

101 FLRR 2-1008

**American Federation of Government Employees, Local 1145 and Department of Justice, Federal Bureau of Prisons, United States Penitentiary, Atlanta, GA**

FMCS 00-04497

**October 4, 2000**

**Judge / Administrative Officer**

**Arbitrator: Cary J. Williams**

**Related Index Numbers**

**117.048 Training and Trial Periods, Refresher Course**

**125.012 Annual Leave, Contract Interpretation**

**125.048 Annual Leave, Scheduling**

**Case Summary**

THE ARBITRATOR FOUND THE AGENCY VIOLATED THE PARTIES' AGREEMENT WHEN IT DENIED EMPLOYEES ANNUAL LEAVE DURING THE TIME OF ANNUAL TRAINING

¶The Agency denied annual leave for all employees from January to March to complete annual refresher training. The Union filed a grievance that the denial of all leave violated the parties' agreement. The Union argued the Agency cannot deny all leave, but can limit the number of employees granted leave. The Agency argued it allowed unscheduled leave and the limitation of annual leave was necessary to complete the annual training in a more efficient manner. The Arbitrator found the Agency violated the parties' agreement by denying all annual leave. The Arbitrator ordered the Agency to consider the Union's input regarding a reasonable number of slots for annual leave during all 12 months of the calendar year.

**Full Text**

Opinion and Award of Arbitrator

FMS No. 00-04497

(Annual Leave)

October 4, 2000

Department of Justice, Federal Bureau of Prisons, United States Penitentiary Atlanta, Georgia and

American Federation of Government employees, Local 1145

The issue is whether the Agency violated the Agreement in its administration of annual leave for the period of January I through March 25, 2000; and if so, what is the remedy?

**PERTINENT CONTRACT PROVISIONS**

**ARTICLE 19 - ANNUAL LEAVE**

Section a. The Employer and the Union agree that annual leave is the right of the employee and not a privilege, and should be used by employees. ... Annual leave will be scheduled as requested by employees in accordance with the provisions of this article insofar as it does not decrease the safety, security, or mission accomplishments of the organization.

Section b. All departments will use total-leave year scheduling.

1. all departments will apply the features outlined in Section I of this article in scheduling annual leave for all bargaining unit employees unless mutually waived by the department head and the Union: and

Section c. Employee requests for unscheduled leave will be handled in accordance with applicable laws, rules and regulations,...

Section 1. Total leave-year scheduling procedures may be negotiated locally provided that:

1. a leave committee of at least one (1) supervisor and at least one (1) Union representative, the number to be negotiated locally, will be responsible for implementing the seniority requirements of this article regarding total leave-year scheduling; and

2. after considering the views and input of the Union, the Employer will determine the maximum number of employees that may be on scheduled annual leave during each one (1) week [seven (7)

consecutive days] period, and when scheduled annual leave will be curtailed because of training and/or other causes such as military leave. ....

Section m. Total leave-year scheduling does not prohibit employees from requesting leave for various lengths and reasons throughout the leave year.

Code of Federal Regulations

TITLE 5--ADMINISTRATIVE PERSONNEL  
CHAPTER 1 --OFFICE OF PERSONNEL  
MANAGEMENT PART 630--ABSENCE AND  
LEAVE

Sec. 630.1202

Leave year means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

(Un. Tab 7A) BACKGROUND

The United States Penitentiary in Atlanta, Georgia, is the largest such facility in the Federal system. The prison has over 700 staff members and over 2300 inmates. The Custody Department is the largest single department at the prison with approximately 380 staff.

As a field institution, all employees at the prison must complete 40 hours of Annual Refresher Training (ART) each year. In the past the Agency has limited scheduled annual leave during ART to approximately ten slots rather than the average 30 slots per month during other times of the year. The testimony indicated that completing ART has taken a long period of time in the past. In an effort to complete ART in a shorter period of time, the Agency decided to change its policy and not approve any scheduled annual leave for the first six pay periods of 2000 from January I through March 25. The testimony of both Union and Agency witnesses established that annual leave has never been limited in this way in the past.

The Union became aware of the Agency's action regarding annual leave during its annual leave committee meetings in November 1999. Discussions

took place between Union and Agency representatives on the issue, and the Agency ultimately decided not to approve scheduled annual leave for the period of time in question. Union Tab 10 A presented leave request forms from various bargaining unit members which showed that they requested annual leave during the January 1 through March 25, 2000, period, but were denied. According to specific requests in that exhibit, these requests were denied, "due to the requirements of annual refresher training". When it became apparent the Agency was going to implement the annual leave policy, the Union

filed the present grievance.

Union witnesses testified that the Agency had never limited annual leave in this manner in the past at the prison. They stated many employees want to take their annual leave during the months of January, February and March, and that they were denied that right in this case. According to these witnesses, by limiting leave for the months of January through March, the Agency created problems for the remainder of the year for employees trying to schedule leave. In addition, they testified they presented several options to the Agency, but it did not consider them before putting the new policy in place. According to Harry Butler, past Local President, if the Agency had allowed even a few staff to take leave during the time in question rather than none,

the Union might have been satisfied.

Agency witnesses testified that other prisons curtail or limit annual leave during ART as was done in this case in order to complete training in a more efficient manner. Ms testimony indicated ART places a burden on scheduling especially in the Custody Department, and the curtailment of annual leave was done for safety and security reasons.

Warden Scott verified that the policy was put in place because the prison is a high security institution, and it was important to have the maximum number of trained correctional officers on duty at all times. To this end, he stated annual leave was limited so that ART could be completed and the safety and security

of the prison would not be compromised. Scott testified further that military leave combined with annual leave puts stress on scheduling enough staff to man the facility, and the annual leave policy helped that problem. Scott stated that even though annual leave was limited during the period of time in question, unscheduled leave was granted for staff with special circumstances who could justify the leave.

Grady Turner, Correctional Supervisor, testified he examined the records and found that 430 employees were granted unscheduled annual leave during the period from January I through March 25, 2000. Turner stated the Agency did not block annual leave for the time in question, but merely curtailed it.

Michael Wright, Associate Warden of Programs, testified the Agency decided to limit or curtail annual leave from January I through March 23, 2000, in an effort to complete ART more efficiently. He stated the Agency told staff not to schedule routine annual leave during the time in question, but unusual situations were approved when possible.

#### CONTENTIONS

The Union contends under Article 19 scheduled annual leave is a right rather than a privilege, and the Agency violated this portion of the Agreement when it refused to allow such leave for the period of January I through March 25, 2000. The Union contends both Article 19 and past practice have established that scheduled annual leave is based on "total leave year scheduling" which means all months of the year, and the Agency cannot eliminate leave for periods of time as it did in this case. The Union contends the Agency should negotiate the number of leave slots to be granted during ART, and cease blocking annual leave during certain months.

The Agency contends it has authority to curtail scheduled annual leave during training (ART) under Article 19, Section 1.2., even if it allows no leave to be scheduled during such training. The Agency contends it curtailed the scheduling of annual leave for the period of January I through March 25, 2000, to avoid decreasing the safety, security or mission of the

organization under Article 19, Section a. The Agency contends unscheduled annual leave was granted during the time in question in an effort to accommodate staff. The Agency contends it considered the Union's views and input before it implemented the annual leave policy, and that the Agreement does not require it to negotiate the issue with the Union. Regardless, the Agency contends the Union had the opportunity to discuss the issue during negotiations for the Local Supplemental

Agreement (JX 4), but did not raise this issue.

#### OPINION

An examination of Article 19 finds that there are two types of annual leave set out therein, "scheduled" and "unscheduled". Scheduled annual leave is described in Section a. as a "right rather than a privilege", and "will be scheduled as requested by employees, And so far as it does not decrease the safety, security, or mission accomplishment of the organization". The Agency, therefore had the burden to show that eliminating scheduled annual leave during the time in question met the requirements of that language.

Warden Scott and other Agency witnesses testified that annual leave was limited to complete ART and for the safety and security of the facility. While there was some general testimony that denying leave during the time in question helped in scheduling, especially in the Custody Department, there was no conclusive evidence of a safety or security problem in the past when some staff were allowed to take scheduled annual leave during ART. To limit the employees' right to annual leave in such a fashion requires clear proof that the prison's mission could not be accomplished without eliminating annual leave. In this case the evidence did not establish that the total elimination of scheduled annual leave was necessary during the time in question for the "safety, security, or mission accomplishment of the organization" .

The Agency relies on the language of Article 19, Section 1.2. for its right to "curtail" scheduled annual

leave during training. The record is clear that the Agency has limited or curtailed leave during ART in the past, and has the right to do so in the future. But there is a difference in curtailing leave during ART and totally eliminating it. There was no testimony regarding the intent of the parties in including the term "curtail" in Section 1.2., but Websters New Twentieth Century Dictionary (2nd Ed) defines the term as, "to cut short, reduce, shorten, lessen, diminish, decrease or abbreviate". The import of the term "curtail" in the Agreement based on these definitions is to cut back the number of leave slots, but there is no proof the parties intended to give the Agency the right to totally eliminate leave slots in the absence of clear proof of an emergency or other unusual situation. The same dictionary on the other hand defines "eliminate" as, "to take out, get rid of, reject or omit". From a comparison of the two terms there is clearly a difference in curtailing and eliminating annual leave. I disagree with the Agency's contention that curtailing leave can also mean allowing zero leave slots. If the parties had intended such a result they would have simply stated the Agency could terminate or eliminate annual leave during training and/or other causes. This language would leave no doubt the Agency had the right to implement the policy it put in place for January I through March 25, 2000. That language, however, is not in the Agreement, and the term "curtail" does not allow the Agency to totally eliminate all scheduled annual leave during the year.

The phrase "total leave year scheduling" is found several times in Article 19. In Section b.1. it states, "All departments will use total-leave year scheduling". (Emphasis added) Again, there was no testimony regarding what the parties meant by the use of this phrase, but the logical interpretation is that they intended annual leave to be scheduled during the entire 12 months of the calendar year. It is difficult to make any other assumption based on this language. Article 19 discusses the rights of the employees to annual leave, and it follows that this phrase defines the period of time annual leave should be available

within the limits set out in Section a. and Section 1.2. In addition, CFR, Section 630.1202 (Un. Tab 7A) defines "leave year" as an entire calendar year. The logical conclusion, therefore, is that scheduled annual leave should be available to employees throughout the calendar year, and the Agency can only limit its availability under those examples set out in Article 19, Sections a. and I., but cannot totally eliminate scheduled annual leave during certain months except under extraordinary circumstances.

Article 19, Section 1. states, "Total leave-year scheduling procedures may be negotiated locally..... The Union relies on this language to contend the Agency must negotiate the number of slots for annual leave during training or other situations. I disagree. The language stated above only states that scheduling procedures may be negotiated. It does not mandate that the Agency negotiate annual leave scheduling whenever it decides to modify the procedure so long as it is ready to justify its actions under the Agreement if the Union chooses to grieve. Section 1.2. instructs the Agency to consider, "the views and input of the Union" before determining the maximum number of employees that may be on annual leave. So long as the Agency makes a good faith effort to listen to the Union's views regarding leave scheduling for the year, it can decide what is a reasonable number of slots available for annual leave during all months of the calendar year.

#### AWARD

The grievance is granted. After considering "the views and input of the Union" regarding scheduled annual leave, the Agency shall determine a reasonable number of slots to be available during all 12 months of the calendar year, but cannot totally eliminate it during certain months as it did in the present case.