

FAX TRANSMITTAL

DATE: 11 Jan. 08

NUMBER OF PAGES INCLUDING THIS PAGE: 7

TO: Eric Young

DEPARTMENT: SERVIP

FAX #: 954 239 9678

FROM: Robert C. Swanson

PHONE# _____

FAX# 803-637-1704

COMMENTS: _____

IN THE MATTER OF
THE ARBITRATION BETWEEN

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 510

*

FMCS CASE NO. 06-55289

*

and

*

UNITED STATES DEPARTMENT OF
JUSTICE, BUREAU OF PRISONS
FCI
Edgefield, South Carolina

*

*

* * * * *

APPEARANCES: For the Union, Leisha A. Self, Esquire. For the Agency, James A. Vogel, Jr., Esquire.

BACKGROUND

This grievance was filed on March 7, 2006, and in it the Union charged a violation of the Agreement when the Agency directed Bargaining Unit Correctional Officers to bid for particular shifts. The Union charged a violation of the seniority rights of the Correctional Officers.

Article 18, Section E, reads (in pertinent part):

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

The decision by the Agency to mandate and direct specific employees to bid for specific shifts in March, 2006, resulted from a direction from Agency Management which had been received in the latter part of 2005. Nine employees were directed to bid for

specific shifts and objection to the procedure was raised by the Union. That matter was adjusted and following that adjustment, the Union maintained that a large number of employees had not completed the rotation directed by the Agreement.

Bids are reviewed by a Roster Committee and the roster is issued and signed by the Warden. Article 18, Section D.2.d reads:

"The Roster Committee will consider preference requests in order of seniority and will make reasonable efforts to grant such requests. Reasonable efforts means that Management will not arbitrarily deny such requests."

Testimony presented by the Union was that while officers had been told that they could not bid a particular shift due to the fact that they had been on that shift for a year, there had never been an instance that a particular shift assignment was required because the officer had not complied with the rotation through all three shifts during a three-year period.

The parties met and reached an informal agreement that officers could be mandatorily assigned to particular shifts during the first quarter of the new three-year period during the latter part of March, 2006. However, the Union having had consultation with its regional representative specifically stated that the Agreement would not become effective until and unless it was put in writing, in detail. On February 27, the Union sent a Memorandum to Management which said (in pertinent part):

"On February 17, 2006, the Union met with Management to discuss mandatory assignments for Correctional Service Staff. The Union was informed that the three-year rotation was being extended. The Union agreed that this issue would be informally resolved if the terms of the agreement were put in writing. As of 1:00 p.m. on February 27, 2006, the Union has not received anything in writing from Management, therefore, there is no binding resolution."

In spite of the Union's notice that it was withdrawing from the proposed agreement, because Management had not furnished it with the agreed-upon written agreement, Management continued and carried out its decision to direct mandatory assignments in the first quarter of the new three-year period. Most officers filled out the roster form as they were directed to do, perhaps in order to protect their seniority right to a post of their choice. Some officers expressed openly their disagreement and filed informal grievances. One officer declined to complete the form as directed, but was subsequently assigned to the shift selected by Management. Testimony was heard about the effect of these changes upon employees in matters connected with their family life. In addition, there was testimony about lost opportunity for overtime, and testimony in connection with the effects upon family life that included expense to which the employees were subjected which they attributed to having to work the mandated shift.

DISCUSSION

At the arbitration, the parties did not agree upon a formulation of the issue, and I indicated that I would make it clear in my Award what I considered the issue to be. In its brief, Management stated that it saw the issue as "whether a verbal agreement if (sic) binding, if so what shall the remedy be?" The case does hinge on whether or not the agreement to accept mandatory assignments for the affected persons during the first quarter of the new three-year period, and then to count those persons as having satisfied the three shift rotation requirement in the

previous three-year period and counting the mandatory shift also in the new three-year period was a binding agreement. Essentially Management argues that a verbal agreement was reached, and as it is recognized in labor relations matters that verbal agreements in settlement of a grievance are to be enforced, Management was correct in mandating the shift assignments. I find that the Union's acceptance of the proposed agreement was conditioned by it upon its receipt of a written agreement setting out the terms. When it did not receive that agreement, it withdrew its acceptance, and at that point, there was no completed understanding between the parties. Therefore, Management was in no position to proceed with the mandatory assignments under the guise that it could do so pursuant to an agreement reached with the Union in settlement of the grievance. It may well be that the Union withdrew its acceptance based upon a misunderstanding of a Memorandum received from Bureau headquarters, but that does not change the fact that its acceptance was withdrawn. Management had the option of entering into further discussion about the matter, but it decided to go forward on a unilateral basis. It had the entire three-year period to resolve the question of three-shift rotation within the new period. It also had the option of making a notation on the record of those officers who had not made the three-year rotation in the previous period indicating that they had not done so.

The Agency raised the question of arbitrability of this grievance, saying that since the matter had been settled by verbal agreement, that settlement should be binding. That is a good

general proposition, but one that is inapplicable in this instance because there was not a settlement by verbal agreement. As I have found, the Union conditioned its acceptance of the dual credit proposal upon receipt from Management of a written agreement. Before a written agreement was received, the Union withdrew its acceptance based upon its understanding, which may in fact have been a misunderstanding, that Management could not extend the three-year period. It made that withdrawal clear in writing, and Management's later proffer of a written agreement was of no effect. The grievance is arbitrable, and it was necessary to proceed with the arbitration in order to determine whether or not there was, in fact, a binding verbal agreement. I find that there was not.

Management has argued that its right to assign work precludes a finding of a violation of the Agreement. However, Article 18 sets out the procedure to be used to fill out the roster, and instead of following that procedure Management made assignments based upon its belief that it had reached an agreement with the Union to do it in that manner. As stated, the Union's agreement was conditioned upon its receipt of a written agreement, and when it had not received such an agreement, it withdrew its conditional acceptance as it had a right to do.

AWARD

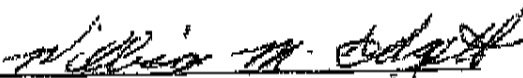
The grievance is arbitrable.

I find that by directing Correctional Officers to bid a specific shift in the circumstances presented, the Agency violated Article 18 of the Agreement. As a remedy for that violation, the

Agency is directed to ~~make~~ an entry on the record of each affected Officer stating that the officer did not rotate through all three shifts in the three-year period ending March, 2006, and that the entry was directed as a remedy in lieu of completing that rotation in the arbitration of FMCS Case No. 06-55289.

Compensation for lost night differential is denied. Compensation for asserted denial of Sunday pay is denied. Compensation for child care expenses incurred is denied. I do not find that it is practicable to reset the roster.

Jurisdiction is retained for the purpose of resolving a question of attorney fees should the parties be unable to resolve that matter.



William M. Edgett
Arbitrator

January 8, 2008