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August 29, 2013

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Ms. Gail L. Elkins
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US DOJ/FBOP/HRMD/LMR
320 First Street, N.W., Room 252
Washington, D.C. 20534

Re: FMCS No. 11-50579
United States Department of Justice, Federal Bureau of Prisons, Coleman, Florida
and American Federation of Government Employees, AFL-CIO, Local 506

Dear Counsel:

Enclosed is the Arbitrator's decision in this matter. Also enclosed is the Arbitrator's statement for services and expenses.

Very truly yours,

William H. Mills

WHM/lan
Enclosures
cc: Federal Mediation and Conciliation Service

In the Matter of Arbitration Between:	FMCS NO. 11-50579
	DATE OF HEARING:
UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FCC COLEMAN, FLORIDA	May 16, 2013
	DATE BRIEFS RECEIVED:
and	August 14, 2013
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 506	DATE OF DECISION: August 29, 2013

Arbitrator

William H. Mills, appointed by Federal Mediation and Conciliation Service

Appearances

FOR THE AGENCY: Gail L. Elkins, Attorney Advisor, U.S. Department of Justice

FOR THE UNION: Tiffany L. Malin, Attorney

Issues

The parties stipulated that the issues to be decided in this arbitration are:

1. Is the grievance arbitrable?.

2. Whether the Agency violated the criteria or standards cited in Part 5 of the grievance form?. - If so, what is the remedy?.

Background

This dispute arose at the Agency's facility at Coleman, Florida. The basis of the dispute is a grievance filed by the Union on August 19, 2010. The parties did not resolve the matter between themselves and arbitration was requested and an arbitrator was appointed.

An arbitration hearing was conducted at the Federal Correctional Complex at Coleman, Florida on May 16, 2013. The parties presented oral testimony and documentary evidence on the stipulated issues. The parties agreed to file post-hearing briefs and agreed that the matter would be considered as submitted to the Arbitrator for decision when the post-hearing briefs were received by the Arbitrator. The parties agreed that Issue 1 would be considered a threshold issue and that Issue 2 would be considered and decided by the Arbitrator only if the Arbitrator decided the dispute was arbitrable.

Summary of the Evidence

This summary includes the pertinent evidence presented at the hearing on both issues. There were few conflicts in the evidence presented. Where relevant, such conflicts in the evidence will be apparent in the summary which follows.

The Coleman Federal Correction Complex (FCC) consists of five separate institutions located on the same premises. Each institution has a Control Center which generally manages the activities of that institution and which generally provides

and manages equipment used by employees in the performance of duties related to that institution.

Inmates at the Coleman FCC who require medical care not available at the Complex are transported by the Agency to outside hospitals or clinics in the area where they receive medical care. A number of area hospitals or clinics provide this service for inmates, including facilities as far from Coleman FCC as Gainesville, Florida, which the evidence showed to be approximately 70 miles from Coleman.

Inmates transported to outside medical facilities are required to be escorted by specially trained and certified Correctional Officers. Not all Correctional Officers are qualified for such escort duties. To be qualified as an Escort Officer a Correctional Officer must have special training and be certified for Basic Prisoner Transportation (BPT).[1]

Each inmate transported outside the Complex for medical treatment is required to be escorted by at least two BPT certified Escort Officers (hereafter generally referred to as "Escort Officers") who are responsible for the transported inmate and who must diligently act to keep the inmate under

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[1]This escort arrangement applies also to inmates transported outside the Complex for reasons other than medical care but since this dispute concerns escorts for medical care and issues peculiar to medical care escorts, only medical care escorts will be discussed in this decision.

constant surveillance and subject to their control at all times while outside the Complex. While performing escort duties all Escort Officers are required to be armed and are at all times while armed required to wear an item of equipment variously referred to as body armor, a ballistic vest, an armored vest, or personal protective equipment. This item of equipment will generally hereafter be referred to as "body armor".

Body armor is designed to protect the upper body and vital organs of a wearer from gunshot wounds. Body armor of the type involved in this case basically consists of two armor plates, one designed to protect the front of the upper body and the other designed to protect the back of the upper body. The two plates are designed to effectively "wrap" around the upper body and meet or overlap on the sides in such a manner as to provide protection for the sides of the upper body below the armpits as well as the front and back of the upper body. The armor plates (front and back) are each inserted into a separate cloth or vinyl covering (basically a pouch). The covering, or pouch, has straps attached to its top and sides with velcro fasteners which allow the front and back armor plates and the cloth or vinyl coverings to be connected to one another and form a vest which can be worn like an item of clothing. The velcro straps allow some adjustment to the positioning of the front and back parts of the vest to

accommodate the body of the wearer. Such body armor is manufactured in sizes, like the sizes of upper body clothing, from a small size to a number 3 extra large size. These various sizes, along with the adjustability of the straps, allow a proper fit for most body sizes and types. Body armor is designed and manufactured in different configurations to fit females.

The observation of demonstrations presented at the hearing (and oral testimony) showed the protection provided by body armor of various sizes when worn by individuals of different sizes and different body configurations. Small size body armor will not meet on the sides of a large person. Depending on the size of the individual and the size of the body armor, a considerable unprotected space is left on the sides below the armpits if the body armor unit is not large enough. Manufacturer's literature accompanying some body armor used by the Agency indicate that the front and back plates of properly fitting body armor should meet or overlap on the sides of the wearer in such a way as to leave no area on the wearer's side unprotected.

Observation of demonstrations also showed (as did testimony) that body armor of a size which is longer than required to protect the upper body of a wearer can extend below the belt line where fire arms or other weapons would normally be attached. Such excess length can affect the

bodily movements of the wearer and the wearer's efficient access to his or her weapon.

Body armor is worn like a garment and is subject to the same external or internal exposure as clothing, including contamination by perspiration on the inside and contamination from external sources on the outside. The cloth covering enclosing the body armor is generally cleaned by removing the armor plate and laundering the covering as an ordinary cloth garment would be laundered. A vinyl covering can be cleaned in the same manner, or can be cleaned by wiping it with a cloth impregnated with a chemical cleaning substance or by wiping it using soap and water.

At the Coleman FCC body armor is used by two special groups of employees in addition to the Escort Officers on escort duty, the Disturbance Control Team and the Special Operations Response Team. Each member of the Disturbance Control Team and the Special Operations Response Team is issued a personal body armor unit of a size appropriate for the member for the sole use of the member and which the member keeps in his or her possession for use when needed.

Officers assigned medical escort duty are not issued a personal body armor unit for their personal use only. Instead, the Agency's practice is that body armor for escort duty is issued by a Control Center to the Escort Officer or Officers first detailed to a particular inmate's escort

assignment and that body armor is for use for the entire escort assignment regardless of its duration and the number of Escort Officers who may participate in the particular escort assignment.

Each Control Center maintains an inventory of 14 body armor units of various sizes for use by Escort Officers. An additional body armor inventory is maintained at the Complex's Central Lock Shop/Armory and the inventory at Control Centers can be replenished from the Lock Shop/Armory inventory. However, the Lock Shop/Armory is only open from 8:00 a.m. to 4:00 p.m. Monday through Friday. At other times access to the Lock Shop/Armory is available only at the special request of the Lieutenant on duty.

At the beginning of an escort assignment for a particular inmate Escort Officers are issued body armor from the Control Center inventory in the size requested by the assigned Escort Officers. An Escort Officer must remain with an inmate at all times while the inmate is outside the Complex. Escort Officers apparently work fixed-hour shifts while on escort duty. If the purpose for which an inmate is transported away from the Complex, e.g., for extensive medical treatment or hospitalization, lasts beyond an initially assigned Escort Officer's designated shift then that Escort Officer or Officers is relieved at the outside medical facility by another assigned Escort Officer or Officers who travels to the

outside facility where the inmate is located and takes over the escort duties from the first assigned Escort Officer (or Officers). It has been the practice at Coleman FCC that an Escort Officer who relieves another Escort Officer at an outside location is not issued body armor at the Complex before traveling to the outside treatment location to relieve a previously assigned Escort Officer. Instead, the body armor issued to the first Escort Officer at the time of the initial escort assignment is merely "passed down" to the relieving Escort Officer for his or her use. This means that the relieving Escort Officer must wear the same body armor worn by the Escort Officer he or she relieves without regard to the size or condition of the body armor. Inmate escort at outside medical facilities can be for prolonged periods of time (e.g., hospitalization) and can result in the same body armor unit being passed down to a number of different Escort Officers.

Observation of demonstrations by witnesses wearing mis-sized body armor illustrates that: (1) under-sized body armor does not provide the maximum protection body armor is designed to provide; (2) oversized body armor may handicap or impede a wearer in gaining access to a weapon in the event of an emergency calling for the use of weapons; and (3) either undersized or oversized body armor may be uncomfortable to the wearer and may handicap or impede the ability of a wearer in the swift and decisive movement required in an emergency.

Such a "passing down" of body armor also leaves the relieving Escort Officer, who is required to wear it, with body armor in whatever condition of sanitation it was left in by the relieved Officer.

If a relieving Escort Officer found the body armor passed down by a relieved Escort Officer to be of an unacceptable size or condition the Agency had in effect a practice which permitted a relieving Escort Officer to contact his or her supervising Lieutenant and request properly sized or sanitary body armor. The Lieutenant was authorized to secure a properly sized or sanitary body armor unit and deliver or have it delivered to the relieving Escort Officer making the request.

The Union's evidence showed that in actual practice Escort Officers seldom requested substitute, properly sized or sanitary body armor because practical obstacles to prompt replacement rendered it of marginal benefit because of lengthy delays in receiving a needed replacement. Reasons for the delay in receiving a replacement, as testified to by Union witnesses, were:

(1) The Lieutenant to whom a request would need to be made often had other duties more pressing in nature that would delay action on a request for a replacement unit for an extended period of time.

(2) The body armor inventory available at the Control Center and to which the Lieutenant would have convenient access frequently would not include the requested size because of the limited inventory maintained at a Control Center, and this would necessitate going to the Complex Lock Shop/Armory to obtain the desired size, which would result in further delay in providing a substitute unit.

(3) If a request for replacement body armor was made on a weekend or between 4:00 p.m. and 8:00 a.m. on weekdays the Lock Shop/Armory, the facility which maintained additional inventory, would not be open and would require special effort and extended time to obtain replacement body armor when the correct size was not available in the Control Center inventory.

(4) The place where replacement body armor was needed was often miles away, in some instances as much as 70 miles away, from the Complex and this distance added to the time required for an actual replacement to reach the location where needed.

The evidence showed that on more than one occasion relief Escort Officers were disciplined for not wearing mis-sized body armor or body armor that was considered unsanitary that was passed down by the previously assigned Escort Officer. The discipline was imposed as enforcement of the strict Agency policy that officers performing escort duty must wear body armor at all times.

No evidence showed that the Agency maintained a record of the body armor size worn by each of its Escort Officers. Neither did the evidence show that the Agency had ever taken any action to provide for the delivery of properly sized body armor units to outside locations for use by Escort Officers at the beginning of their shifts. No evidence showed that the Agency maintained a current record of the size of body armor units issued from Control Centers for use by Escort Officers at outside locations that was readily available to Escort Officers who would be relieving the earlier assigned Escort Officers currently on duty. Apparently, by the practice followed, a relieving Escort Officer would not learn of the size of the body armor used by the Escort Officer to be relieved (and immediately available to him or her) until the relieving Escort Officer arrived at the relief location.

The Collective Bargaining Agreement provides for a joint Labor Management Relations (LMR) meeting at least four times each year between representatives of the Agency and representatives of the Union to discuss personnel policies, practices, conditions of employment, and working conditions (Article 2, Master Agreement). The issue of mis-sized and unsanitary body armor for Escort Officers relieving other Escort Officers at outside locations were required to wear was brought up and discussed at several LMR meetings in 2009 and 2010. Minutes of the June 29, 2010 LMR meeting show that the

issue of mis-sized and unsanitary body armor that Escort Officers were required to use when relieving other Escort Officers at outside locations was brought up and discussed at some length. The minutes of the June 29, 2010 LMR meeting reflect the substance of the Union's complaint at that time, as follows:

* * *

> 6. 6. FCC Coleman Complex is currently issuing a community piece of Personal Protective Equipment (PPE)/Level IIIA Body Armor when an inmate is placed in an outside hospital. This practice is not safe because every Basic Prisoner Transportation (BPT) Certified member does not have the same size torso size and not all BPT certified staff are male.
>
> The Body Armor is currently to be laundered every three days according to management, or nine different officers wearing it for eight hours apiece. Staff are required to wear Personal Protective Equipment (PPE) that some other Staff have placed directly against their skin, and which other Staff have placed on top of their shirt. This makes the PPE/Level IIIA body armor foul and unsanitary.
>
> In addition to the unsanitary condition of the Level IIIA body armor that staff are expected to utilize, they have not been form fitted for the person's torso. The Level IIIA body armor PPE are also out of proportion between the various staff when they put on body armor it lessen's the effectiveness of the body armor which hinder's there ability to obtain a weapon in an emergency situation.
>
> Finally, I would like to point out, that the procedures currently used to select and issue body armor to escort staff do not comply with the guidance provided by the United States Department of Justice, Office of Justice Programs, National Institute of Justice, Selection and Application Guide to Personal Body Armor: where it states "when issuing Body Armor, a department's first obligation

is to ensure that armor fits the officer it is issued to, for it determines whether or not it will be comfortable and, to a large extent, wether it will be worn". "All personal should receive training regarding body armor's capabilities and limitations, as well as proper care methods. All armor should be routinely inspected and when it is determined that it no longer fits properly or is no longer serviceable, it should be replaced immediately.

The fact that management is aware of these guidelines was demonstrated when the "Stab Resistant Vest Program" was implemented. All staff who requested a vest were form fitted for the Personal Protective Equipment (PPE). This fitting was based on their body type. They were also provided with multiple covers due to hygiene concerns.

Please implement this same program with the PPE - Level IIIA body armor to afford the BPT Certified Staff members the maximum protection allowed by having a form fitted vest to the individual to protect them fully, in addition to being more sanitary.

Benefits to each BPT Certified Staff member having their own PPE - Level IIIA Body Armor:

a. Staff will wear the vest more - since it is clean and fits properly

b. The Morale of the BPT Cadre will go up - since they have been issued Level IIIA vest

c. The Sanitation Level - Staff will not worry about wearing a community PPE - Body Armor

d. Professional Appearance - the PPE - Level IIIA Body Armor will properly fit male/female

e. Be able to easily obtain your weapon in a Emergency Situation

Decision: Union Stance: Union response is that Management is concerned about money. The Union believes that Management needs to meet the manufacturer's specification regarding the issuance of body armor (i.e. gender and size). There is not negotiated procedures for safety of vests, only

cleanliness of vests.

Management Stance: Management would like to examine the option of vest covers as well as provide several vest sizes on escorted trips. Management will continue to ensure the agreed upon procedures will be followed while ensuring the safety of the staff.

Suspense Date: **Issue closed.**

* * *

At that meeting the Agency's position, as shown by the above quotation from the minutes, was that it would like to examine the option of vest covers and providing several vest sizes on escorted trips. The Agency stated at this meeting that it would "continue to ensure the agreed upon procedures will be followed while insuring the safety of the staff.". Apparently no action was taken by the Agency on the body armor complaint following the June 29, 2010 meeting before August 19, 2010.

On August 19, 2010 the Union filed a grievance. The grievance, on a form provided by the Agency, read in part as follows (printed part of form follows numbers):

* * *

5. Federal Prison System Directive, Executive Order, or Statute violated:
a. United States Department of Justice, Office of Justice Programs, National Institute of Justice, Selection and Application Guide to Personal Body Armor
b. OSHA 29 C.F.R. 1910, Subpart I - Personal Protective Equipment (Level IIIA Body Armor)
c. Master Agreement, Article 27, Health and Safety, Sections (a) and (e)

6. In what way were each of the above violated? Be specific.

FCC Coleman is providing staff personal protective equipment (Level IIIA Body Armor) that is not properly fitted and/or gender specific, this is raising the inherent hazards and hinders the Officers in their performance, and required duties. Management has been made aware of this problem during LMR. The Union believes this is a continuous violation that management is neglecting their staff by not properly fitting the Officers with required protective gear.

On June 29, 2010 during an LMR meeting the Union brought the matter of (Body Armor Level 111A) to Management Officials that the gear was not properly fitted or gender specific as required. The Union also pointed out that proper fitting as well as gender specific vest were essential for the Officers safety, as well as enhancing the likelihood that the Officers would wear it.
As of 8-16-2010 management still refuses to resolve this issue (Body Armor, Personal Protective Equipment Level IIIA) to lower the inherent hazards for our Bargaining Unit Employees.

a. United States Department of Justice, Office of Justice Programs, National Institute of Justice, Selection and Application Guide to Personal Body Armor:
"when issuing Body Armor, a department's first obligation is to ensure that armor fits the officer it is issued to, for it determines whether or not it will be comfortable and, to a large extent, wether it will be worn". "All personal should receive training regarding body armor's capabilities and limitations, as well as proper care methods. All armor should be routinely inspected and when it is determined that it no longer fits properly or is no longer serviceable, it should be replaced immediately.

Exhibit 10: Design Elements That Contribute to Armor Comfort - fit properly to each individual and gender based **Appendix E: Body Armor Inspection Sheet** - are there creases in the armor, is it free from odor, does the vest fit the officer properly and securely

Appendix F: Law Enforcement and Corrections Technology Advisory Council - James Mahan, Senior Technologist, Office of Security Technology, Federal Bureau of Prisons

b. OSHA 29 CFR

1910.132(d)(1)(iii) select PPE that properly fits each employee

1910.132(f)(1)(v) the proper care, maintenance, useful life and disposal of the PPE

c. Master Agreement, Article 27, Health and Safety, Sections (a) and (e)

Article 27, Health and Safety, Sections (a) 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 federal laws.

Article 27, Health and Safety, Sections (e) unsafe and unhealthful conditions reported to the Employer by the Union or employees will be promptly investigated. Any findings from said investigations relating to safety and health conditions will be provided to the Union, in writing, upon request. No employee will be subject to restraint, interference, coercion, discrimination, or reprisal for making a report and/or complaint to any outside health /safety organization and/or the Agency.

7. Date(s) of violation(s)
June 29, 2010 The Union advised Management of violation and reported it. This alleged violation is ongoing daily

8. Request remedy (i.e., what you want done)
Management needs to implement and comply with all directives established by the United States Department of Justice, Office of Justice Programs, National Institute of Justice, Selection and Application Guide to Personal Body Armor, and OSHA 29 CFR guidelines. The Union is demanding that all requesting staff be provided with properly fitted vest as well as multiple covers for their vests; due

> to hygiene concerns. Multiple vest covers will allow staff to always have at least one clean cover on stand-by. All Basic Prisoner Transportation Certified staff need to have the same maximum protection allowed. By having a form fitted Personal Protective Equipment / Level ITIA Body Armor vest issued to the officer/employee will protect them fully; in addition to being sanitary. All Officers that work post's that require them to wear bullet proof vest such as mobile patrols/perimeter vehicle will be provided the same. Any and all other remedies the Arbitrator and/or Union deems appropriate to **make the employees whole.**

The Agency took no action following the filing of the grievance. On October 13, 2010 the Union requested arbitration.

On October 14, 2010 the Agency responded to the grievance as follows:

> This letter is in response to your grievance received in the Human Resource Department on September 27, 2010. In your grievance, you allege that management is providing staff personal protective equipment (Body Armor) that is not properly fitted.
>
> In block 5 of the grievance form, the grievant is required to identify what Federal Prison System Directive, Executive Order or Statue was believed to be violated. Under block 5, the grievant outlined the following violation: United States Department of Justice, Office of Justice Programs, National Institute of Justice, Selection and Application Guide to Personal Body Armor, OSHA 29 CFR 1910, Subpart 1, and Master Agreement Article 27 section a and e.
>
> Block 6 of the grievance form requires the grieving party to state how the items cited in block 5 were violated. It specifically states the grieving party must be specific. Your grievance fails to specifically articulate how anything in block 5 was violated. It is the responsibility of the grieving

party to point out clearly and precisely what is being claimed.

Additionally, you are indicating management is violating the United States Department of Justice, Office of Justice Programs, National Institute of Justice, Selection and Application Guide to Personal Body Armor. As indicated on page 4 of this document, it is not intended to create, does not create, and may not be relied upon to create any rights, substantive or procedural, enforceable by any party in any matter civil or criminal.

Based on the above, your grievance is procedurally rejected.

As to the merits of your claim, the current procedure for issuing body armor to staff is in accordance with Bureau of Prison and OSHA regulations.

Based on the above your grievance is denied.

Beginning in 2010 the Agency began replacing cloth body armor covers with vinyl covers. Vinyl covers were shown to be water proof. The Agency testimony was, and an Agency witness demonstrated, that vinyl covers can be efficiently and effectively cleaned by wiping them with a chemical cleanser impregnated fabric. The Agency's testimony also showed that vinyl covers could be cleaned by wiping them with a cloth using soap and water.

The Union testimony concerning unsanitary body armor covers related to the cloth covers used in 2010 and earlier. Apparently cloth covers, which were in use in 2010 when the grievance was filed, have now been replaced by vinyl covers. Agency testimony showed that it presently has in effect a

systematic practice for the cleaning of body armor covers at outside locations (such as hospitals) on a frequent and regular basis by wiping them with a chemical cleansing agent. The Union offered no evidence indicating that the unsanitary conditions existing in 2010 when the grievance was filed and cloth covers were in general use exist at the present time or that the Agency's present cleaning procedure is not effective to prevent the unsanitary conditions experienced when cloth covers were in use.

Pertinent Statutes and Provisions of
The Collective Bargaining Agreement

STATUTE

5 USC §7106 Management Rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws—

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from—

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

MASTER AGREEMENT PROVISIONS

ARTICLE 2 - JOINT LABOR MANAGEMENT RELATIONS MEETINGS

Section a. Representatives of the Employer and ten (10) representatives of the Union, or the number of Employer representatives, whichever is greater, shall meet in person at least four (4) times per year to resolve and/or negotiate, as applicable, on issues regarding personnel policies, practices, conditions of employment, and working conditions.

These meetings may be initiated by either party, but may only be dispensed by mutual consent.

The duration of these meetings will normally be two (2) days, however, by mutual agreement, they may be extended or shortened as determined by both parties. The expense of such meetings will be borne by the Employer.

Union representatives shall be on official time.
Section b. An agenda will be required for all meetings. Each party will exchange agenda items not less than twenty-one (21) calendar days prior to the scheduled meeting.

The Union may revise the number of their representatives, to achieve equal numbers with the Employer, if the number of agency representatives exceeds ten (10).

The party placing an item on the agenda shall describe the issue, concern, or problem in sufficient detail to allow others to understand the situation and prepare for discussion.

Section c. Generally, the issues for discussion will be limited to those placed on the agenda in a timely fashion. Exceptions may be made for pressing issues which arise after the agenda has been established and which should be discussed before the next meeting.

Section d. The Employer will prepare minutes (summary) of the items discussed, agreements reached, and/or suspense dates set for follow-up action. The minutes will be reviewed and approved by the parties upon conclusion of discussion of each issue. A final copy of the minutes will reviewed and signed by the parties prior to the conclusion of the meeting and a copy will be provided to each participant.

Section e. Management will provide the Union with updates on issues raised at these meetings in accordance with agreed upon time frames. Should the Union be asked to provide the Agency with an update on any issues raised at national meetings, the responding Union representative will be afforded the use of that amount o official time that both parties at the meeting agree to be reasonable and necessary.

Section f. The parties at the national level endorse the concept of regular labor management meetings at the local level. It is recommended that such meetings occur at least monthly, that there be an established method of written minutes, and that there be suspense dates for responses or corrective action. The actual procedures for local labor

management meetings will be negotiated locally.

* * *

ARTICLE 27 - HEALTH AND SAFETY

Section 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 federal laws, standards, codes, regulations, and executive orders.

Section b. The parties agree that participation in and monitoring of safety programs by the Union is essential to the success of these programs. The Union recognizes that the Employer employs Safety and Health Specialists whose primary function is to oversee the safety and health programs at each institution.

1. it is understood by the parties that the Employer has the responsibility for providing information and training on health and safety issues. The Union at the appropriate level will have the opportunity to provide input into any

safety programs or policy development; and

2. although the Employer employs Health and Safety Specialists whose primary function is to oversee the health and safety programs at each facility, representatives of the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA), Centers for Disease Control (CDC), and other regulatory and enforcement agencies that have a primary function of administering the laws, rules, regulations, codes, standards, and executive orders related to health and safety are raised.

* * *

Section e. Unsafe and unhealthful conditions reported to the Employer by the Union or employees will be promptly investigated. Any findings from said investigations relating to safety and health conditions will be provided to the Union, in writing, upon request. No employee will be subject to restraint, interference, coercion, discrimination, or reprisal for making a report and/or complaint to any outside health/safety organization and/or the Agency.

* * *

ARTICLE 28 - UNIFORM CLOTHING

* * *

Section b. The Employer will ensure that adequate supplies of security and safety equipment are available for issue to and/or use by employees during the routine performance of their duties. This includes, but is not limited to, whistles, key chains, key clips, belts for equipment, disposable resuscitation masks and rubber gloves, handcuffs, two-way radios, body alarms, flashlights, hand-held metal detectors, weapons, ammunition, etc. Cases or holders, whichever is appropriate, to carry such equipment will also be available for these particular items of equipment normally using such cases or holders. Employees receiving such items will be accountable for them until they are returned to the Employer.

Section c. The Employer will provide additional equipment or clothing for safety and health reasons when necessary due to the nature of the assignment and as prescribed by the Safety Officer. The Safety Officer will consider input from the safety committee as appropriate. This equipment or clothing will be in a size identified by the employee and will not be charged to the employee's uniform allowance.

Section d. On armed posts, if the wearing of a bullet-proof vest is mandated or requested, there will be a sufficient supply of such vests provided by the Employer. The Employer will ensure that adequate numbers and sizes of such vests are available, including vests sized for female employees. The cleaning of these vests may be negotiated locally.

* * *

ARTICLE 29 - WORK SITE CONDITIONS

* * *

Section e. The Employer agrees to provide, maintain, or repair all equipment for staff to fulfill their duties.

* * *

ARTICLE 31 - GRIEVANCE PROCEDURE

Section a. The purpose of this article is to provide employees with a fair and expeditious procedure covering all grievances properly grievable under 5 USC 7121.

Section b. The parties strongly endorse the concept that grievances should be resolved informally and will always attempt informal resolution at the lowest appropriate level before filing a formal grievance. A reasonable and concerted effort must be made by both parties toward informal resolution.

Section c. Any employee has the right to file a formal grievance with or without the assistance of the Union.

1. after the formal grievance is filed, the Union has the right to be present at any discussions or adjustments of the grievance between the grievant and representatives of the Employer. Although the Union has the right to be present at these discussions, it also has the right to elect not to participate;

2. if an employee files a grievance without the assistance of the Union, the Union will be given a copy of the grievance within two (2) working days after it is filed. After the Employer gives a written response to the employee, the Employer will provide a copy to the Union within two (2) working days. All responses to grievances will be in writing;

3. the Union has the right to be notified and given an opportunity to be present during any settlement or adjustment of any grievance; and

4. the Union has the right to file a grievance on behalf of any employee or group of employees.

Section d. Grievances must be filed within forty (40) calendar days of the date of the alleged grievable occurrence. If needed, both parties will devote up to ten (10) days of the forty (40) to the informal resolution process. If a party becomes aware of an alleged grievable event more than forty (40) calendar days after its occurrence, the grievance must be filed within forty (40) calendar days from the date the party filing the grievance can reasonably be expected to have become aware of the occurrence. A grievance can be filed for violations within the life of this contract, however, where the statutes provide for a longer filing period, 75 then the statutory period would control.

1. if a matter is informally resolved, and either party repeats the same violation within twelve (12) months after the informal resolution, the party engaging in the alleged violation will have five (5) days to correct the problem. If not corrected, a formal grievance may be filed at that time.

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

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

1. when filing a grievance, the grievance will be filed with the Chief Executive Officer of the institution/facility, if the grievance pertains to the action of an individual for which the Chief Executive Officer of the institution /facility has disciplinary authority over;

2. when filing a grievance against the Chief Executive Officer of an institution/facility, or when filing a grievance against the actions of any manager or supervisor who is not employed at the grievant's institution/ facility, the grievance will be filed with the appropriate Regional Director;

3. when filing a grievance against a Regional Director, the grievance will be filed with the Director of the Bureau of Prisons, or designee;

4. in cases of violations occurring at the national level, only the President of the Council of Prison Locals or designee may file such a grievance. This grievance must be filed with the Chief, Labor Management Relations and Security Branch, Central office; and

5. grievances filed by the Employer must be filed with a corresponding Union official.

Section g. After a formal grievance is filed, the party receiving the grievance will have thirty (30) calendar days to respond to the grievance.

1. if the final response is not satisfactory to the grieving party and that party desires to proceed to arbitration, the grieving party may submit the grievance to arbitration under Article 32 of this Agreement within thirty (30) calendar days from receipt of the final response; and

2. a grievance may only be pursued to arbitration by the Employer or the Union.

Section h. Unless as provided in number two (2) below, the deciding official's decision on disciplinary/adverse actions will be considered as the final response in the grievance procedure. The parties are then free to contest the action in one (1) of two (2) ways:

1. by going directly to arbitration if the grieving party agrees that the sole issue to be decided by the arbitrator is, "Was the disciplinary/adverse action taken for just and sufficient cause, or if not, what shall be the remedy?"; or

2. through the conventional grievance procedures outlined in Article 31 and 32, where the grieving party wishes to have the arbitrator decide other issues.

Section I. The employee and his/her representative will be allowed a reasonable amount of official time in accordance with Article 11 to assist an employee in the grievance process.

ARTICLE 32 - ARBITRATION

Section a. In order to invoke arbitration, the party seeking to have an issue submitted to arbitration must notify the other party in writing of this intent prior to expiration of any applicable time limit. The notification must include a statement of the issues involved, the alleged violations, and the requested remedy. If the parties fail to agree on joint submission of the issue for arbitration, each party shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard. However, the issues, the alleged violations, and the remedy requested in

the written grievance may be modified only by mutual agreement.

* * *

Section g. The arbitrator shall be requested to render a decision as quickly as possible, but in any event no later than thirty (30) calendar days after the conclusion of the hearing, unless the parties mutually agree to extend the time limit. The arbitrator shall forward copies of the award to addresses provided at the hearing by the parties.

Opinion and Decision

ISSUE 1 - ARBITRABILITY

Positions of the Parties

Agency's Position:

This dispute is not arbitrable for three reasons: (1) the grievance was not timely filed; (2) an attempt at informal resolution was not undertaken in accordance with the Master Agreement; and (3) the grievance was not sufficiently specific to give the Agency notice of the claimed violation or violations.

The grievance was not timely in that it was not filed within the 40 day time period specified in Article 31, Section d, of the Master Agreement. The grievance was filed on August 19, 2010. The facts on which the grievance is based were known by the Union by at least June 29, 2010 and occurred no later than that date. Consequently, the grievance filed on August 19, 2010 was beyond the 40 day time limit specified in Article 31, Section d, of the Master Agreement.

Further, the grievance as to body armor was premature and not ripe for resolution, and not ripe for arbitration, because the Occupational Safety and Health Administration or other Federal agency having responsibility for health and safety concerns at the Complex had not been consulted about whether the Agency was properly supplying body armor in accordance with OSHA and other Federal regulations before the grievance was filed. Therefore, the issues raised by the grievance could not be resolved by the October 19, 2010 grievance and the current arbitration.

The Master Agreement (in Article 31, Section b) endorses the concept of informal resolution of grievances. In this case there was no showing of a reasonable and concerted effort toward an informal resolution before the filing of a formal grievance. Therefore, the Union's grievance is not arbitrable because there was no attempt at informal resolution.

The form on which the formal grievance in this case was stated and presented had requirements, in Parts 5 and 6, about specificity and particularity with respect to regulations, rules, etc., claimed to have been violated and facts supporting any claimed violations. The purpose of this requirement of specificity and particularity is to allow the Agency an opportunity to understand a claim of a violation and rectify it or defend against it. The grievance in this case did not comply with the specificity requirements stated on the

grievance form and the grievance is not arbitrable for that reason.

Union's Position:

It is a fundamental principle of labor arbitration jurisprudence that grievances are presumed to be arbitrable and that all doubts must be resolved against the forfeiture of a grievant's right to assert a claimed infraction. The party who raises an affirmative defense of lack of arbitrability has the burden to establish that contention by a preponderance of evidence, which the Agency has not done. Additionally, in this case the Agency waived all of its asserted objections to arbitrability except lack of specificity by not raising them in its answer to the grievance. The Agency should not be allowed to contest arbitrability on grounds not asserted in its answer to the grievance.

The Agency's argument that informal resolution of this dispute was not pursued before a formal grievance was filed is not sustained by the evidence. The subject of body armor sizing and sanitation was raised and discussed at several LMR meetings before the grievance was filed and the Agency was aware of the details of the complaint. There is a reference in the grievance to LMR meetings and attempted informal resolution with the Agency's LMR chairperson. The Agency took no action to resolve the complaints before the grievance was filed although it had the opportunity to do so.

The 40 day time limit on grievances in the Master Agreement does not apply to this grievance because it is a grievance about a continuing violation. The Agency's response to the grievance did not assert the 40 day time limit and apparently conceded the contention made in the grievance that it involved a continuing violation.

The Agency's argument regarding specificity in the grievance is not based on language in the agreement itself. The word "specific" appears only on the questionnaire type form on which the grievance is written, a form prepared by the Agency. The Master Agreement provides that grievances will be filed on forms prepared by the Agency but this does not give the Agency the power to determine the required content of a grievance beyond what the Master Agreement provides. Therefore, there is no basis in the Collective Bargaining Agreement for the Agency's lack of specificity argument. Furthermore, the grievance contains facts sufficient to inform the Agency of the nature of the complaint. Additionally, the grievance makes reference to LMR meetings where the facts on which the grievance is based were discussed with and made known to Agency representatives.

Decision

The Agency argues that this grievance is not arbitrable for three reasons:

1. The grievance was not timely filed.

2. There was no effort or opportunity to informally resolve the issues raised by the grievance.

3. The grievance was not sufficiently specific in its allegations to warrant arbitrability.

The Agency's response to the grievance did not assert an objection based on lack of "ripeness" or of failure to file the grievance within the 40 day time limitation. The grievance averred that it was a complaint of "a continuous violation" (see JX2), which the Agency's answer did not deny. Neither did the Agency's answer state an objection based on the lack of effort toward an informal resolution of the Union's complaint. The Agency's answer did raise the question of specificity in the grievance document.

The timeliness argument has two contentions. The first is that the grievance was premature or not "ripe" because there had been no required investigation by OSHA or other Federal agency finding a health or safety irregularity to be corrected before the grievance was filed. The second timeliness contention is that the grievance was filed after the 40 day time limit on grievances spelled out in the Master Agreement.

The "ripeness" argument is a little difficult to understand. The grievance cites three violations in Part 5 of the grievance form. The Arbitrator views each of these as a discrete claim of an infraction for which a remedy is claimed. One of these (5c) is a clear and direct averment of contractual violation - the Agency's failure to comply with express requirements in Article 27 of the Master Agreement relative to health and safety. Part 6c clearly shows this violation is based on the Agency not supplying proper body armor to Escort Officers. The Arbitrator finds no provision in the Collective Bargaining Agreement that makes a finding by OSHA or others of an Agency infraction a prerequisite to the filing of a grievance. Even if OSHA involvement were required for the infractions referred to in Parts 5a and 5b and 6a and 6b of the grievance form (which the Arbitrator does not decide) this could not affect the right to file a grievance raising a failure to comply with a specific contractual obligation, as Parts 5a and 6c do. Indeed, the innate purpose of grievance provisions in collective bargaining agreements is to provide a structured means for addressing claimed contractual violations. In the absence of a provision in the Master Agreement requiring that there be an OSHA or other agency investigation regarding contractual health and safety infractions before a grievance can be filed, the Arbitrator is not inclined to view the lack of an OSHA or other agency

investigation as an impediment to this arbitration since there is a claim that a specific contract provision (here, Article 27, Section a) has been violated.

It is a time honored principle of labor arbitration jurisprudence that continuing violations are not barred by contractual time limit restrictions on the filing of grievances unless there is a specific contractual prohibition against the continuing violation principle. See, e.g., Celanese Corp. of America, 17 L.A. 303 (1951); Bethlehem Steel Company, 23 L.A. 538 (1954); Bethlehem Steel Company, 33 L.A. 324 (1959); Babcock & Wilcox Company, 27 L.A. 172 (1956); Sears Roebuck & Company, 39 L.A. 567 (1962). Article 32, Section d, seems to recognize the continuing violation exception. There would seem to be no need for Section d if the 40 day limit was absolute for all grievances not governed by a statutory limitation. The underlying rationale of the continuous violation principle is that a continuous and repeated violation of a contractual requirement is given the same status as if the most recent violation were the triggering event for time limitation computation. In this case the evidence indicates that the provision of mis-sized and unsanitary body armor of which the Union's grievance complained had gone on for several years and was a current practice at the time the grievance was filed. Consequently, because the grievance complained of a continuing violation,

the 40 day time limit in the Master Agreement does not bar the arbitrability of this grievance.

The Agency further argues that the language of the Master Agreement encourages resolution of disputes between the Agency and the Union by informal agreement between the parties and that this did not occur in this case and bars arbitrability. The evidence does not bear out the contention that there was no opportunity for an informal resolution of the present dispute. The evidence seems clear that this matter had been brought up and discussed at LMR meetings as early as 2009. The minutes of the June 29, 2010 meeting clearly reflect a discussion of the subject at that time and the Agency's willingness to "examine the option" regarding body armor sizes and sanitation and its determination to insure "the safety of the staff". The evidence, however, does not show any further response by the Agency or that any remedial action was taken by the Agency before the grievance was filed. An informal resolution is, of course, a two-party event. One party cannot compel the other party to agree. The evidence does not show Agency effort toward an informal resolution after the June 29, 2010 LMR meeting. From this background the Arbitrator cannot conclude that this arbitration is barred because of the lack of an effort or opportunity for informal resolution.

The Agency's third objection to arbitrability is that the Union's grievance is not sufficiently specific to inform the

Agency of the Union's complaint. The Arbitrator finds several flaws in this argument.

Parts 5 and 6 of the grievance form read:

5. Federal Prison System Directive, Executive Order, or Statute violated:

6. In what way were each of the above violated? Be specific.

In Part 5 the grievance lists a DOJ publication, an OSHA regulation, and a Master Agreement provision as being violated. In Part 6 considerable factual background is alleged as the basis for the claimed violations. Whether the claimed Agency duties cited in Part 5 are Agency obligations and whether the alleged facts indicate a possible Agency violation are, of course, substantive questions dealing with the merits of the grievance and not matters that render the grievance procedurally inadequate.

The Agency's brief appears to consider the language of the grievance form as the ultimate authority on what a grievance must contain to be sufficient. This is an overly broad assessment of the authority of the grievance form. The grievance form could be interpreted to mean that the only allowable subjects of grievances are violations of FPS Directives, Executive Orders, or statutes. This completely ignores the most likely subject of a grievance provided for by a collective bargaining agreement - a violation of a provision of the collective bargaining agreement. The grievance clearly

asserts a violation of Article 27, Sections a and e, of the Master Agreement in Part 5. In Part 6 the grievance sets out a significant alleged factual basis for this claimed violation.

The Agency's reliance on the use of the word "specific" in the grievance form as a basis for its insufficient grievance argument is somewhat misplaced. As the Union's brief points out, the word "specific" is not found in the Master Agreement. It is found only in the questionnaire on the grievance form the Agency prepared. The Master Agreement provides that the Agency will prepare the grievance form; however, allowing (or requiring) the Agency to prepare a grievance form does not allow the Agency to, in effect, unilaterally insert an additional requirement in the Master Agreement by the language it chose to include in the grievance form. Therefore, the Arbitrator does not give the Company's grievance form and its use of the word "specific" the effect attributed to it by the Agency's brief.

It is a well recognized principle of labor arbitration jurisprudence that technicality in the allegations of a grievance is not required; and that where a grievance sufficiently presents facts which are, under the circumstances, sufficient to inform of the basis for a claimed infraction it is sufficient. See, e.g., Hayes Aircraft Corporation, 33 L.A. 847 (1959); Nepco Unit v. Nekoosa Edwards

Paper Company, 37 L.A. 116 (1961); Lade Mills Redi-Mix, Inc., 38 L.A. 307 (1962); Armour & Company, 39 L.A. 1226 (1963). While the grievance presented by the Union appears adequate in its designation of infractions and the factual basis for them as to all its claimed violations it is manifest that the specific reference to Article 27, Sections a and e, and the rather lengthy recitation of facts in the grievance and the reference to dealing with the subject of body armor in LMR meetings appears abundantly adequate to inform the Agency of the basis of this part of the Union's complaint (Part 5c on grievance form).[2] Therefore, under the circumstances of this case, the Arbitrator finds, under the usual liberal rule applicable to the sufficiency of grievances, the grievance to be sufficiently informative.

For the reasons discussed, the Arbitrator concludes that the Agency's objections to arbitrability are not well taken and will proceed to consider and decide the merits of this controversy.

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[2]As will be apparent from later portions of this decision, this case will be decided on the basis of the merits of the claim presented as Part 5c and Part 6c of the grievance form, so it is not necessary to further consider the procedural or substantive sufficiency of Parts 5a and 5b and Parts 6a and 6b.

ISSUE 2 - MERITS OF THE CONTROVERSY

Positions of the Parties

Union's Position:

The Master Agreement obligates the Agency to lower the "inherent hazards" of employment to the "lowest possible level" and to furnish "conditions of employment that are free from recognized hazards" that are likely to cause death or serious physical harm. Further, the Master Agreement obligates the Agency to promptly investigate "unsafe and unhealthful conditions reported to it" by the Union or employees. The Agency failed to meet these contractual requirements by requiring Escort Officers to wear body armor at all times while on escort duty but not providing properly fitting body armor, a condition which left a portion of the upper body of a wearer unprotected and which increased risk to a wearer by handicapping movement and impeding access to weapons which may be needed for protection in an emergency.

At the time the grievance was filed relief Escort Officers at remote locations were faced with the absolute duty of using unsanitary body armor received from the relieved Escort Officer. This adversely affected the well-being of such employees.

Agency's Position:

The National Institute of Justice publication cited by the Union is, by its terms, not binding on the Agency and

creates no enforceable rights for employees. There has been no finding that OSHA or any other Federal agency has made a finding that the Agency was not in compliance with all Federally recognized requirements regarding body armor. Additionally, procedures are in place and have been in place that enable an Escort Officer relieving another Escort Officer at an outside location who is faced with the use of a mis-sized body armor unit to seek a replacement unit of proper size.

The Union's complaint about unsanitary body armor has been corrected by subsequent Agency action which replaced cloth body armor covers with vinyl covers and which inaugurated a cleaning program shown to be sufficient to supply sanitary equipment.

Decision

Common sense and common experience instruct that employment at a correctional institution, and particularly employment requiring an employee to assume the custody and management of inmates away from the institution, involves inherent hazards to the health and safety of such an employee. The Escort Officers this case concerns are assuredly subject to these hazards. Common sense and common experience further tells us that a total elimination of such hazards to correctional institution employees is not possible. Article 27 of the Master Agreement between the parties recognizes

these obvious conclusions.

In spite of the impossibility of eliminating all hazards of correctional institution employment the Master Agreement provides, in Article 27, Section a, that the Agency agrees to "lower those inherent hazards to the lowest possible level, without relinquishing its rights under 5 U.S.C. §7106". The central and overriding issue for resolution in this case is whether in its provision of body armor to Escort Officers the Agency has or has not acted to "lower" hazards to Escort Officers to the "lowest possible level" that can be achieved by use of body armor. The role and significance of the cited DOJ publication and OSHA regulations and whether they have been violated is secondary, and in some sense only partially relevant, to this central issue and a decision in this case.

The "lowest possible level" as it relates to the hazards of employment is a somewhat ephemeral concept. Specifically defining, quantifying, or locating it is an almost unthinkable task. However, it is usually possible to observe and identify conditions or circumstances which show that the "lowest possible level" as related to hazards has not been reached. It is also usually possible to identify actions or conditions which contribute to the achievement of this standard and determine whether the presence or absence of such actions or conditions indicates that all possible measures are or are not being taken to move toward the goal of the "lowest possible

level". This approach appears to be the correct analysis for the issue of whether there has been compliance by the Agency with Article 27, Section a.

There can be no argument that the provision of and the use of body armor by Escort Officers lowers the hazards of their employment. This undoubtedly is a major part of the rationale of the Agency's strict requirement that body armor be worn at all times by Escort Officers while performing escort duty. This undoubtedly is the basis for Article 28, Section d, of the Master Agreement which obligates the Agency to "ensure that adequate numbers and sizes of such vests [body armor] are available, including vests sized for female employees".

This leads to the next step in our analysis - the question of the role of properly sized body armor in the lowering of employment hazards to the "lowest possible level". Common sense tells us and observation demonstrates that properly sized body armor provides more protection than mis-sized body armor and that proper sizing is necessary for body armor to provide the maximum protection it is designed to provide to a wearer. As the parties agree, body armor is designed to protect the upper body or torso. As the literature of one of the manufacturers which has provided body armor to the Agency points out, and as observation confirms, body armor provides full protection for the torso only if the front and

back plates meet (or overlap) on the sides of the wearer. If the torso of the wearer is too large to permit the front and back plates to meet on the sides of the wearer a portion of the sides of the wearer will be unprotected. A properly fitting body armor unit, one in which the front and back plates meet or over lap, leaves no unprotected area on the sides of the body. Consequently, it is not difficult to reach the conclusion that properly sized body armor provides more protection than under-sized body armor and that under-sized body armor does not lower the hazards to the wearer to the "lowest possible level".

Common sense and observation also instructs that a body armor unit which is too long for a wearer can cover the lower portion of the wearer's torso where a weapon would usually be carried and would impede access of the wearer to the weapon. Efficient access to a weapon is, of course, a factor in lowering the hazards to an employee such as an Escort Officer. Requiring an Escort Officer to wear improperly sized body armor that interferes with access to a weapon obviously does not serve to reduce hazards to the lowest possible level. Rather, it tends to increase the hazards as compared to properly sized body armor.

Common sense and observation also tell us that mis-sized body armor, whether too small, too large, or too long, is likely to be uncomfortable to the wearer and likely to hinder

movement and likely to, over time, depreciate the bodily movement and efficiency of the wearer. Either of these results, when compared with a wearer of properly sized body armor, can increase, rather than decrease, the hazards to an Escort Officer performing his or her duties while wearing mis-sized body armor.

Body armor is manufactured in different sizes roughly equivalent to the sizes of upper body clothing. The Agency maintains a supply of body armor in all sizes. A reasonably fitting body armor unit can be supplied for any normal body size or type. Therefore, providing properly sized body armor, including sizes and styles that will fit females, is a distinct possibility.

Based on the mentioned mundane observations and conclusions, it is a natural and logical progression to reach the ultimate conclusion that not providing properly fitting body armor is failing to take a reasonable and possible step that will "lower those inherent hazards [of Escort Officers] to the lowest possible level". Such failure is, without some justification, a violation of Article 27, Section a, of the Master Agreement.

The Agency counters that it has in place a procedure which permits a relieving Escort Officer who finds that the body armor unit handed down to him or her by the relieved Escort Officer is an inappropriate size to obtain a

replacement that is of proper size. This procedure requires the relieving Escort Officer to call the supervising Lieutenant and request a proper-sized unit, whereupon the Lieutenant will deliver or have delivered to him or her at the duty location the requested size.

The evidence shows that this procedure is more of a theoretical solution than a real and complete solution to the increased hazard caused by the mis-sizing problem and faced by relieving Escort Officers. Having a replacement body armor unit delivered to the outside location, due to several factors, requires a considerable amount of time. The duty station may be a considerable distance from the Complex where the replacement body armor unit must be obtained. One such duty location is in Gainesville, Florida, some 70 miles from the Complex. Other locations are nearer the Complex, but all are miles away. Other reasons for delay are the availability of the Lieutenant, who has other duties, to promptly obtain a replacement body armor unit, the availability of the appropriate size unit at the Control Center, the time required to obtain a unit from the Lock Shop/Armory if the Control Center does not have the needed size in inventory (with additional time required to access the Lock Shop/Armory if the request is received between 4:00 p.m. and 8:00 a.m. or on weekends).

While awaiting a replacement unit an Escort Officer must perform the demanding duties of an Escort Officer wearing the mis-sized body armor unit passed down to him or her. The certainty of considerable delay in receiving a substitute through the current Agency practice, during which time the Escort Officer must wear and depend on the mis-sized unit, means the Escort Officer is not being fully afforded what the Agency contractually agreed to do - to lower the hazards of the job to the "lowest possible level". Providing a properly sized body armor unit for use at all times is surely a "possible" action that will lower the hazard level. To comply with the requirements of the Master Agreement and reduce hazards to the "lowest possible level" and comply with Article 27 Section a, the Arbitrator finds and holds that the Agency must have a properly fitting body armor unit available for immediate use by each relieving Escort Officer at the beginning of his or her duty shift.

There are undoubtedly numerous "possible" actions the Agency can take that will provide Escort Officers with proper sized body armor for use at all times while performing escort duty and thereby lowering the inherent hazards of their employment. The most obvious action would be to issue each Escort Officer body armor of an appropriate size for his or her personal use, as the Union's grievance requests as a remedy. The Agency already does this for other employees it

requires to wear body armor.

The Agency resists the personal body armor for each Escort Officer plan, apparently because of additional cost. Since there are alternative actions that can ensure properly fitting body armor for Escort Officers, the Arbitrator will not require the issuance of personal units to each Escort Officer as the required sole remedy for the Article 27 violation. An obvious alternative procedure that should entail less cost than personal units, and likely no greater cost than the Agency's present procedure, involves only minimal additional record keeping and communication functions and more timely action in delivering a needed replacement body armor unit to the location where needed. The Agency obviously keeps a record of the Escort Officer serving at an outlying location at a particular time. The Agency also undoubtedly schedules a particular Escort Officer for relief at a particular location in advance of the end of the shift of the Escort Officer to be relieved. By maintaining a record of the size of the body armor unit required for each Escort Officer, which would include the size of the unit issued to the presently assigned Escort Officer and the size required by the next relieving Escort Officer, the Agency could easily determine the proper size unit needed by each relieving Escort Officer and have such a unit delivered to and available at the duty station for the relieving Escort Officer at the beginning of

his or her shift in the event a different size is needed.

Since the Escort Officers are required to wear body armor at all times while on duty and since properly fitting body armor is essential in lowering hazards to the "lowest possible level", to comply with Article 27, Section a, the Agency must adopt a new practice, such as one of the alternatives suggested above or some other alternative, which will ensure that a properly fitting body armor unit is provided to each Escort Officer at all times while on escort duty.

The issue of the sanitization of body armor covers appears to presently be essentially a non-issue. This is so because of the passage of time between the filing of the grievance and the arbitration hearing and the interim change of circumstances. The Union's evidence about unsanitary conditions related to conditions existing before the grievance was filed in 2010. At the arbitration hearing, nearly three years later, conditions relating to sanitation had changed. The cloth covers which the Union complained about in the grievance apparently are no longer in use. Vinyl covers which are now in use apparently are not subject to the same sanitation problems and are more easily cleaned. The Agency's testimony demonstrated the facility with which vinyl covers can be cleaned and the Agency presented evidence of a regular and systematic program by which cleaning was effected. The Union presented no testimony to refute this Agency evidence.

Therefore, the Arbitrator is not inclined to find that the sanitation problem raised by the grievance is a present violation that demands a remedy or to grant any relief based on it.

Award

It is the award of the Arbitrator that the grievance be, and the same hereby is, sustained to the extent that the Arbitrator finds that the Agency is in violation of Article 27, Section a, of the Master Agreement in failing to lower inherent hazards of employment to Escort Officers to the lowest possible level by providing properly fitting body armor for use by Escort Officers at all times while escorting inmates away from the Complex. The Agency is directed to take such action as is necessary, either one of the alternatives described in the above opinion or some other effective action, that will ensure that Escort Officers are provided with properly sized body armor, including sizes for female Escort Officers that provide equivalent protection, access to weapons, and facility of movement as that provided to male Escort Officers, at all times while on escort duty.

Done and Ordered this 29th day of August 2013.

William H. Mills
Arbitrator