monday to see who was BPT and who was bus qualified available on the roster that day to work; And then I would have to see on each Monday who was actually signed up for overtime and who wasn't; and that doesn't provide the necessary information" (Tr. @ 175).

According to the Agency, the Union's failure to request the daily rosters and other information that would have enabled it ascertain which employees were allegedly denied overtime not only caused the list it generated to be misleading, but also diminished the Union's capacity to prepare a grievance

statement commensurate with the Article 31, Section f specificity requirement. At minimum, specific data would have correlated the list of overtime sign-up sheets with the rosters to determine who worked the airlifts and thereby identified the BPT and Bus Certified employees who were allegedly harmed as well as the names of staff members denied overtime and the dates of the purported occurrences.

#### UNION POSITION

The Union, on the other hand, argues that its grievance contained sufficient facts to "clearly inform the Agency who was involved and the relevant time periods of the violations." The Union notes that the grievance provided a timeframe for the violations "from December 12, 2003 and ongoing to the present, the affected employees and the specific overtime job that is being distributed inequitably and unfairly." The Union further notes that "[a]lthough the grievance does not list every employee who has been adversely affected by the inequitable rotation of overtime, the union requested from the Agency, among other things, the names of staff members who were assigned to work the (Airlift) Bus; the dates, names of staff, and the hours worked, and to include any overtime hours that were worked by those employees; a list of employees' names who were Bus qualified and a list of employees who were BPT qualified, starting 1-1-2004 until 6-4-2007."

In response to the Agency's contention that the Union failed to identify, with specificity, "who was involved and [in] what specific time frame the allegations occurred," the Union contends that the "who" was identified to the

Agency on numerous occasions, including the Labor Management Relations Informal Resolution Meeting on February 22, 2007 where President Bensinger, in response to Lt. Weir's question: "Are you referring to the bus or ground crew?" stated: "This would affect about 27-30 bus qualified staff and all BPT qualified staff." Moreover, in the formal grievance submitted on January 29, 2007, Bensinger's requested remedy was "that the affected bargaining unit staff be made whole in every way..."

Similarly, the Agency, in its February 27, 2007 response, wrote:

[m]anagement assigned the airlift positions to staff who were available on shift and possessed the necessary qualifications to fill the position. There is no way to determine that these assignments will go beyond an eight (8) hour shift. It would not be prudent or cost effective to taxpayers to fill these positions with off duty staff from the Special Bus Run/Bus Rotation List when qualified staff are available on shift. The Lieutenants assigned staff to airlift positions do maintain a tracking system to ensure that all available staff on shift receive these assignments in a fair and equitable manner.

The Union also distinguishes the arbitration award relied on by the Agency. Whereas Arbitrator Fox in AFGE, Local 922, Forrest City, AR and U.S. Dept. of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Forest City, AR, FMCS 01-14974 (2002) determined the grievance to be "procedurally and substantively defective" because the Union made "no attempt at specifying who was involved and [in] what specific time frame the allegations occurred," the Union herein argues that its grievance provided the Agency with "the nature of the claim; the specific time frame of the violation; the affected employees; and the specific overtime job that is being distributed inequitably and unfairly."

Unlike the Union in the above-mentioned case where the arbitrator found that the Union made "no attempt" to meet the specificity requirements, the Union here alludes to Arbitrator Calhoun's decision in AFGE, Council of Prisons, Local 1242 and Federal Bureau of Prisons, U.S. Penitentiary, Atwater, CA, FMCS 05-5789 (2006) where the purpose of a grievance was described as sufficient if it allowed the Agency "to evaluate and remedy the alleged violations."

#### Opinion

The standard for ascertaining whether a grievance statement complies with language comparable to Article 31, Section f of the Master Agreement is whether the Agency was provided with sufficient notice and specificity of the claim for it to prepare and present an adequate defense. In the Arbitrator's opinion, the information provided to the Agency in Block 6 of the Grievance Form accomplishes this objective.

The Union informed the Agency of the violations alleged, the time frame when these violations allegedly occurred, and the category of individuals adversely affected by management's actions. In Block 6, the Union noted that, notwithstanding management's right to assign overtime pursuant to Article 5, this right was subject to the Article 18, Section P language that airlifts be distributed or rotated equitably among bargaining unit employees. It further noted that "[m]anagement scheduled the airlifts to be worked only by a few employees, and was not scheduled accordingly, or following the CBA."

Although the Agency argues that the specific employees affected were not identified, the Arbitrator finds that the grievance, essentially a class action or

group grievance on behalf of employees who were allegedly denied overtime during the airlift operation, was sufficient for the Agency to identify the subject matter of the violation and the employees who were seeking a remedy. In this regard, the grievance states "[t]his unwarranted personnel action resulted in the reduction of pay, allowances for employees who should have been scheduled this overtime in an equitably and rotating manner" (Jt. Ex. #2).

Similarly, the Agency's assertion that the "actual dates" of the violations were not provided is negated by the Union reference to the "starting date of 12/12/03 and ongoing to present" as part of a continuing violation.

To the extent that the Agency had any doubts regarding the scope or specificity of the claim, these concerns were addressed during the Informal Resolution Meeting on February 22, 2007 when Union President Bensinger advised Lt. Weir that the affected employees were "27-30 bus qualified staff and all BPT qualified staff."

It is also noteworthy that the Agency's knowledge of the Union's grievance was enhanced by the Union's post grievance requests for information on June 4, 2007 and August 10, 2007.<sup>\*</sup> Having sought the names of the staff members who were assigned to work the (Airlift) Bus, the dates, names of staff and the hours worked, including any overtime worked by these employees and a list of employees who were Bus and BPT qualified, the Agency had even more information to use in preparing its defense, irrespective of whether the Union

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\* The Agency's inability to produce the sign-up sheets for the period January 5, 2004 to March 20, 2006 or the sign-up lists from August 18, 2005 through March 20, 2006 undoubtedly limited the Union's ability to generate pertinent statistical information.

correlated this information to the level of specificity deemed appropriate by the Agency.

In effect, the Agency's position is indicative of a demand for greater specificity beyond the information necessary to prepare an adequate defense. When the Agency argues that the Union should have requested the Monday rosters to determine the name of each employee and who was BPT or Bus qualified for the airlift operation, it seeks to maximize the limited database normally required to satisfy a specificity standard.

Finally, the Arbitrator distinguishes the case cited by the Agency, AFGE, Council of Prisons, Local 1242 and Federal Bureau of Prisons, U.S. Penitentiary, Atwater, CA (2006) from the instant case. Whereas Arbitrator Fox found that the Union made no attempt "at specifying who was involved and what specific time frame the allegation occurred," for the reasons discussed above, the Arbitrator finds that AFGE, Local 148 met the minimum standard with respect to specificity of its grievance statement and thereby did not violate Article 31(f).

Moreover, Arbitrator Fox's finding that the grievance was not arbitrable due the "vagueness" of the Union's allegations that denied the Agency the opportunity to take corrective action can also be distinguished from the instant case. In contrast, Lewisburg management, given the information provided, could have addressed the claim of inequitable rotation of overtime provided it deemed the claim meritorious.

Based on the foregoing analysis, the Arbitrator finds that the Union satisfied the specificity requirements of Article 31, Section f.

III. Did the Agency violate Article 18, Section P, Paragraph 1 of the Master Agreement by the manner in which it distributed airlift overtime?

UNION POSITION

The Union, which has the burden of proof in a contract interpretation grievance, maintains that the Agency violated Article 18, Section P, Paragraph 1 by the manner it allocated overtime during its airlift operation at the Lewisburg Federal Penitentiary commencing January 2005.

According to the Union, the Agency unilaterally changed the airlift staffing procedure whereby the airlift would be staffed by calling on officers on a day off, on annual leave, or from an off-shift to serve on an overtime basis to a procedure where staff was selected largely from the visiting room every Monday. In the event a visiting room employee was not BUS or BPT Qualified" that individual would be assigned to another post within the prison to replace a separate employee who was BUS or BPT Qualified. If additional staff was needed for the airlift operation, qualified employees would be taken from yet other assignments within the prison...or the Agency would select other off-duty or BPT or Bus Qualified personnel."

The Union contends that following the change in airlift procedures commencing January 31, 2005, the airlift overtime hours, which formerly ranged from eight (8) hours per mission trip to 15.75 hours, declined drastically to the level of one (1) to three (3) hours (U. Ex. #16). Pursuant to the policy change, the Agency abandoned the use of the computer sign-up sheet for overtime, as