

106 LRP 40670

**U.S. Department of Justice, Federal
Bureau of Prisons, Federal Correctional
Complex, Coleman, Florida and Council
of Prison Locals, American Federation of
Government Employees Local 506**

Federal Arbitration

05-57172

0-AR-4122

July 3, 2006

Judge / Administrative Officer

Peter E. Donnelly

Full Text

APPEARANCES:

Michael A. Markiewicz: Agency Representative
for the Federal Bureau of Prisons.

Ken Pike: Union Representative, Local 506 and
Shaun Young, Union Representative and Vice
President, Local 506.

Decision

The parties appeared before me at Coleman,
Florida on April 6, 2006 and gave evidence
concerning the above-captioned grievance. Thereafter
both parties filed briefs in support of their positions.

Issue

Did the Federal Bureau of Prisons at the Federal
Correctional Complex in Coleman, Florida (herein
called the Agency) violate written Agency policy and
the collective bargaining agreement currently in effect
between the Agency and the Council of Prison
Locals, AFGE, Local 506 (herein called Union) with
respect to the matter of the assignment and payment
of medical overtime to correctional officers for the
transport of prisoners from FCC to area health
providers and hospitals.

Facts

The Agency operates a Federal Correctional
Complex, (FCC) at Coleman, Florida, which houses

some 1,200 inmates. The prison correctional officers
are represented by the Union under a collective
bargaining agreement captioned Master Agreement..

There is a small medical facility at the hospital
used for routine prisoner healthcare, but at times it is
necessary to transport prisoners to area hospitals,
doctors or other healthcare providers when prisoners
need medical treatment, which goes beyond the
capabilities of the prison medical facilities to provide.

The Agency policy for providing prisoner
transport is set out in Agency Program Statement
5538.04, Sec. 6(8), p.7, which reads, The correctional
officer(s) receiving overtime pay (must) provide
security for an inmate outside the institution while the
inmate is transferred from the institution to the
consultant or hospital or while he/she is transported
back to the institution. An officer may be allowed two
hours of outside medical overtime to prepare for the
detail. Medical overtime may not be charged for
security provided within the institution, except if: A
staff member on duty and assigned to an inside post is
the only qualified (BPT certified) available person for
the outside escort and must be replaced. Overtime
may be given to the staff assigned to replace the
individual on the inside post. Overtime may not be
given to the staff member on the outside escort.

However, despite this policy, when both an
officer on duty working the shift within the institution
and the officer called in for the overtime, are both
BPT certified, the prisoner transport will be assigned
to the officer working the inside post and the officer
called in to work the overtime will replace that officer
and be paid the overtime rate for his work on the
inside post.

Apparently this is done with the approval of the
shift Lieutenant, to accommodate the officers
involved for a variety of reasons. For example, when
the inside posted officer's home is near to the hospital
or healthcare provider to which the prisoner was
being transported.

The Master Agreement, with respect to overtime
states, consistent with the written policy,

... "when Management determines that it is necessary to pay overtime for positions/assignments normally filled by bargaining unit employees, qualified bargaining unit employees in the bargaining unit will receive first consideration for these overtime assignments, which will be distributed and rotated equitably among bargaining unit employees ..."

(ARTICLE 18 -- HOURS OF WORK, Section p.1.)

Discussion

The basic facts are not in dispute. Clearly, the Agency's own written policy requires it to assign prisoner transport to the officer called in to work the overtime at the overtime rate unless the officer called in for the overtime is not BPT certified. This is the exception. When this happens, written policy, as set out above, states that a BPT certified officer on the inside post may do the prisoner transport at regular pay. The officer called in for the overtime replaces him at the overtime rate and is paid as medical overtime.

Apparently, at least some of the time, the Agency does not follow its own policy, and, as noted above, assigns the prisoner transport to an officer posted inside and replaces that officer with the officer called in for overtime, even when both officers are qualified, i.e. BPT certified.

In its grievance, the Union takes the position that, in circumstances where both officers are BPT certified, the Agency is violating policy by assigning prisoner transport to an inside post officer while the officer called in for overtime is assigned an inside post and paid medical overtime for the inside post assignment.

It is undisputed, and I agree with the Union, that the Agency is violating its own policy as stated in Program Statement 553804, set out above.

However it is also necessary to determine whether or not these policy violations may also have violated the Master Agreement which states that once the Agency determines that overtime is necessary to fill a bargaining unit position, first consideration must

be given to qualified bargaining unit employees ... for these overtime assignments ...

This Master Agreement language contemplates that whenever overtime is needed to fill any bargaining unit position/assignment, the next qualified bargaining unit employee on the overtime will be assigned to fill that position/assignment for which the overtime was required. The Agency is not free to call in the next qualified bargaining unit employee and then assign that employee as it chooses. That employee is required, under the terms of the Master Agreement, to fill the position/assignment that made the overtime necessary.

In the instant case, regarding overtime for prisoner transport,

this procedure was not followed, despite the fact that it was mandated by both the Master agreement and written company policy. Actually, the Agency's written policy is more explicit and restrictive, since it states, that when overtime is required for prisoner transport, the qualified officer receiving the overtime pay must provide the transport.

Nonetheless, and despite the strictures found in both the Master Agreement and written Agency policy, the Agency assigns prisoner transport to the inside posted officer and the officer called in for the prisoner transport overtime is assigned the inside post, even when both are qualified.

The Union also argues that the Agency violated its own policy by paying medical overtime to the overtime officer replacing the on duty inside post officer. However, I conclude that since this violation was not alleged in the grievance before me, and upon which this arbitration was conducted, I have no authority to decide that matter.

In summary, I conclude that the Agency is violating both its own written policy and the Master Agreement in the matter of assignment of overtime for prisoner transport.

Remedy

The Agency shall cease and desist from

assigning prisoner transport overtime to on duty inside post officers when the officer called in for such overtime work is qualified for prison transport.

Award

The Union grievance is hereby sustained and the Agency is directed to take the remedial action set out above in the Remedy.