

110 LRP 55915

AFGE, Local 4047 and Federal Bureau of Prisons, FCI Allenwood

Federal Arbitration

0-AR-4691

09-57336

August 18, 2010

Judge / Administrative Officer

Scola, Gerard

Full Text

APPEARANCES

For the Union

Molly A. Elkin, Esq.

Diana J. Nobile, Esq

Paul Marvin President

For the Agency

Mr. Daniel Ritchey

EXHIBITS

Joint Exhibits

Exhibit No. 1 Exhibit No. 2 Exhibit No. 3
Exhibit No. 4 Exhibit No. 5

U.S. Department of Justice Federal Bureau of Prisons

Master Agreement

Grievance

Letter to Gregory McGillivray Letter to Regional Director Dodrill

Position Description

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Paper from the Office of Personnel Management

Letter from Alfred B. Robinson FCI Allenwood Staffing Report State of the Bureau 2007

Weekly Population Report

Position Description GS-007-08 Letter to Captain Tim Burns Position Description GS-007-07

Staff Search Procedures

Quarterly Roster Dec.08-Mar 09 Weekly Changes for wk of 3/14/10 Daily Assignment Rosters

Assignment Cards 3/1 /10

Marvin 2 Daily Assignments Map of FCI Allenwood

General Post Orders

Program Statement (9/12/2001) Program Statement (12/19/2007) Settlement Agreement

Letter dated 07-17-06 to Karen Hogsten/Warden

Time difference from shift start

Specific Post Orders Compound Officer

Short Clips Disc 1 (02/01/10) Assignment Cards 3/3/2010 Fausey, S2 - Daily Assignments

Specific Post Orders - Control Center #1 Officer

Premature Low Battery Alert

Special Instructions - Control Center Officers

Assignment Cards - Parsons 2 Parsons 2 - Daily Assignments Assignment Cards Segraves 2 Seagraves 2 - Daily Assignments Assignment Cards Parker C2 Parker C 2 - Daily Assignments

Specific Orders - Perimeter Patrol #1 #2 Officers

Specific Orders - Perimeter Patrol #1 #2 Officers Morning Watch Assignment Cards - Bottorf 2

Bottorf 2 - Daily Assignments Assignment Cards - Arnold R Arnold 2 - Daily Assignments

CONTRACT LANGUAGE

EXHIBIT #6 Position Description Major Duties and Responsibilities:

"Enforcing rules and regulations governing facility Security, inmate accountability, and inmate conduct to ensure judicial sanctions are carried out and inmate's remain in custody."

"Is subject to being in such hostile or life threatening situations as riots, assaults and escape attempts. Exercises sound judgment in making instantaneous decisions affecting life, well being, civil liberties and property which cannot be reviewed prior

to implementation and which may subject decision maker to legal liabilities, including personal sanctions."

"Possesses a thorough knowledge BOP regulations to force security measures and protect life and property. Work within a prison environment and requires a special ability for alertness, requiring keen mental and physical effort. Must be aware of group or individual tensions, alert to unpredictable behavior, and generally sensitive to signs of trouble which could result in injury and reports any abnormal behavior attitudes to the correctional supervisors or other higher authorities.

EXHIBIT # 17 Program Statement (9/12/2001)

Page 32 Tour of Duty

"It is the responsibility of each staff member to report to the institution in sufficient time to draw keys, equipment, check pertinent information and special orders check off with the shift lieutenant, and be on the assigned post at the designated time."

EXHIBIT # 17- Programmed Statement

Shift Start and Stop Time

Each institution shall have an approved work schedule with shift starting and stopping times for employees who work at the institution to begin and end at the point employees pickup and drop off equipment at the Control Center. Therefore, employees who pick up equipment at the Control Center shall have their shift schedule to include reasonable time to travel from a Control Center to their assigned duty post and return at the end of the shift. (Tr.24 #2)

EXHIBIT #35 Perimeter Patrol # 1 Officer / # 2 Officer

SHIFTS: EVENING WATCH

4:00 PM Report for duty wearing the prescribe uniform without any, unauthorized deviations to the shift lieutenant and receive any pertinent information regarding your shift for the operation of the institution. Report to Control Center and draw equipment.

Perimeter Patrol #1 meet the day watch officer in front of the administration building and proceed to the clearing barrel to exchange weapons and pertinent information. Do not exchange weapons, or ammunition near high traffic areas (i.e. Administration building, rear gate, or parking lot). An equipment inventory is provided to document that all items listed are present and accounted for. List any discrepancies noted during the inspection of the equipment. Wearing of the vest is Mandatory. Receive any pertinent information regarding the post.

At no time will both perimeter exchange equipment at the same time for location. One vehicle must remain mobile at all times

12:00 AM you will be relieved by the morning watch officer. Ensure weapons, ammunition, and equipment are operational and accounted for. Complete all log books and paperwork. As on any pertinent information. Your tour of duty ends.

WEAPONS Page 24-35

The exchange of weapons between relieving officers will take place utilizing a clearing barrel.

Duty carry of firearms is as follow:

9MM pistol > 14 round magazine inserted in the magazine well with 1 round in the chamber.

Shotgun > six rounds loaded in the magazine tube with an empty chamber, safety on.

For extra rounds place in the ammo carrier mounted to the weapon.

M16 rifle > 30 round magazine loaded in the magazine well with an empty chamber, and safety on.

The weapons must be unloaded by the office being relieved prior to giving them to the relief officer as outlined below.

(The rest of the order spells out exactly how the officer is to unload the 9MM Pistol, load the 9MM pistol, unload the shotgun, load the shot gun, unload the M-16 Rifle and load the M-16 Rifle.

The loading procedure is done by the relief

officer. The last line of the Loading Procedure 9MM states:

YOUR WEAPON IS NOW LOADED FOR DUTY CARRY !

The last line of the loading procedure for the shot gun states:

YOUR WEAPON IS NOW LOADED FOR DUTY CARRY WITH THE SAFTY ON!

Loading procedures for the M-16 Rifles:

YOUR WEAPON IS NOW LOADED FOR DUTY CARRY WITH THE SAFETY ON!

GENERAL POST ORDERS

Page 8

CONDUCT OF EMPLOYEEES

While on duty...Once on post, staff will not leave until properly relieved or instructed to do so by the Shift Lieutenant. If your post does not have a relief, you were required to remain on post until the end of your assigned shift. Should they really be needed, the Lieutenant's Office will be notified. Staff ... areas.

CREW KITS

Page 12

Crew Kits are to be picked up and returned to the Control Center daily.... Officer.

KEY CONTROL AND HANDLING

Page 18

Each key ring...rings. When drawing keys, staff are to immediately count the number of keys on the ring to ensure the key count is correct. Discrepancies are to be brought to the attention of the Lieutenant and the Control Center Officer immediately

POSTED PICTURE FILE

Page.24

The Posted Picture File...file. The File is considered "Sensitive" and is to be reviewed on a monthly by all institution staff. A Signature Sheet is provided for staff to sign and

acknowledge they reviewed the file which is monthly for Correctional Service staff and quarterly

for non-Correctional Service staff.

TOUR OF DUTY

Page 32

Duty hours for each post in Correctional Services can be found in several locations, to one clue the Specific Post Orders of each post, the Quarterly Assignment Roster, and the Daily Assignment Roster. It is the responsibility of each staff member to report to the institution in sufficient time to draw keys, equipment, check pertinent information and special orders, check off with the shift lieutenant, and be on the assigned post at the designated time.

The staff are not to leave their post without being properly relieved or instructed to do so by the Shift Lieutenant. In the event a relief officer is not punctual, the Lieutenant's Office is to be contacted.

TWO-WAY RADIOS Page 33

Their batteries, which are charged, are available in the Control Center in the event the one in the radio goes dead. Each staff using a radio is to ensure it is in good operating order, contains a working battery, and is set to the proper frequency. The... Control Center.

When a radio is issued, it should be clipped on the staff members belt or placed in a radio holster. Care... radio.

SPECIFIC POST ORDERS

Compound Officer #1 & #2 Page 1

0800 report for duty and check in with the Operations Lieutenant. Have the Control Center Officer contact the Morning Watch Compound Officer via radio and determine where you can meet him/her effect the relief. Verify the key count against a key chits on the ring. Receive the radio, other equipment and any pertinent information from the officer being relieved. Ensure... job.

4:00 PM your tour of duty is ended. Ensure all paperwork, fire and security reports are properly completed. Exchange all keys and equipment with the Evening Watch Compound Officer.

The American Federation of Government Employees LOCAL 4047 (the Union) and the Federal Bureau of Prisons, Federal Correctional Institution, Allenwood (the Agency) are parties to a Collective Bargaining Agreement (CBA) that began on the 9th day of March, 1998, and continued through the 8th day of March, 2001. The Union continues to operate under this CBA to this day. On March 22, 2010; through March 26, 2010, the Union put on their case in the Conference Room at the Allenwood FCI, Medium Security Prison Allenwood, Pennsylvania. A second hearing was held on April 13, and continued through April 15, 2010, at the same location where the Employer put on its case. Both parties were given the opportunity to argue orally, present documentary evidence, and examine and cross-examine witnesses.

ISSUE

Did The Bureau of Prisons, FCI Allenwood suffer or permit bargaining unit employees to perform compensable work before and or after their scheduled shifts, without compensation, in violation of the Fair Labor Standards Act and the parties' Master Agreement? If so, what is the remedy?

BACKGROUND

In a three-way phone conference, prior to the start of the arbitration, it was agreed that the Union would take the first week of the arbitration to put on their case. There Would be a break of several weeks, and in the second week of the hearing the Agency would put on their rebuttal case.

FCI Allenwood is a prison that has two layers of razor wire fences around it. It is a work place that has posts, and the correctional officers are assigned to various posts. There are Housing Unit posts where the inmates are housed. There are SHU (SHU) posts, where inmates who have been violent toward staff members are segregated. There are compound posts. The workers who are assigned to the compound posts manage the inmates' movement on the compound. There are two outer perimeter posts. One truck will be stationary while the other truck drives around the institution's perimeter 24 hours a day, seven days a

week. These trucks are equipped with M16s, handguns, and shotguns, along with ammunition.

There are two Control Center posts. Officers in these posts are required to open and close doors remotely in the institution. The Control Center officers hand out equipment, batteries, and they keep track of the master count of the inmates in the institution. There are five counts a day to make sure the inmates stay inside the institution.

For the most part, the posts are manned seven days a week, 24 hours a day. There are some posts that have fewer hours. The Visiting Room post is an eight-hour post that

operates three days a week. Security measures must take place so that inmates are not being given contraband from their visitors. The Visiting Room is open for 7 hours, but the post is manned for eight hours.

There are also sixteen hour posts, where they have an AM shift and a PM Shift. Some of the SHU and the "B" side of the Housing Units are sixteen hour posts.

The main post at FCI Allenwood are, a day-watch shift from 8:00 AM to 4:00 PM, an evening watch shift from 4:00 PM to Midnight, and a morning watch shift which runs from Midnight to 8:00 AM. These shifts are all exactly 8 hours long. The workers assigned to these posts get exactly 8 hours of pay.

Each officer has a duty belt. The duty belt has a metal chain that the officer attaches to his keys give them at the key window of the Control Center.. The belt has metal chits that have the officers name on them. The officers exchange these chits for equipment they need. The belt also has a holster for a radio, and a holster for handcuffs.

Before the officer puts on his/her belt they have to put the belt through an x-ray machine that is dedicated solely for the staff. The officer then walks through a metal detector, as required by the Agency. After the officer passes through the metal detector

they put their belt on and go to the key window at the Control Center. Depending on the shift, they may collect a crew kit. The crew kit is a little pouch, about the size of an envelope. Inside are index cards that have the inmate's name, picture, information and work detail

that the inmates are assigned to. This is a necessary piece of equipment needed to maintain accountability of the inmates and security of the institution.

In addition to the crew kits, all of the workers pick up a charged battery. The batteries are maintained in the Control Center because that's where the battery chargers are located, for safety reasons. The officers need fresh batteries so that they can have a working radio and working body alarm while on their posts.

All of the 24 hour posts have a radio with a body alarm that stays at that post. Each officer on the 24 hour posts pick up a fresh battery at the Control Center as they come in for duty. They may switch out their fresh battery or wait until the radio goes dead, then switch it out. The batteries are meant to last at least eight hours.

At the Control Center, officers may pick up a radio, batteries, keys and handcuffs, or combinations of this equipment depending on the posts. Then they will walk through two doors controlled by the Control Center. Each door must be operated separately by one of the officers in the Control Center. The area between the two doors is called the Sally Port. In the Sally Port there is a board called the "accountability board". On the accountability board there are metal chits one for each person who has a duty in the compound. The chit has two colors. One side is white and the other side is red. The red side has a number that is assigned to each person that works in the compound. As the officers pass through the Sally Port the officer will turn over a chit that has his number on it so that the Control Center Officers know who is in the compound. If the

red side is showing that indicates that the officer is inside the compound. Once the officers turn over their chits from white to red side with the numbers showing they walk through the compound door into the compound and walk to their assigned posts.

Inside the prison there are 1440 inmates, which include murderers, rapists, pedophiles, burglars, robbers and gang members. The correctional officers are out-numbered on a post at a ratio of approximately 150 inmates to 1 during the morning and evening watch, and 312 to 1 during the morning watch.

Depending on the shift, as the officers are walking to their posts there may be inmates all around. As the officers make their way up the hill to the Housing Units they are monitoring the inmates. e.g., telling them to put their hat on, or they may answer questions from the inmates. They are maintaining rapport with them so that they know the pulse of the environment on that particular day or shift.

Once they get to the Housing Unit the incoming officer will be let into the Housing Unit by the officer being relieved. Once inside the building the officers will go into the office where they exchange information, about the pulse and mood of the Housing Unit. This is also where the officers exchange equipment. The equipment may consist of a radio with a body alarm, handcuffs and keys.

The Union argues that if an employer had a requirement to put on necessary equipment at work that's where the work should start. Therefore, it is the Union's position that

since the metal detector has been in place, compensation for the measure of the compensable workday should begin the moment the officers don their duty belt, after they've gone through the metal detector, and up to the time they return to the Control Center at the end of their shift. That's the measure of the workday. Some of these workers are actually working overlapping shifts of 15, 20, 25 minutes depending on the post. The reason for this is that the

Agency had scheduled only 8 hour shifts.

The Union is asking for four things: First: they want compensation for overtime since 2003. Second: they want the statute of limitations extended from September of 2004 back to September of 2003. Third: they want liquidation of damages that is back pay. Fourth: the Union is asking for reasonable attorneys' fees.

On the other hand, the Agency argues that if the Agency suffered and permitted an activity that was not integral and indispensable, it would not be compensable under the law. So even if you engage in it , it doesn't automatically make it compensable. It had to be a principal activity and must be an activity integral and indispensable and must be more than "de minimus". The Agency believes that going through a metal detector is not integral and indispensable, and also believes that picking up and dropping off a battery is not integral or indispensable. .

TESTIMONY

FOR THE UNION ,

The Union's First Witness: Paul Marvin, is a correctional officer and had worked for the Bureau of Prisons for 13P4 years. In 1996 he became a GL-7 Senior Officer. Officer Marvin is also president of the local and has held that position for six years. Prior to becoming president, he was vice president of the local for four years. There are 124 correctional officers in the bargaining unit, forty-four officer specialists and eighty correctional officers. 1

Officer Marvin stated, that FCI Allenwood is a medium security institution. It gets its designation from the fact that there are two fences that encircle the institution, as well as electronic detection devices on the fences. Also they have a higher staff-to-inmate ratio and greater internal control. There are approximately 1440 inmates in the facility. In the Housing Units, for the 16 hour shift, there is one officer for every 156 inmates, and for the morning watch, there is one officer for every 312 inmates.

Each Housing Unit has an "A" side and a "B"

side. In March 2005 the "B" side officer was eliminated from Midnight until 8:00 AM. The "A" side officer covers the "A" side and "B" side watch during the night time hours when all the inmates are locked down.

1. Transcript pages 36-45

Officer Marvin testified that correctional officers need equipment in order to perform their duties. This equipment composed of keys, a radio with a body alarm, handcuffs, and a duty belt that is worn by the officers on post.

The body alarm feature is an orange colored button on the top of the radio. It is the most important piece of equipment that a correctional officer has that would help in the event s/he is physically attacked. 2 In case of an emergency, the officer presses the button, and it sends a signal to the control room. The control room would know which radio was activated and they would send assistants. These body alarms only work if the radio works. He stated that he picks up a fresh battery at the Control Center as he comes on duty. He then drops off the dead batteries at the Control Center on his way out of the compound. 3 these batteries are supposed to last for eight hours.

Officer Marvin testified that he was required to respond to any emergency situation when he entered the institution. 4 He said that there was a memo, put out by Captain Bradley that stated:

"In the event of an emergency situation, staff is not to be delayed due to search procedures."

Search procedures are in the front lobby. Everything metal, like his lunch box and duty belt, must go through the x-ray machine. Everything that has metal on it comes off, and is put in a bin that goes through the x-ray machine. The officer then walks through the

2 Transcript pages 74

3 Transcript pages 60 4 Transcript pages 70

metal detector. Once through the metal detector the officers put their clothing and duty

belt back on before they go to the Control Center. 5

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The duty belt has a radio holster, chit keeper, metal chits, handcuff case and a chain. The metal chits have holes punched through them. The officers name is stamped on each chit. The chits are used to acquire equipment, like a radio, or handcuffs. If the officer needs any equipment s/he will give a chit to the Control Center Officer. The Control Center Officer will put the chit on the key peg and give the officer the equipment that came off the peg. That way it identifies who had which equipment. Every officer is required to wear chits as part of their daily duties. They are also required to have keys secured to a chain. That chain has to be secured on the officers body. 6

The first post is the front desk. Their hours are from 7:30 AM to 3:30 PM and there is no relief. The officer at the front desk collects: a radio, keys, maybe a box of keys, if it's needed, and a stamper. At the end of the shift he would return all these things to the Control Center. During the shift the officer monitors phone calls, identifies staff and visitors coming into the institution, and makes sure all visitors fill out the proper paperwork. Besides that, he makes sure the visitors have the right memo to come in, and also makes sure the visitors have the right badges, stamps, and IDs. He must know whom the visitors are coming in to see, and if they have permission to come into the institution.'

5. Transcript pages 89

Transcript pages 88 7. Transcript pages 90

The next post is the front screener position. The metal detector and x-ray machine for the staff is in a separate room. The screening room has a 16 hour shift, 5:30 AM to 1:00 PM, and 1:30 PM to 9:30 PM. The officer on that post has a radio that he gets from Control Center at 5:30 AM. At 1:30 PM the officer relieving the 5:30 AM person exchanges his chit with Control Center, and the relieving officer gives the relieved officer back his chits. At 9:30 PM the officer

returns this a radio to the Control Center and he gets back his chit. (8)

At Midnight an officer from compound "2" comes down to the screening room to screen the staff for the Midnight shift.

After leaving the screening room the officers go to the Control Center key window where they pick up the crew kits. These kits are located next to the key window on the outside of the Control Room. The kit is a leather bound envelope that hold index type cards with the inmate's name, what Housing Unit he is in; his work detail, and picture of the inmate. The officer uses the crew kits to keep track of his orderlies and the inmates that are unassigned because of vacation or sickness. 9

There are two officers assigned to the Control Center. They are called control " 1 " and control "2". The Control Center is manned 24 hours, three eight hour shifts. The control "1" officer may work from 8:00 AM to 4:00 PM, or 4:00 PM to Midnight, or from

(8) Transcript pages 93

Transcript pages 95

Midnight to 8:00 AM. The Midnight to 8:00 AM shift officer is in the Control Center by himself. The Control "2" officers work from 5:30 AM to 1:30 PM and from 1:30 PM to 9:30 PM. The control officers monitor radio traffic, give out keys and equipment, monitor inmates and staff through the use of different television screens, account for the money given to inmates that are being released. They also monitor staff coming in, visitors and inmates going out on a trip. They have to keep track of all the inmates flowing in and out of the institution and make sure that the master count is correct. These officers are also responsible for monitoring and opening and closing four different sets of doors. 1°

There are five inmate counts each day. Two officers count each inmate. That count had to match what Control Center had on their master list. So the Control Center officer is responsible for the master

count."

The Sally Port has an external and internal door. Both doors cannot be opened at the same time. The doors are controlled by one of the Control Center officers. They also control the exterior SHU Sally Port doors. 12

There are four Housing Units each has an "A" and a "B" side. There is also a Special Housing Unit. (SHU) Housing Unit side "A" is staffed 24 hours a day, while side "B" is staffed 16 hours a day. The officers that work side "B" work from 6:00 AM to 2:30 PM and from 2:30 PM to 11:30 PM. Each Housing Unit had the same schedule.

(10) Transcript pages 98

Transcript pages 99 (12) Transcript pages 101

The officer working "A" side of the Housing Unit comes through the Control Center, s/he

picks up a battery, and the equipment s/he might need for the shift. The current officer

in "A" side lets the incoming officer into the unit. The officer being relieved exchanges radios, keys, handcuffs, and would pass on any pertinent information to the officer coming in. The outgoing officer takes the discharged batteries back to the Control Center.

The Incoming "B" side officer picks up his keys and radio at the Control Center at 6:00 AM. He leaves his chits for the equipment at the Control Center. The relieving officer for the "B" side, who comes in at 2:30 PM, exchanges his chits at the Control Center for the chits of the officer being relieved. When he arrives at the "B" side of the Housing Unit he then gives the relieved officer his chits back. The officer being relieved takes any dead batteries and sometimes the crew kit back to the Control Center. At the end of the PM shift for side "B" the Housing Unit officer will take the radio and keys to the Control Center and get back his chits.

Unit "5" is staffed 24 hours a day with one officer. Unit five also has a separate Control Center

and a SHU which is staffed 24 hours a day. The officer may pick up a flashlight and a set of keys to get back through the compound door at the Unit "5" Control Center. However, he must pick up his batteries at the Control Center as he enters the

compound. Unit "5" has a SHU "1" , "2", and "3", a SHU rec, and a SHU property. The SHU "2" AM officer works from 7:30 AM to 3:30 PM. He picks up a radio and two sets of keys and returns the equipment to the Control Center at the end of his shift. The PM

Officer works from 4:00 PM to Midnight. He will also picks up a radio and two sets of keys and he will return the equipment to the Control Center at the end of his shift. The SHU recreation and SHU property officers each work 8 hour posts. They pick up and drop off their equipment at the Control Center.

The Visiting Room is open three days a week. There are three officers assigned to the Visiting Room, and it is an 8 hour post. They start at 8:00 AM and finish at 4:00 PM. Visiting Room hours are from 8:00 AM to 3:00 PM. The officers pick up a radio and keys at the Control Center. One of the officers would pick up a handheld metal detector, cuffs, possibly a cuff key and a black light.

There are two Perimeter Controls the shifts are Midnight to 8:00 AM, 8:00 AM to 4:00 PM, and from 4:00 PM to Midnight. In each vehicle they have the vehicle keys, a radios, shotgun, handgun, and an M16. These officers do not pick up any equipment in the Control Center. Both officers for each shift come in for their shift at the same time. 13

The posted picture file is maintained in the lieutenant's office. It's a file that lists the names of inmates with their pictures. This file had information about each inmate or detainee who poses a threat to staff, other inmates or the community of inmates. These inmates will be identified in the institution's posted picture file and the posted picture file is updated quarterly. It is a requirement that each officer view the file on a monthly

13 Transcript pages 111

basis. 14 This is usually done as the officers enter or leave the institution. It takes approximately 10 minutes to view the posted picture file. A signature sheet is provided for staff to sign and acknowledge that they reviewed the file.

Officer Marvin stated that it takes approximately 10 minutes on the average to walk from the Control Center to the Housing Units. He stated that someone working in the Control Center would not know whether a person worked seven hours and 55 minutes or 8 hours and 10 minutes. On the evening watch shift about 15 to 20% of the staff walk in with the lieutenants, and at the end of their shift sometimes they will walk out with them. 15

Officer Marvin stated that on any given shift nearly 100% of the staff pick up batteries as they come in for their shift. If the battery goes dead while on post in the Housing Unit, you have a fresh one you can replace it with. If you did not, pick up a battery the first thing the officer does is call the officer on the other side of the Housing Unit to see if they have an extra battery. If they do not have one, the officer then calls the compound officer. The officer needing the battery may wait from 5 minutes to 2 hours in order to get a replacement battery.

Post orders say you have to have a working radio. The only way to have a working radio is to have a charged battery. He stated:

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15 Transcript pages 71 March 25

"My life is in danger in that unit if I can not get hold of someone so they can get a battery to me. If you have 1 minute that you don't have a way to respond to let staff know you're in trouble, you're dead".

Union 23, talks about Exchange time. Exchange time is how long it takes an officer to walk to the Housing Unit and how long it takes to exchange information and equipment and for the relieved officer to walk out of the unit. Officer Marvin stated

that on the average it took six minutes to make the exchange. Eighteen minutes on average was the amount of time that both officers were in the institution at the same time on any given week.

The Union's Second Witness, Timothy Seagraves, is a GS-8 Senior Officer Specialists. He has worked at the Allenwood facility for 17 years, primarily day watch. For 3 years he was a Material Handler Supervisor, he also worked in SHU " 1 " as a Safety and Security Officer. Since 2003 he has worked the Housing Units.

When he is working day watch at SHU he is at the Control Center at 7:30 AM. While there, he puts on his duty belt, he collects a battery, and if he is working in the Housing Unit on the "B" side, he will pick up a radio and keys. As he goes through the Sally Port door he turns his chit from white to red. Once he had turned his chit, he enters the compound through the second set of Sally Port doors. Once in the compound he goes from the compound grill to the SEG door. He passes the Lieutenant's office, and stops at the SHU "1" door. Once at the door he waits for the door to be opened by the Control Center officer who can see him on a camera located by the door. Once inside SHU, he had to go through a second door that is operated by the SHU " 1 " staff.

When he arrives at his post, he exchanges information, equipment, a radio and keys. He had to physically count the keys. If any of the keys are broken or missing he will not accept them. 16 The relieved officer will tell the incoming officer information, about any activity or abnormal behavior that happened during the night, or things that are going to happen on his shift, such as an inmate that is going on a medical trip.

The Housing Unit Officer keeps a log book of what went on during his shift, such as: a lot of talking and activities that happen throughout the night. This could predict what might happen on his day watch shift among the inmates or among groups of inmates. 17

Once relieved at SHU " 1 " the evening watch

officer will let him through the first door manually into the Sally Port. He then will call control by radio, and will be let out through the second door. He follows the same path back to Control Center carrying a dead battery. He arrives at the Control Center at approximately 5:55 PM. He said that typically he puts in about 8 hours and 20 or 25 minutes total. 18

Officer Segraves testified that he comes in at 7:30 AM for the morning watch. 19 He stated that he leaves when the exchange of information and equipment is passed on to the relieving officer. 29 When he is on the evening watch he will come in at 3:30 or 3:35 PM, put on his duty belt, pick up a battery and head up to the unit about 3:45 or

16. Transcript Page 48 March 26

17. Transcript Page 49

18 Transcript Pages 61

19 Transcript page 66

3:50 PM. The officer that he relieves will walk out about 3:55 PM. In the Housing Unit it takes about 5 minutes to exchange information. 21 It takes another 10 minutes to get from the Housing Unit to the Control Center.

Officer Segraves stated that if he were relieved at 3:58 PM, it would take roughly 5 minutes to exchange information and by the time he arrived at the Control Center it would be about 4:15 PM. So if he showed up for his shift at 7:30 AM and got back to Control Center at 4:15 PM that day, he would have put in 45 minutes of overtime that he would not get paid for. 22

The Union's Third Witness, Carl Parker, has worked for FCI Allenwood for 17 years. He is a GS-8 Senior Officer. He had worked every post in the institution. His present position is Perimeter Patrol number "1", on evening watch the shift starts at 4:00 PM. During his tour of duty, he drives the outer perimeter road of the institution. There are two front wheel drive trucks assigned to Perimeter "1" and Perimeter "2", (one truck is roving while the other is stationary), and they will switch. There are no differences in the job duties of the Parameter" 1 " and

Perimeter "2" duties.

Both trucks are equipped with three weapons, ammunition, radios, keys, binoculars, a spotlight, helmet, pistol-belt, a charger for the radio and a ballistic vest. These weapons are mounted to the right of the driver. Before his watch begins he had to make sure that

20 Transcript page 67 21. Transcript Page 70 22
Transcript page 81 #3

there are 30 rounds of ammunition for the M16, that there are no rounds in the chamber. That there is a round in the chamber of the nine millimeter handgun, and he must exchange vests with the person who he is relieving. All of this checking must be done before the person who is being relieved leaves his post. So, the officer who is relieving the day watch officer at 4:00 PM he is usually climbing into the vehicle between 3:20 to 3:30 PM, so that he will be ready for his tour of duty, which starts at 4:00 PM. According to the post orders, both vehicles may not make the exchange at the same time. At the end of his shift he does the same thing in reverse. He testified that he usually leaves his post between 11:45 and 11:50 PM

Perimeter "1" and Perimeter "2" officers do not go through the Control Center or the metal detector before they start their shift. Everything that they need is in the trucks. 23

The Union's Fourth Witness, James Bottorf, has been with FCI Allenwood since

December 2003. He is a GS-7 officer and works Visiting Room one. His shift starts at 8:00 AM and ends at 4:00 PM. He works the post on Fridays, Saturdays, Sundays and all Federal Holidays. He does not relieve any officers. There are three Visiting Rooms and he had worked all three. Officer Bottorf testified that he arrives at the Control Center about 7:35 AM. He picks up his keys a radio a roster of inmate's and goes to the Visiting Room. When he arrives at the Visiting Room he turns on the lights, logs. into the computer and opens the filing cabinets. He makes sure that the vending machines,

(23) Transcript Pages 89-108

utensils and condiments are full. He then unlocks the bathrooms and children's play

room. He makes sure that the chairs and all the other furniture are in order, and

searches them for contraband. The visitors start arriving at the Visiting Room at 8:00 AM.

While he is doing all of the above the officer from Visiting Room two is helping the front desk officer with the screening of the visitors. The "Visiting Room '2' Officer" makes sure the papers and pens are out. He then escorts the visitors from the front entrance area to the Visiting Room. While "Visiting Room '2' Officer" is doing this, "Visiting Room '3' Officer" is picking up a radio, keys, cuff key, and a hand-held black light from the Control Center. He then goes back to the Visiting Room and helps the "Visiting Room '1 I' Officer" with the preparation of the Visiting Rooms. In addition he had a log book, and a shake-down sheet that he keeps in the back where he strips the inmates as they come in and out of the Visiting Room.

Officer Bottorf stated that, it is not possible for him to arrive at the Control Center at the start of his scheduled shift and have the Visiting Room prepped and ready for visitors to arrive at 8:00 AM. If he arrived at the Visiting Room at 8:00 AM he would be arriving with the visitors in a dark room, with all the doors locked and he would not have time to assign seats the bathrooms would be locked and he would not know who the visitors were visiting because he had not logged into the computer.

Visiting hours are over and 3:00 PM the inmates and visitors are separated. The visitors come to the front where they are IDed. They are then escorted out in groups of

10 to the front entrance by the Visiting Room "2" Officer. "Visiting Room "3" Officer is stripping inmates out in the back room so that they can return to the Housing Units. While this is happening

'Visiting Room '1 I' Officer's job is to keep the inmates and visitors' part.

At the end of their shift Visiting Room one, two and three officers take back to the control room the equipment they gathered at the beginning of their shift. They carry out to the front the trash collected that day and arrive at the Control Center about 4:00

PM. 24

The Union's Fifth Witness, Randy Arnold, has worked for FCI Allenwood since October 2000. He is a GS-7 correctional officer. He stated that he often works Housing Unit 3 "A" and primarily works day watch. He arrives at about 7:20 AM and goes through the metal detector, he then picks up a battery and goes through the Sally Port door about 7:21-7:22 AM. He flips his accountability chit and is let through the second set of Sally Port doors into the compound.

At 7:30 AM there is a general work call and the inmates are reporting to work. He testified that almost daily, as he is walking up the hill to his post, he had interaction with the inmates correcting the way they should be wearing their cloths, answering questions etc. 25

Once at the Housing Unit he is let in by the officer being relieved. He is handed the keys

24 Transcript Pages 109-118

25 Transcript Pages 4-16 March 26

which he will count. In Unit 3 "A" there are 12 keys. He then does an inventory of the cage to make sure the cuffs, flashlight and everything is where it is suppose to be. He discusses what happened during the previous shift, so he knows what to expect during his shift

After the exchange, the relieved officer will take the dead batteries and anything that had to go to the Lieutenant's office with him. At the end of his shift, he goes through the same information exchange that happened when he arrived. He then takes the crew kits and any dead batteries with him to the Control Center and usually arrives at about 3:55

p M .26

When Officer Arnold works the "B" side his hours are 6:00 AM to 2:30 PM. He arrives about 6:20 AM where he goes through the metal detector and at the Control Center; he picks up the keys, radio, the crew kits and an extra battery. As soon as he gets to the Unit he begins to unlock the cells because they call diabetic pill line first. He needs to get those inmates out, otherwise he will hold up everyone else. He stated that it takes about 10 minutes to unlock the 55 cells. At the end of the shift he takes the sensitive report to the lieutenant's office along with the crew kit and the dead battery. He arrives at the Control Center about 2:40 PM. 27

When he works the compound, he arrives about the same time, 7:20 AM, for the 8:00 AM shift. He will usually takes two batteries. He stated that it is not possible for him to

26 Transcript Page 20

27 Transcript Page 25

pick up 3 or 4 batteries early in his shift as compound "1" officer, because he is giving 40 or 50 inmates the equipment they need for the day. He then dumps the trash, Compound "2" officer usually is doing the laundry first thing in the morning or he may be doing the rear dock inspection. The Compound officers have to do this before the 8:30 AM movement of inmates. When he is relieved at the end of his duty he arrives at the Control Center about 3:50 PM, because that post is closer to the Control Center. 28 He testified that it takes about 10 minutes to walk from compound to the Control Center and back to compound. 29

The Union's Sixth Witness, Tommy L. Wilborn, is a GS-8 Senior Officer Specialist and has been employed 17 years as a correctional officer at FCI Allenwood. He had worked every post in the institution and had also worked on all three shifts.

Officer Wilborn testified that if he is working the day watch or evening watch post, or leaving a day watch or morning watch post, there are inmates on the compound. He stated that he usually ends up walking to his post with an inmate just talking about anything.

He sometimes had to correct inmates that have not complied with the dress code.

He usually is putting on his duty belt, when he is working the PM post of the Housing Unit B at about 2:15 PM. He goes through the metal detector, then to the key window,

28 Transcript Page 27

29 Transcript Pages 55

exchanges chits and picks up a battery. The chits he exchanges are for the keys and the radio that are in unit B. He then goes through the Sally Port and turns his name chit on the accountability board. He walks up to the grill through the metal detector Shack up to his post. The unit officer will unlock the door let him in, and they will go to the office where he will be given information on what happened that day.

Officer Wilborn exchanges the relieved officers chits for the radio and the keys. As soon as he is handed the keys, he counts them to make sure that none are broken or damaged. The relieved officer then logs out of the log book, takes the dead batteries, crew kits, and if there is any confiscated property he will take that to the lieutenant's office. The relieved officer is usually walking out of the Housing Unit about 2:25 to 2:30 PM. He will drop off any confiscated items at the Lieutenant's office, the dead batteries and crew kits he will drop off at the Control Center.

At 10:00 PM lockdown begins, it takes about 5 to 10 minutes to complete this task. If the unit is full there are 156 inmates. After the unit is locked down, he waits for the officer from the "A" side, so that they can begin their count. If both officers are in agreement with the count they go into the office and call the Control Center and tell them that the count is correct. Once this is completed, he logs out of the book, checks to make sure that all the equipment is there, locks up and leaves. He takes with him the dead batteries, keys and the radio, which he turns in at the Control Center. The officer in the Control Center gives him back his chits and he is usually leaving the facility by 10:25 or 10:30 PM.

AGENCY'S WITNESSES

As its first witness the Agency recalled Mr. Marvin, and the Union objected to the recall of the witness. I sustained the objection, but allowed the witness to take the stand and noted that his testimony would be taken for what it's worth

Mr. Paul Marvin was questioned about post orders and whether there was anything in the post orders that mentioned picking up a battery at the Control Center. He was also questioned about the video that was reviewed by the Union. There were questions about: the changes that took place in side "B" work day schedule; about whether he talked to Warden Hogsten about putting on the duty belt and picking up a battery; about the informal resolution and later a memo that was sent to her. 3° He was also questioned about the cameras that were installed to monitor inmates; and about the portal issues brought up in the LMR meetings.

There was quite a bit of discussion about the LMR meeting minutes and how they would be corrected if there was an error in the written minutes of the meeting. The Agency attempted to prove that there was no formal attempt on the part of the Union to resolve this case informally. The Agency introduced three documents which they claim to show a pattern of behavior contrary to its attempt at an informal resolution. 31

30 Union 20

31 Transcript Page 43 April 14

Because the Union objected to the recall of this witness , and it is my normal procedure to take testimony and exhibits that are objected to for what they are worth, the questions posed by the Agency and the testimony given by this witness played little on the decision I will make on this case. However I do make reference to the overall assumption that the Agency makes when writing my Decision.

The Agency's Second Witness, Mr. Joseph McCluskey, has been with the BOP since 2002. In 1988 he received a Bachelors degree from Seton Hall

University. He graduated from Widener University School of Law in 1992. After graduation he took a job with the Pennsylvania State Police, then he went to work for the federal courts, then to the U.S. District Court. From there Mr. McCluskey went to the Southern District of Florida, where he worked till 2002.

Mr. McCluskey is an attorney with the BOP, where he defends the Agency and staff on inmate lawsuits. He is also chairman of the LMR Committee. 32. As chairman he schedules meetings between the Union and management; represents management's interest at the meetings; and tries to resolve disputes between labor and management. 33 He testified that he took on the role of LMR chair sometime in 2006. The witness was shown a copy of the LMR Minutes of the September 2006 meeting. He stated that there are no errors or omissions in the document. Mr. McCluskey stated that the Union would bring Portal-to-Portal issues either in writing or formally to the

32 LMR - Labor and Management Relations

33 Transcript Page 66

meeting and they would be addressed. If they brought up questions in, general terms they would be asked for specifics. At times management would get the specifics, and at times they would get exact complaints on Portal-to-Portal issues. During his testimony, he could not recall if the Union brought up anything about whether picking up a battery after going through the metal detector constituted the beginning of the work day. He said that he would remember that, because it would have been a specific complaint that the Union brought to management's attention, so they would have looked into how to resolve the complaint.

Mr. McCluskey testified that if the Union came to him and said that clipping on the duty belt was compensable work, the Agency would have addressed the issue. 34 Management would try to get the specifics as to who, what times and what shifts were being addressed and, then it would be discussed

among management, which would then get back to the Union.

At the LMR meetings Mr. McCluskey attended he did not remember the Union discussing topics such as checking in at the Lieutenant's office, or checking their mailbox, or addressing inmate behavior on their way to or from their post, or that shift relief activities were taking too long, and that these activities were compensable activities and they should be compensated for the practices. 35

When asked if Mr. McCluskey had seen the actual grievance, he stated that he doesn't

34 Transcript pages 69-70

35 Transcript page 74

receive all the grievances that are filed with the warden or with the regional director. This grievance would not come to him; it would have been given to the attorneys in the central office. He said that he did not see the document until the day before his testimony. As the chair of LMR he did not recall receiving any of these specific complaints on Portal-to-Portal issues. 36 Mr. McCluskey reiterated that if a complaint had been brought up at a meeting management would have addressed it.

The Agency's Third Witness, Lieutenant Haas, spent 4 years at Fort Dix, 10 years at

Lewisburg, in 1996 he spent 6 months at Allenwood, transferred back to Lewisburg, and then in 2007 he returned to Allenwood. 37

Lieutenant Haas was questioned about what officers do once they cleared the metal detector. He testified that they put the duty belt through the scanner, once it comes out the other side they typically clip on their duty belt right there. He stated that there is nothing in the post orders as to when the belt had to be clipped on. He does say that when the officer receives keys, they must be attached to a chain that is attached to the belt.

Lieutenant Haas stated that officers entering for duty do not have to pick up batteries because the officers in the compound post go to the Housing Units

a number of times for the counts. There is a count at 3:00 AM, another at 5:00 AM, and another at 4:00 PM.

36 Transcript page 93

37 Transcript page 101

They collect the hot trash between 8:00 AM and 9:00 AM, and they drop off mail at the Housing Units during the weekdays before 4:00 PM. So there is no reason why compound could not drop off charged batteries or pick up dead ones at those times. 38

When asked about whether the officers coming on duty needed to stop by the lounge to check their mail before going to post, Lieutenant Haas stated that all the information they need is usually disseminated either by conference calls or by way of e-mails. They also have a logbook that information will be in when they reach their post. When asked about his observation of how the officers relieve each other, he stated that it was a general practice at the institution that the officers relieve each other about a half hour early. However, on the 6:00 AM to 2:30 PM shift the officer can be at the Control Center at 6:00 AM and not be late. Visiting Room officers are also not late if they are at the Control Center at 8:00 AM. If he gets a call that the Visiting Room officers are extra busy on a particular day he will send a compound officer to give them a hand.

Lieutenant Haas stated that if someone has not been relieved about 10 minutes before the shift ends, he will get a phone call. He will then check to make sure.

that someone had been assigned to that post for the next shift. He said as shift officer he has never had anyone call him and tell him that they have worked ten minutes overtime. 39

A question about post orders was asked of Lieutenant Haas in cross-examination, and

38 Transcript Pages 104-105

39 Transcript pages 120-126

he affirmed the fact that the post orders required

correctional officers to have a working radio with a charged battery in it at all times. He also stated that, depending on the officers shift, or the officers themselves, most make it a practice to come in 30 minutes early and pick up a battery. There is nothing in the post orders that stated that officers shall not stop at The Control Center to pick up batteries on their way in or drop off batteries at the Control Center on the way out. 4°

Lieutenant Haas expects an officer to remain constantly alert on the way to his post and on the way from his post to ensure the safety and security of the Institution, inmates and the staff. 41 However, if the officer does not have a radio that works, he does not put himself in jeopardy or take chances

In the discussion about the "Accountability Board", he stated that when the red side of the chit with the officer's number is showing they are in the compound. When they leave, they are required to turn the chit back. It is important that the Agency know who is in the compound. Lieutenant Haas stated that besides the Control Center he also had a document that would identify what chit number belongs to what officer When asked if Lieutenant Hann was familiar with the compound officers post. Orders, he said that he was not familiar with the He said that the post orders are vague and are only guidelines. It was agreed that the compound post orders are silent on whether replacing batteries is one of

40 Transcript Page 138

41 Transcript Page 151

the duties of the compound officer. However it does list by specific times from 8:00 AM

to 4:00 PM what duties are to be carried out. 42

The Agency's Fourth Witness, Captain Ken Gabrielson, started his career as a correctional officer with the bureau of prisons in March of 1995 at SCI Cumberland in Cumberland, Maryland. From there he transferred to SCI Schuylkill again as a correctional officer and from there to USP Lewisburg as a

lieutenant where he spent five years. Leaving there he transferred to SCI Allenwood as Captain in March of 2007.

Captain Gabrielson testified that one of the changes he made was the start time for the AM shift of the "B" side Housing Unit. The officers were reporting to the Control Center at 6:00 AM and then would report to the Housing Unit. They would make contact with the "A" side officer, drop off his detail pouch for the day, and then begin to unlock the cells. 43

Captain Gabrielson testified he was never told that the officers picking up a battery at the control center felt they should be compensated. He stated that the post orders cover the situation. No one is telling them to pick up a battery on the way in. They are to report and pick up their equipment, their functioning equipment, whether that's at the control center for the "B" side for the 8 hour shifts, or the 16 hour post, for the 24 hour

42 Transcript pages (137-138

43 Transcript Page 5 April 15

post, or at compound, or Seg " 1 " where they are to pick up operating the equipment."

The captain testified that the AM "B" side shift should be at the control center at 6:00 AM. The "B" side AM officer completes his shift at 2:30 PM. He stated that ordinarily officers at this institution come in 15 to 20 minutes early. 45 If the officers need to talk to the lieutenant or captain they will arrive even earlier. Once the officer is properly relieved, and they have passed on information and exchanged equipment, they head down to the control center. The captain stated that when they made the change, he wanted to make sure that the officers were locking down the inmates and were out of the institution at 10:30 PM 46

When questioned about the Visiting Room officers Captain Gabrielson testified that, in the three years that he has been here, there had not been one instance where a Visiting Room staff officer has had

to stay beyond their shift. They are to report to the control center to pick up their equipment at 8:00 AM and approximately 8:15 AM they are to call control center at the front lobby and let them know they are ready to receive visitors." He said that he had seen staff in the lobby area at 3:05 PM and had asked the Operations Lieutenant to find something for them to do until 4:00 PM.

44 Transcript Page 12

45 Transcript Page 27

46 Transcript Page 32

47 ibid

DECISION

After careful consideration of the testimony of officers who worked Control #1,

Compound, "A"-Side Housing Units, "B"-Side Housing Units, SHU, Unit 5, Perimeter Patrol and Visiting Room posts, and the volume of exhibits, the post hearing and reply briefs, the video CD of the random taping of the arrival and departing times of officers and the numerous hours spent researching the FLRA cases, the following represents my understanding and decision.

All the officers that testified were Correctional Officers with closely related responsibilities even though they had different posts. Some of the officers that testified had worked all of the posts mentioned above. After four and a half days of testimony the Union felt that further testimony of other witnesses would only burden the record. I also believed that the testimony of other witnesses would have only duplicated what had already been offered in previous testimony

There are two separate time spans that need to be addressed in this arbitration; One, from the filing date of the grievance, to January 2008, when the metal detector and X-ray machines were installed in a separate screening room, and two; the time from January 2008 to the present.

The Union argues that the work day starts when

the officers don their duty belt after they go through the metal detector, pick up a battery, keys, and/or a radio and any other equipment needed for that day, at the key window of the Control Center.

The Agency argues that in order for any activity to be compensable, the activity must be integral and indispensable. It also had to be a principal activity and must be more than "de minimus". The Federal Regulations 5 CFR § 551.401 Basic Principles provides:

(a) "All time spent by an employee performing an activity for the benefit of an Agency and under the control or direction of the agency is "hours of work". Such times include:

(1) Time during which an employee is required to be on duty;

Time during which an employee is suffered or permitted to work; (3) Waiting time or idle time which is under the control of an Agency and which is for the benefit of an Agency."

We heard from numerous witnesses about how they come in a 1/2 hour early in order to be on the post at their designated time. Even the Agency's witnesses, Lieutenant Haas 48 and Captain Gabrielson, testified to the fact that almost all of the officers had the practice of coming in early" 50 During the testimony of the Union's witnesses they mostly stated that they arrived at the Control Center about 25 to 30 minutes before the beginning of their shift, and most of the officers testified that when they were relieved they arrived back at the Control Center about 5 minutes before the end of their shift.

There were rules in place that govern the safety of the officers in particular dealing with

47 Federal Arbitration Judge/Administrative Officer, Richard E. Allen, 0-AR-4117, FBP Milan Mich. & AFGE, Local 1741, June 21, 2006, pg 15,16

48 Lieutenant Haas in his testimony stated that if the relieving officer had not arrived 10 minutes before the shift change, the officer to be relieved should call him. So not only did the Agency know the officers

were arriving early they were relying on the officers reporting at their posts before their time.

49 E.g., *Brennan v. General Motors Acceptance Corp.*, 482 F.2d 825, 827 (5th Cir. 1973). Actual or constructive knowledge of supervisors is imputed to the employer.

50 Judge/Administrative Officer - John R. Swanson April 4, 2007 - Council of Prison Locals C33, AFGE Local 1302 & FBOP. Florence Colorado

The FLSA is clear in its definition of "suffer or permit work". If the employer requires or allows employees to work, this time spent not requested by the employer but still or allowed, is hours of work[ed].

their radio and body alarm. The rule being that they had to have a radio and body alarm that was working all the time, a "principal activity" required by the Agency, yet the order was mute about how the officers were to maintain their radios and body alarm without picking up a battery at the Control Center before they entered the compound. The Agency did not order the officers to pick up a battery instead they ordered the officers to have a radio and body alarm in working order at all times, which is "integral and indispensable" to their work. 51 The Agency left the decision to pick up a battery to the officers before they entered the compound. In order to be compliant with the order everyone picked up a battery. I heard arguments mostly from The Agency that picking up a battery did not start the work day because it did not meet the integral and indispensable activity and was not a principal activity.

IBP Inc. v. Alvarez, 546 U.S. at 37, the Supreme Court instructs that any activity that is "integral and indispensable" to a "principal activity" is, itself, a principal activity that must be compensated under the F.L.S.A. Some of the factors used to determine whether an activity is "integral and indispensable" to a principal activity include whether the activity is made necessary by the nature of the work performed by the employee; the activity is undertaken primarily for the employer's benefit; the employer knew or

should reasonable have known that the activity was being performed; and the activity was controlled or required by the employer.

It is my opinion, an officer that needs a battery to make sure that his radio and body alarm is working at all times, as required by the Agency, is an activity that is "integral and indispensable" to that principal activity, and therefore according to Alvarez it should be compensated.

51 The Agency tried to play down the importance of the radio and body alarm during the testimony by making inferences to earlier days when officers did not have radios. However, now if any officers radio was not functioning and there was an emergency that s/he did not respond to, that officer would be reprimanded.

The Agency's argument that there was no formal attempt at resolving this issue does not hold water. 52 The Warden could have made an effort once she was approached with the Portal-to-Portal issue.. She decided, for whatever reason, not to respond 10 the Union's attempt to resolve the grievance informally. An informal attempt to settle a case is always on the table, regardless of whether the Union had hired an attorney or not. Mediation could have happened at any time, from the day the problem was brought to the attention of the Warden until the moment the Arbitration hearing ended. The fact that the union did not put in the informal letter of who, what, when and where is not important. There was a portal to portal issue, and the Warden elected to ignore it. The fact that the President of the Union approached the Warden should have been enough to send up a flag that there was a problem and a sit-down with the Union was in order, which never happened. 53

I have had arbitrations where the two sides decided on the day of the arbitration that they would sit down and attempt to resolve the issue themselves instead of allowing me to hear the case and make a decision. That never happened, the Agency knew that there were issues from 2006, and now its 2010 and there has not been any effort on the part of the

Agency to sit down and talk about a resolution either with the Union or with the firm of Woodley McGillivray who represents the Union in this case. I believe the

52 Union Exhibit 20 - To Karen Hogsten/Warden, From Paul Marvin President Local 4047 - Dated 07/17/06

53 Informal Resolution - This is Local 4047's attempt at informal resolution for bargaining unit employees. Bargaining unit employees are doing work on the (A)gency's behalf and are not being compensated for it. This is both pre and post shift work that bargaining unit employees are performing without compensation. Let me know when you want to try to resolve these issues

Agency made a mistake in allowing this situation to go this long without attempting a resolution

In order to get into the compound at FCI Allenwood staff must be let in through two sets of doors in the Sally Port a "principal" activity. Once you are in the compound there is no way to get out, unless the officer in the Control Center lets you out. The Control Center Officer that opens and closes the Sally Port doors knows who is in the compound by the red chits that are located on an "Accountability Board". This board is located between the two Sally Port doors. The chits that are on the "Accountability Board" are white on one side and Red on the other, the red side also has a number stamped into it which is assigned to an officer. The sheets with the names of the officers along with their associated number are kept by the officers in the Control Room. There are also copies located in the lieutenant's office. An "Indispensable" activity that allows management to know at a glance who is in compound. "thereby enhancing the efficacy of the facility's emergency response effort". 54

Once the officer enters the Sally Port from the outer lobby and the Sally Port door closes behind him/her, and they turn their chit on the "Accountability Board" from the white side to the red side, which displays their number, the officers day has

begun. When they reenter the safety of the Sally Port from the compound side and that door closes behind them, their day has ended. 55

54 FBOP Greenville, II. & AFGE Local 1304 FMCS Case # 05-05187, Arbitrator Steven Briggs, (5/28/2010)

pg 49

55 Local 1034 and USP Pollock, FMCS No. 06-56077 (Dec. 10, 2008). In USP Pollock, the Arbitrator found

that "the act of passing through the Control Center slider, and traveling to the duty post," was integral and indispensable because when officers did so they were "locked in the facility and/or alert."

The opening and closing of the Sally Port doors meets all the requirements of the Agency. It is a principal activity that is an integral part of the work day in that one must be let through these locked doors to get into and out of the compound. These doors are the only way into and out of the compound therefore they are essential. The doors can only be opened by a Control Center Officer one door at a time, therefore they are controlled by management, and these doors are "indispensable" because they keep whom ever is suppose to be "in" the compound, be it inmates, officers or staff, "i n" the compound, so therefore they are also absolutely necessary. (see: AFGE Local 1034 and USP Pollock, FMCS No. 06-56077 (Dec. 10, 2008). In USP Pollock,)

There have been times when the Control Center would not allow anyone out of the compound because there was a problem during lock down, and officers had to respond back up to one of the units to help resolve the problem. (Sally Port Doors under the control of the management). The entrance into the Sally Port, carrying equipment needed at their post, from the Lobby at the beginning of the officer's shift, is "the first principal activity", and the reentry into the Sally Port from the compound side, carrying equipment back to the Control Center, is "the last principal activity", that describes the outer limits of the officers work day, prior to the installation of the

metal detector and x-ray equipment for the staff in January 2008. In FCI Allenwood the Sally Port Doors are but a few feet away from the key window of the Control Center, so therefore there is no difference between the officers who start and end their day at the Control Center key window and those that walk through the Sally Port Doors to their posts. During our tour of the facility I noticed a key window inside of the Sally Port, and one also on the compound side of the Control Center, which could be used to return equipment.

The metal detector was installed by the Agency in January 2008. All personnel who worked in the compound were required to submit to a metal detector and x-ray test. Any one having metal or carrying their lunch to work or personal baggage or equipment, like the officers duty belt, had to subject same to the x-ray machine. Some officers had to remove clothing or their shoes because of the metal in their clothing or shoes before they were allowed through the metal detector. These officers then were allowed to walk through the metal detector.

This equipment was placed in a separate room referred to as the screening room. Only staff was allowed to go through the metal detector in this room. All other visitors who enter the institution go through screening equipment located in the lobby. Once the Agency made the metal detector in the screening room a requirement, it became the officer's "first principal activity" of the day. The outer limits of the work day then began at the screening room instead of the entry into the Sally Port from the lobby, and ended as the officers reenter the Sally Port from the compound side at the end of their shift.

Once the officer passes through the metal detector and s/he begins to put on and collect the equipment s/he needs for their post, their focus shifts from civilian coming to work to correctional officer. The fact that these officers are going to be unarmed and locked in an environment with convicted felons, some of which have committed violent crimes, and who are out numbered by inmates 250 to 1 has to

weigh on one's mind. Each officer that testified stated, one way or another, that their job was to keep the

inmates in custody, help their fellow officers in times of emergency, and to arrive safely at home after their shift ends.

Now as part of their work day that started at the screening room, the donning of the duty belt, the stop at the Control Center key window to pick up a battery or any other equipment the officers need for their post, becomes part of their work day. The screening room activity has also added an additional five minutes to everyone's time that will be compensated by this award. This compensable time began in January 2008 when the officers were required to use the screening room for the first time.

No matter how I viewed the situation, officers were arriving 20-30 minutes before their scheduled time, to relieve their fellow officers so that the relieved officers could depart on time at the end of their shift. This was testified to by the Agency's witnesses Lieutenant Haas, and Captain Gabrielson. The relieved officers were arriving back at the Control Center about 5 minutes before the end of their shift. Now if an officer was arriving at the facility 25-30 minutes before s/he was to be on post and the officer who was relieved was arriving at the Control Center 5 minutes before his/her scheduled end time it is very clear to me that there is an overlap of some 20 to 25 minutes of compensable time. 56

56 employer had knowledge or reason to believe that the officers are working and the employer is benefiting by the work being performed.

The employer is required to control the workplace discontinue work it does not want performed. Establishing a rule to prohibit the work is not a satisfactory resolution. Accepting the fact that the work is being performed and benefiting from the work is an acknowledgement an acceptance that time spent is time work. 1D At 37

The Agency may argue that the time it takes to walk to the officers post is "de minimus" the

Portal-to-Portal Act, 29 U.S.C. § 251 et seq. provides a limited exception for so-called "travel time", in an environment like FCI Allenwood, which presents an ever present possibility of violence or other emergency situations and should not be compared to the noncompensable "travel time" identified in 29 U.S.C. § 254 (a).

In an Advisory Memorandum issued post-Alvarez (2006-2, May 31, 2006) Stated: "time spent after the beginning of the first principal activity, including time spent walking is not affected by section 4(a) of the Portal-to-Portal Act 29 U.S.C. § 254(a), and is therefore compensable.

There are shifts where officers encounter inmates immediately upon entering the compound. Those officers that encounter inmates as they enter the compound are suppose to be monitoring inmate conduct and are expected to correct any behavioral problems as they walk to their posts. A practice which favors the Agency, who claims that the officers are not on duty until they reach their posts.

There are shifts where the compound is empty, because inmates are locked down for the evening or are at the dinning hall. There are compound officers whose duty is the compound area itself. Everything that goes on at FCI Allenwood centers around the compound. Once the officers are locked in the compound the officer's movement is dictated by what post they are assigned.

Because of the location of the Compound Post to the Control Center, it takes less time for the incoming officers to walk to the Compound Post and for the outgoing officers to

walk to the Control Center. Therefore they should be compensated less than the officers who are traveling further to the Housing Units.

On the issue of the Perimeter Patrol, I took into consideration the post orders. There are three eight-hour shifts with two officers per shift for a total of 6 officers. If the officers arrive on post on time, each would work at least 15 minutes over time on each shift, because of the gun exchange procedure

that must be completed at the start of each shift. Three Perimeter Patrol #2 officers each day would work an additional 15 minutes, because the post orders say that both vehicles can not be stopped at the same time 57. The Perimeter Patrol officers #1 & #2 arriving on post at the allotted time and Perimeter Patrol #2 must stand around for 15 minutes while Perimeter Patrol #1 checks out the gun procedure, according to the post orders. Then when outgoing officer #1 leaves, the Incoming and out going officer #2 go through the same procedure. For any 24 hour

57 Post orders Perimeter Patrol - 4:00 PM Report for duty wearing the prescribe uniform. .

equipment.

Perimeter Patrol #1 meet the day watch officer in front of the Administration Building and proceed to the clearing barrel to exchange weapons and pertinent information. Do not exchange weapons, or ammunition near high traffic areas (i.e. Administration building, rear gate of the parking lot). An equipment inventory is provided to document that all items listed are present and accounted for. List any discrepancies noted during the inspection of the equipment. Wearing of the vest is Mandatory., Receive any pertinent information regarding the post.

At no time will both perimeter exchange equipment at the same time. One vehicle must remain mobile at all times

12:00 AM You will be relieved by the Morning watch officer. Ensure weapons, ammunition, and

equipment are operational and accounted for. Complete all log books and paperwork. Pass on any pertinent information. Your tour of duty ends.

The weapons must be unloaded by the office being relieved prior to giving them to the relief officer as outlined below.

(The rest of the order spells out exactly how the officer is to unload the 9MM Pistol, load the 9MM pistol, unload the shotgun, load the shotgun, unload the M-16 Rifle and load the M-16 Rifle.

The weapons must be unloaded by the office

being relieved prior to giving them to the relief officer as outlined below

duty six officers are working fifteen minutes over time and three of the six (officer #2) are working an additional fifteen minutes overtime because they have to wait until #1 completes the gun exchange before they can start their exchange..

The Agency's argument that the Visiting Room officers have time left at the end of their shift is believable. The Captain's testimony to the fact that they can start and end their day at the Control Center, within the eight hour work day, is believable. Therefore those officers working the Visiting Room should be excluded from any overtime back pay from this arbitration award. Also excluded from back pay are the officers that work the AM shift on the "B" side Housing Unit. When this post started at 5:30 AM and ended at 1:30 PM the officers were starting and ending their shift at the Control Center. The "B" side shift that started at 1:30 PM and ended at 9:30 PM, also started and ended at the control center. When the "B" side shift was changed from 5:30 to 6:00 AM, and from 1:30 to 2:30 PM. The "B" AM officer started his day at the Control Center at 6:00 AM. He was then relieved in time so that he could make it back to the Control Center by 2:30 PM. Therefore there should not be any overtime allotted to this position. However, the "B" side PM Officer had to relieve him prior to 2:30 PM, so this "B" side officer will be included in this decision, but only since the change took place in 2008 or 2009. S/He will receive the same compensation as the "A" side officers.

Also excluded from back pay are the officers who work the front desk, the front screener officers, SHU "2" officer who works from 7:30 AM to 3:30 PM, the 4:00 PM to Midnight,

SHU recreation and SHU property officers. All these officers start and end their work day at the Control Center and do not relieve any other officer.

There is no doubt in my mind that the Agency at FCI Allenwood knew that the officers were coming in 25 to 30 minutes prior to their start time, gathering

equipment necessary and walking to their post. These officers were also expected to be at their posts at least 10 minutes prior to the shift change. This was not testified to, but eluded to, by Lieutenant Haas in his statement. ("if your replacement has not arrived 10 minutes before your shift ends call my office"). Therefore the Agency knew, and depended on this practice and therefore must compensate its employees for all hours of work that it "suffered and permitted" to be performed. 58 6 59

These posts and times are relevant from September 18, 2003 to January 2008 when the Screening Room was opened.

Control Center # 1:

25 minutes of compensation

Compound:

15 minutes of compensation

A-Side Housing Units:

20 minutes of compensation

B-Side Housing Units

6:00 AM to 2:30 PM: none

2:30 to 10:30: 20 minutes of compensation

58 C.F.R. § 551.104. an employee cannot volunteer to perform work for free.

59 Judge/Administrative Officer - John R. Swanson April 4, 2007 - Council of Prison Locals C33 AFGE Local 1302 & FBOP, Florence Colorado

The FLSA is clear in its definition of "suffer or permit work". If the employer requires or allows employees to work, this time spent not requested by the employer but still or allowed, is hours of worked

SHU # 1 : 20 minutes of compensation

Unit 5 Control: 25 minutes of compensation

Unit 5 Housing: 15 minutes of compensation #

Unit 5 SHU: 15 minutes of compensation

Unit 5 Compound: 30 minutes of compensation

Perimeter Patrol:

Perimeter Patrol #1 15 minutes of compensation

Perimeter Patrol #2 30 minutes of Compensation
Visiting Room: Three officers None

From January 2008, when the screening room went into effect, to the present time five (5) additional minutes will be added to the above posts, with the exception of the Perimeter Patrol, whose overtime compensation will remain the same.

The Agency should have known that it was in violation of FLSA. One has to only look at the post orders to realize that if the officer came in at the post order designated time, the officer on post would be leaving his post 15 to 20 minutes late. In order for the officer to be on time at his/her post, then s/he would have to come in 15 to 20 minutes early so that the officer on post could leave on time. This grievance had been on going since 2006 and no one made any attempt to resolve the issue, or even attempt to request assistance, to see management was in compliance. During the arbitration the Agency presented no compelling evidence that it was complying with the FLSA. Because the Agency failed to establish that it acted in good faith or on reasonable

grounds that it was not in violation of Section 1 of the Portal-to-Portal Act, 29 U.S.C. 260, the Agency is liable for liquidated damages equal to the correctional officers back pay-"

When the Union brought the letter of portal to portal issues to the Warden and she decided to ignore the issue, her decision to ignore the issue was in effect a willful disregard of Section 255(a) of the FLSA. In accordance with the FLSA, 29 U.S.C. § 216 (b) the act of ignoring the issue, will therefore allow the statute of limitations be extended three years to September 18, 2003 and continue through the present.

The Union will submit its petition for attorney fees and reasonable expenses within 30 days of this award.

AWARD

I find that the Bureau of Prisons, FCI Allenwood, did suffer and permit bargaining unit employees to perform compensable work before and

or after their scheduled shifts, without compensation, in violation of the Fair Labor Standards Act and the parties Master Agreement.

The Arbitrator will retain jurisdiction, for the purpose of resolving any differences between the parties, as to persons eligible for payment, as stated in my decision above, and/or the amount of compensation due until such time as the ordered compensation has been completed.

57 Section 216(b) of the FLSA provides that an employer "shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages."

The agency and Union will determine the amount of compensation due using 5 CFR 550.805 - as their basis for computing back pay.

The parties shall come together within 90 days of this award to begin to compile a list of employees eligible for back pay. This time may be extended only by a joint request of the parties compiling and computing the list.

This is not an order but a suggestion that the Management at FCI Allenwood and the Union seriously take a look at the times associated with the post orders of all those posts made reference to in this arbitration, and make adjustments to allow for overlap to prevent further portal to portal issues.