

**UNITED STATES OF AMERICA
FEDERAL MEDIATION AND CONCILIATION SERVICE**

IN THE MATTER OF THE ARBITRATION

BETWEEN

**FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
COLEMAN, FLORIDA**

AGENCY

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 506
FEDERAL CORRECTIONAL COMPLEX
COLEMAN, FLORIDA**

UNION

OPINION AND AWARD

**FMCS CASE NO. 12-52024
ASSAULT ON STAFF COM**

**ARBITRATOR
N. J. STOCKER**

APPEARANCES:

UNION:

KENNETH PIKE – MEDIUM V.P./ARBITRATION SPECIALIST
JOE ROJAS – UNION REPRESENTATIVE
CATHRYN L. BENNER – SKILLS TREATMENT SPECIALIST
LISA COTTON – PSYCHOLOGIST; DAP COORDINATOR
DAVID DECAMILLA – LIEUTENANT
SEITH HACKLER – SENIOR OFFICER SPECIALIST
MATTHEW KLECKNER – UNIT MANAGER
JAVIER MOURIZ – PSYCHOLOGIST CHALLENGE PROGRAM COORDINATOR
ANGEL PEREX – CORRECTIONAL OFFICER
MICHAEL ROSSIGNOL – CASE MANAGER
ELIZABETH SIERRA – STAFF PSYCHOLOGIST
TARONICA WHITE – PSYCH TREATMENT SPECIALIST
GEORGIA WHITLOCK – CHIEF PSYCHOLOGIST

AGENCY:

WESLEY A. PUMMILL – LABOR RELATIONS SPECIALIST
DAVID HONSTED – ASSISTANT PERSONNEL OFFICER
JOEY PITTS – SAFETY MANAGER

This arbitration arises pursuant to a notice from Federal Mediation and Conciliation Service dated March 6, 2012 that the undersigned was selected by the above parties as set forth in their collective bargaining agreement. The decision of the arbitrator shall be final and binding on the parties.

The hearing in this matter was held at 9 a.m. on March 14 and 15, 2013 at the Federal Coleman Correctional Administration Building, Room MGM, 846 N. E. 54th Terrace, Coleman, Florida 33521. The parties agreed they were afforded full opportunity for the examination and cross-examination of witnesses, the introduction of relevant exhibits and for argument. A transcript of the proceedings was taken by Letha Wheeler. Both parties filed post-hearing briefs and were received by the arbitrator on May 7, 2013, closing the hearing. Neither party objected to the publication of the Award.

ISSUE:

The parties agreed to the following issue as presented at the arbitration hearing:

DID THE AGENCY VIOLATE THE MASTER AGREEMENT, BY TRANSFERRING AN INMATE FROM A PENITENTIARY TO A MEDIUM SECURITY FACILITY, AND, IF SO, WHAT SHALL BE THE REMEDY?

RELEVANT COLLECTIVE BARGAINING AGREEMENT CONTRACT PROVISIONS:

Preamble §§(D) of the Master Agreement

The Federal Bureau of Prisons acknowledges that the participation of its employees in providing input into the development of personnel policies, practices, and procedures which affect conditions of employment, and their assistance in the implementation of policies, practices, and procedures, contributes to the effective operation of Bureau facilities. The Bureau of Prisons will develop and maintain constructive and cooperative relationships with its employees, through their exclusive representative, where applicable, the Council of Prison Locals and the American Federation of Government Employees. The parties respect the rights granted to Management, employees, and the Council of Prison Locals by the Civil Service Reform Act of 1978, as amended.

The parties recognize that efficient and effective service is a paramount requirement and that public interest requires the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency. Moreover, the parties recognize that the administration of an agreement depends on a good relationship. This relationship must be built on the ideals of mutual respect, trust, and commitment to the mission and the employees who carry it out. Therefore, the Federal Bureau of Prisons and Federal Prison Industries, Inc., hereinafter referred to as "the Employer" or "the Agency" and the Council of Prisons Locals and the American Federation of

Government Employees, hereinafter referred to as "the Union" or "exclusive representative." Do hereby agree to:

(D) recognize that the employees are the most valuable resource of the Agency, and are encouraged, and shall be reasonably assisted, to develop their potential as Bureau of Prisons employees to the fullest extent practicable.

This Agreement and such supplementary agreements and memorandums of understanding by both parties as may be agreed upon hereunder from time to time, together constitute a collective agreement between the Agency and the Union.

Article 5, a. 1 of Master Agreement

To determine the mission, budget, organization, number of employees, and internal security practices of the Agency.

Article 27 (Health & Safety), § a (1)(2) of the Master Agreement

a. There are essentially two (2) distinct areas of concern regarding the safety and health of employees in the Federal Bureau of Prisons:

- (1) the first, which affects the safety and well being of employees, involves the inherent hazards of a correctional environment; and
- (2) the second, which affects the safety and health of employees, involves the inherent hazards associated with the normal industrial operations found throughout the Federal Bureau of Prisons.

With respect to the first, the Employer agrees to lower those inherent hazards to the lowest possible level, without relinquishing its rights under 5 USC 7106. The Union recognizes that by the very nature of the duties associated with supervising and controlling inmates, these hazards can never be completely eliminated.

With respect to the second, the Employer agrees to furnish to employees places and conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm, in accordance with all applicable laws, standards, codes, regulations, and executive orders.

Article 36 (Human Resource Management) of the Master Agreement states,

The Union and the Employer endorse the philosophy that people are the most valuable resource of the Federal Bureau of Prisons. We believe that every reasonable consideration must be made by the Union and the Employer to fulfill the mission of the organization. This will be achieved in a manner that fosters good communication among all staff, emphasizing concern and sensitivity in working relationships. Respect for the individual will be foremost, whether in the daily routine, or during extraordinary conditions. In a spirit of mutual cooperation, the Union and the Employer commit to these principles.

Relevant Statute:

The Federal Employees' Compensation Act

The Federal Employees' Compensation Act (FECA) (Federal employees who are injured on the job.) 5 USC § 8116 (c).

The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel.

U.S. Court of Appeals, Sixth Circuit stated in 948 F.2d 258,

The Supreme Court has recognized FECA's exclusivity and has stated that employees are "guaranteed the right to receive immediate, fixed benefits regardless of fault and without need for litigation, but in return, they lose the right to sue the government"...Because plaintiff's injury is covered by FECA, the Court concludes that the remedies afforded by FECA are exclusive, and plaintiff is barred from bringing a suit for the intentional infliction of emotional distress.

United States Court of Appeals Decision No. 90-5570

See Attached.

BACKGROUND:

The grievant(s) in this case are bargaining unit employees of the Department of Justice, Federal Bureau of Prisons at the Federal Correctional Complex, Coleman, Florida. FCC Coleman is a complex with four separate components to include a Medium facility, Low facility, a satellite camp and two penitentiaries.

On March 10, 2011, inmate Anderson Phillips claimed he had been sexually assaulted by another inmate while in the Special Housing Unit a FCC Coleman Penitentiary – 2.

On September 29, 2011, Phillips was transferred from the Special Housing Unit, Penitentiary-2, directly to the general population at the Medium facility and assigned to the Skills Unit.

On October 4, 2011, one week after being transferred to the Medium facility, Phillips assaulted and seriously injured three staff unit employees.

The Union contends that Phillips was improperly placed and transferred from the more secure confines of the Low Special Housing Unit to the Medium facility general population, specifically, the Skills Unit/Skills Program and in violation of the parties Master Agreement, as well as, its own Agency policy regarding the procedures and protocols for placement of an inmate into the Skills Program.

A grievance was filed dated November 2, 2011 alleging violations of the Preamble §§ (D) of the Master Agreement, Article 27 (Health and Safety) § a (1) (2) and Article 36 (Human Resource Management) which resulted in the instant proceedings.

POSITION OF THE PARTIES

THE UNION:

On March 10, 2011, inmate Anderson Phillips advised that he had been sexually assaulted by his cell mate while in the Special Housing Unit at Penitentiary-2.

On August 1, 2011, Skills Program Coordinator, Lisa Cotton sent an e-mail to Case Coordinator, Lynda Figueroa, stating that she had reviewed the latest report on Phillips and that he was accepted into the Skills program.

On August 15, 2011, a Suicide Risk Assessment was conducted by Drug Abuse Program Coordinator, Elizabeth M. Sierra, Ph.D. on inmate Phillips. She assessed Phillips as being impulsive and

having a history of aggressive impulsive behavior. Phillips was diagnosed as having a schizoaffective disorder and anti-social disorder. Phillips is actively psychotic, has mood swings, disorganized speech and is not taking his medications. Phillips would benefit from more "constant supervision" and should be considered for the Challenge program due to his high level security points.

On August 30, 2011, a threat assessment was conducted on Phillips by Special Investigative Lieutenant M. Clicker who concluded Phillips poses a threat to the safety and orderly running of the institution and should be transferred to another institution which better suits his security needs.

On September 8, 2011, a "Request for Transfer/Application of Management Variable" was completed by Penitentiary -2 Unit Management and approved by Warden D. B. Drew.

On September 12, 2011 an e-mail was submitted to Grand Prairie, Designation and Sentence Computation Center, Senior Designator, Cory Clark stating, "Mr. Clark we are requesting the above inmate be designated to the Skills program. He was the victim of sexual assault and has mental issues. We are asking that his designation be approved quickly so we can get him transferred just as quickly. Thank you for your assistance."

On September 25, 2011, Phillips reported that he was having a bad day and flooded his cell at Penitentiary-2.

On September 27, 2011, inmate Phillips was approved and designated to the Medium facility, Skills Unit. This designation was approved and entered by Grand Prairie, Designation and Sentence Computation Center, Psychology Treatment Specialist, Caroline Gary.

On September 29, 2011, inmate Phillips was transferred from Penitentiary-2 SHU directly to the general population at the Medium facility and assigned to the Skills Unit.

On October 4, 2011, inmate Phillips assaulted and injured three staff employees; Seth Heckler, Angel Perez and Cathryn Bender.

The Union contends Phillips was improperly placed from a more secure confines of the Low Special Housing Unit (SHU) to the Medium facility, general population, Skills Unit/Skills Program in violation of parties Master Agreement, as well as its own policy regarding the procedures and protocol for placement of an inmate into the Skills Program.

Master Agreement:

Preamble

Article 27, Health and Safety, § a (1)(2)

Article 36, Human Resource Management

* Above set forth in Relevant Contract Provisions

Complex Supplement 5330.11.01, (Skills Program) §11 & 17 – COC 5330.11.01 is the policy that governs the Skills Program and the employees assigned to it. This policy provided guidelines for the implementation of the Skills Program, a unit-based specialty treatment program for Medium security inmates at the FCC Coleman.

Section 11 – Program Referrals:

(Paragraph 1, pg.6) Inmates from BOP facility, who are appropriate for housing in a medium security institution will be considered for the Skills Program. Skills applicants must volunteer for the program and be no less than 24 months from release. Judicial recommendations and referrals from U.S. Probation will also be considered.

(Paragraph 2, pg. 6) In general, referrals to the Skills Program will be submitted by the treating mental health clinician. A referral packet will be completed and submitted to the Skills Program Coordinator by mail or via Groupwise to COA/Psychology Services. Completed referrals will be reviewed by the Treatment team, and if the inmate meets program criteria, a telephone or video interview may be scheduled.

(Paragraph 6, pg. 7) Inmates whose adjustment difficulties are primarily related to personality/character disorders, may not be appropriate for the Skills Program. Referring clinicians may be asked to consider the Axis II program for those inmates.

§ 17. Program Expulsion:

(Paragraph 1, pg. 8) Inmates may be removed from the Skills Program by the coordinator because of disruptive behavior related to the program or unsatisfactory progress in treatment. Expulsion from the Skills Program will always be considered when an inmate refuses program participation on a prolonged basis, engages in sexual or predatory violence, or fails to comply with rules to the degree treatment is not possible (e.g. threatens staff and is unable to return to the compound). In response to disruptive behavior or unsatisfactory progress, treatment staff will meet with the inmate to discuss his or her behavior or lack of progress.

Article 27 – Health & Safety – The Union Claims is clear and unambiguous when it states that, the Employer agrees to lower those inherent hazards to the lowest possible level, without relinquishing its rights under 5 USC 7106. Employees have an expectation that the Agency will not commit acts or actions that purposely and unnecessarily raise those inherent hazards that already exist.

Testimony:

Maria Tejera – Case Manager, Skills Unit – Doctor Cotton said they were receiving an inmate that had some aggressive tendencies. Tejera, after reviewing his name and number replied I didn't think he was appropriate for the program. Cotton's reply was she didn't have a choice, the directive came from people above her. Tejera contacted Dr. Javier Mouriz, Lieutenant David DeCamilla, Lieutenant Park and Dr. Cotton about her concerns. Cotton also replied Phillips had a history of 205ing (Sexual Acts in front of Staff). Tejera felt Cotton could veto someone coming into the Unit, but she had no choice.

Michael Rossignol – Case Manager, Penitentiary -2 – Involved in preparing a "Request for Transfer/Notice of Management Variable" on Phillips. Rossignol did not agree on the request because of Phillips points and disciplinary history, however, was given a directive to do so but could not recall who or how the directive was made.

Taronica White – Challenge Treatment Specialist – White testified to the procedures and protocols that are used when placing an inmate into the Skills Program. "From a psychology standpoint, in order for an inmate to meet the Skills requirement he either has to volunteer or he has to show a certain level of learning limitations or a certain level of psychological issues. But, if that inmate has more behavioral problems he would not be appropriate for the Skills Program. Even though Mr. Phillips did have some level of psychological issues, the majority of his issues were based on behavior and not mental. So therefore, on a regular basis he would not have been recommended for Skills." White further testified Phillips was expelled from the Challenge Program because he could not adopt in the other units, the other housing units in general population. White testified that there was not an assessment done on this inmate, he was not interviewed for Skills program and he was not suitable for the Medium facility.

Javier Mouriz – Psychologist and a Challenge Program Coordinator – Testified to protocol:

1. First, a referral from staff
2. Staff from the Skills Program will go and interview the inmate in person.

3. If they get selected they are put in the Sentry as a Skills wait inmate. There's a Challenge wait. There's a DAP wait, RDAP wait and there is a Skill's wait.

If they go through the assessment process and were deemed suitable, the next thing that needs to be done is the CMC's (Case Management Coordinator) needs to get together to arrange the transfer. Mouriz testified to the best of his knowledge, Phillips was not put on a wait list, no assessment and he was not screened properly and in his opinion was not suitable for the Skills Program.

Elizabeth Sierra- Psychologist – Sierra witnessed the inmate while he was still housed in SHU (Low Facility) and prior to his being transferred to the Medium facility. She felt he was a problematic inmate with behavioral issues and interactions with psychology, a behavioral management inmate. Correctional officers would need assistance trying to get him more under control and to comply with orders.

Sierra was very concerned about repercussions for her testifying.

Lisa Cotton – Skills Program Coordinator – Technically approved Phillips for placement in the Skills program. Cotton was the author of Complex Supplement (Jt. 6) setting forth the procedures and protocols as it regarded placement of inmates into the Skills program, yet she did not follow any of those procedures. No interview, no wait list, no assessment by Skills Team. Cotton felt she had no choice in the matter and had to approve the inmate whether she particularly liked it or not. She sent e-mails to her staff saying "we don't have a choice. We are getting his guy...be on your P's and Q's." Cotton further testified her former supervisor Dr. Whitlock made the decision that Phillips would be placed in the Skills program.

Cotton was in complete fear of retaliation from Dr. Whitlock for testifying.

Georgia Whitlock – Chief Psychologist over the Complex. Supervisor to: Mouriz, Tejera and Cotton. Whitlock's testimony tried to minimize Phillips initial placement in the Skills Program and assigned blame to those under her; "Based on everything I have looked at in preparation for today," (in reference to the hearing), she felt Phillips was appropriate for the Skills Program. She had limited knowledge at the time of the transfer. The Coordinator had accepted him and she supported that decision. If the Coordinator did not approve the decision the inmate would not have been transferred. She denied any knowledge of who approved the transfer.

Cathryn Bender – Skills Treatment Specialist (one of the injured employees) – When a chief psychologist or staff psychologist would make a recommendation, in writing, we would request the inmate's history and so forth. We would then receive that packet and the psychologist, Skills Program Coordinator, Skills

Treatment Specialist, Skills teacher and treatment team would sit down and review the packet. Sometimes an interview of the inmate would take place before a final decision would be made. None of the procedures and protocol were followed and resulted in three staff members being injured; one seriously.

Due to the procedures and protocol not being followed and resulting in an injury to staff personnel, the Agency should be found to have violated the Master Agreement, as well as policy in placing Phillips into the Skills program.

AGENCY:

The Federal Correctional Complex in Coleman Florida is responsible for managing inmate population in various types of facilities, programs, and staff to prepare the inmates to finish their term of incarceration successfully. The Agency provides inmates educational, vocational, recreational, wellness and spiritual programs along with physical and mental health treatment.

Inmate Phillips was housed in the Special Housing Unit of the low security facility. He had several verified mental health issues and was a recent victim of sexual assault. With the inmate's mental condition deteriorating he needed to be managed in a different environment. The best available setting was in the Skills Program.

The Agency has the right under Article 5 of the Master Agreement to assign inmates to any facility and/or program and to determine when and how those assignments are made.

The Federal Bureau of Prisons provide controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient and appropriately secure and also provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

The Federal Employees' Compensation Act (FECA) is the exclusive remedy for federal employees who are injured on the job. 5 USC §8116 (c) US Court of Appeals, Sixth Circuit stated in 948 F.2d 258,, The Supreme Court has recognized FECA's exclusivity and has stated that employees are "guaranteed the right to receive immediate, fixed benefits regardless of fault and without need for litigation, but in return, they lose the right to sue the government..." Because plaintiff's injury is covered by FACE, the Court concludes that the remedies afforded by FECA are exclusive, and plaintiff is barred from bringing a suit for the intentional infliction of emotional distress.

Phillips was due to be released very soon and was quickly decompensating in his current setting. He could not return to the general population at his designated institution and to place him in the adjacent penitentiary would have put him at greater risk. The only viable option was the Skills Program.

Testimony:

Mr. Hackler – He was paid for his time off.

Mr. Perez – He was paid for his time off, however, claimed he would have normally worked 32 hours of overtime a pay period which he was not eligible for due to his light duty status.

Mr. Kleckner – Testified in his threat assessment he could not determine that the inmate actually posed a threat.

Dr. Whitlock – Dr. Whitlock felt the Skills Unit would be an appropriate place for the inmate. Her primary concern with penitentiary inmates entering the Skills Program is with inmates who display predatory behavior. Phillips did not exhibit the behavior. The Skills program offers a lower inmate to staff ratio, which is more protective than the general population. This inmates diagnosed mental condition did not indicate he would be violent. Dr. Whitlock concurred in the Transfer Order that stated, "We believe with the psychology and counseling resources afforded at FCC Coleman – Medium. Inmate Phillips would be more suitably fit at that facility." Dr. Whitlock described the differences between the Challenge Program at the penitentiaries and the Skills Program which she thought would be a better fit for Phillips. Dr. Whitlock also testified the inmate was compliant with his medication.

Dr. Mouriz – Dr. Mouriz shared the same opinion; "Calling him a predator might be going too far. That means you know what you are doing. Was he unstable and did he have sexual problems, yes, which is also a problem, but it is not predatory."

Lt. DeCamilla testified he interacted with the inmate and that the inmate had said nothing that would have caused him to place the inmate in the Special Housing Unit.

Mr. Pitts testified the position descriptions of the affected employees clearly indicated that they "are subject to hostile and possibly life threatening situations and these are the very nature of the duties associated with supervising and controlling inmates. These hazards can never be completely eliminated." He also stated none of the affected employees were required to use their personal time. They received 100% of their pay or 75% tax free. All benefits and time and attendance benefits as

required by the Department of Labor standards including all applicable policies and procedures were followed for Workmen's Compensation.

Mr. Pitts stated Ms. Bender was placed on a Temporary Alternative Assignment for approximately six months and all medical payments associated with her injuries would be covered as described by the Department of Labor. He further stated none of the affected employees had filed for a scheduled award or disability retirement.

FCC Coleman only had two options. They could keep the inmate in Special Housing, allowing him to further regress or they could try to give him one last chance to better himself. The transfer of the inmate was done in accordance with policy. A proper Transfer Order and Management Variable Request was prepared, signed by the Warden, and processed through the appropriate channels.

OPINION

The Arbitrator has carefully reviewed the testimony of the parties and witnesses called to testify in the proceedings. I have also carefully considered documentary evidence, as well as the parties' well-stated contentions in support of, and in opposition to their actions. Having completed my deliberations, I state the following:

First of all, the Arbitrator is saddened by the injuries received by three employees of FCC Coleman and furthermore, the lack of follow-up by Administration in showing concern about their injuries, personal life, related recovery or assistance. The cold attitude of; they are protected by FECA law for any loss financially, or loss of benefits and statute relating to disability.

Second of all, this Arbitrator in his forty (40) plus years of experience has never witnessed employees so concerned about reprisal for giving their testimony in this case. It is the Arbitrator's belief that a certain administrative personnel has abused their executive authority and created an atmosphere of fear in employees trying to do their professional job. These comments should not be taken lightly by the Federal Bureau of Prisons.

The Agency contends, "The Request for Transfer was prepared. The Warden signed the request indicating his approval, it was sent to and subsequently approved by the Designation and Sentence Computation Center and the transfer was completed. The procedures used to transfer the inmate to the medium were in accordance with policy. Even though the "packet" referenced in the Institution

Supplement for the Skills Program does not appear to be completed, that document would not have changed the outcome." The Arbitrator disagrees.

The entire case of the Agency surrounds their right to place and manage the inmate population.

The Preamble §§ of the Master Agreement clearly states, "The Federal Bureau of Prisons acknowledges that the participation of its employees in providing input into the development of personnel policies, practices, and procedures which affect conditions of employment, and their assistance in the implementation of policies, practices, and procedures, contributed to the effective operation of Bureau facilities...."

Dr. Lisa Cotton was the Skills Program Coordinator and the author of the Complex Supplement COC 5330.11.01 (Jt. 6) which is a document setting forth the procedures and protocols for an inmate being considered for transfer to the Skills Program. Cotton made the decision to accept Phillips into the Skills Program, however, testified she had no choice in the matter because the powers above made the decision. She sent everyone on her staff e-mails saying, "we don't have a choice, looks like we are getting this guy, be on you P's and Q's." Inmates who are being reviewed for housing in a medium security institution, will be considered for the Skills Program. Skills applicants must volunteer for the program, (no testimony to this fact) and be no less than 24 months from release. Judicial recommendations and referrals from U.S. Probation can also be considered. A referral for the Skills Program will be submitted by the testing mental health clinician. A referral packet will be completed and submitted to the Skills Program Coordinator by mail or via Groupwise to COA Psychology Services. Completed referrals will be reviewed by the treatment team, and if the inmate meets program criteria, a telephone or video interview may be scheduled. None of this was done. The Complex Supplement further stated, inmates whose adjustment difficulties are primarily related to personality/character disorders, may not be appropriate for the Skills Program. Referring clinicians may be asked to consider the Axis II program for those inmates. Maria Tejera, Case Manager for the Skills Unit at that time testified she said to Dr. Cotton she felt Phillips was not appropriated for the program and Cotton replied she didn't have a choice. Tejera contacted Dr. Javier Mouriz, Lt. David DeCamilla and Lt. Parks about her concerns. Tejera felt Cotton previously could have vetoed somebody coming into the Unit.

Michael Rossignol was the Case Manager at Penitentiary -2 and was involved in preparing a "Request for Transfer/Notice of Management Variable " on Phillips. He felt he was not suitable for a

There was no evidence presented whether Complex Supplement Policy 5330.11.01, (Skills Program) was mutually agreed upon between the Agency and the Union and become part of the Master Agreement. Due to the Agency not following the Complex Supplement Policy 5330.11.01 they were in violation of the Master Agreement.

Based on this finding, the Arbitrator looks at the remedy sought by the Union:

“ Whereas, and based on those reasons as set forth herein, the Union respectfully requests; that the Agency be found to have violated the Master Agreement, as well as, policy; that the Agency be reminded to follow policy when determining placement of an inmate into the Skills Program; that all medical/legal bills, to the extent there should be any, be borne by the Agency, to include, any percentage of loss minus (i.e. 25%) due to being covered under Workers’ Compensation; that sick leave and/or annual leave used due to injuries sustained in the assault, to the extent there should be any, be reimbursed; that the three staff assaulted by Phillips be compensated for pain and suffering, an amount to be determined; that Whitlock be placed under investigation for potential witness tampering; and for any and all other just and proper relief as determined by the Arbitrator.”

There was no evidence presented at the Arbitration Hearing that any medical bills, lost wages or benefits had been incurred by the three injured staff employees except Mr. Perez stating he lost 32 hours of overtime a pay period. This loss was due to Perez being on light duty after the incident.

This Arbitrator recognizes the very hazards of the duties associated with supervising and controlling inmates. However, to award pain and suffering without any factual evidence presented is denied.

The Arbitrator agrees to the request for a complete and thorough investigation.

AWARD

I, THE UNDERSIGNED ARBITRATOR, having been selected in accordance with the Master Agreement entered by the above named parties dated March 9, 1998 through March 8, 2001, and having duly heard the proofs and allegations of the parties, award as follows:

ISSUE:

DID THE AGENCY VIOLATE THE MASTER AGREEMENT BY TRANSFERRING AN INMATE FROM A PENITENTIARY TO A MEDIUM SECURITY FACILITY, AND, IF SO, WHAT SHALL BE THE REMEDY?

FMCS CASE NO. 12-52024

The Agency did violate the Master Agreement, Article Preamble (D), Article 27 (Health & Safety) a (1)(2) & e and Article 36 (Human Resource Management) by transferring an inmate (Phillips) from a Penitentiary to a Medium Security Facility (Skills Program) in not following COC 5330.11.01 policy that governs the Skills Program.

REMEDY:

1. An investigation will be done by a Committee of equal Management and Union personnel consisting of no less than six people. Each party will select their own representatives. Dr. Whitlock cannot be a member of the committee. The committee will convene not later than thirty days following receipt of this Award and they shall elect a chairman. Union personnel shall have no loss of wages or benefits while attending these meetings. The conclusion reached by the committee will be submitted, in writing, to the Federal Bureau of Prisons and the Federal Bureau of Investigation for appropriate action. The committee will be charged with determining who made the decision and why it was made to transfer Phillips to the Skills Program without following procedures and protocol COC 5330.11.01. Furthermore, the committee will determine whether Dr. Whitlock committed witness tampering and perjury during her testimony at the Arbitration Hearing.
2. In the event there is reprisal to personnel testifying in this hearing, the Arbitrator retains jurisdiction.

3. Should there be any disagreement in interpreting this Award, the Arbitrator retains jurisdiction and may be contacted by cellphone at (716) 713-5311.

7/2/13
Dated

N. J. Stocker
N. J. Stocker, Arbitrator

STATE OF FLORIDA)
)SS.
CHARLOTTE COUNTY)

On this 2nd day of July, 2013, before me personally appeared N. J. Stocker, to me known and known to me to be the same person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Heidi Hodder
Notary Public, State of Florida



HEIDI MARIE HODDER
MY COMMISSION # FF 022734
EXPIRES: June 2, 2017
Bonded Thru Budget Notary Services