

FEDERAL MEDIATION AND CONCILIATION SERVICE

IN THE MATTER OF ARBITRATION

BETWEEN

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 3976**

**FMCS CASE # 12-02112-8
RE: OVERTIME**

AND

**U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
ESTILL, SOUTH, CAROLINA**

OPINION

THIS ABOVE REFERENCED CASE WAS HEARD JULY 16, 2014 IN THE FCI ESTILL TRAINING FACILITY AT FEDERAL BUREAU OF PRISONS, 100 PRISON ROAD ESTILL, SOUTH CAROLINA COMMENCING AT 9:15 AM UNDER THE RULES AND ADMINISTRATION OF THE FEDERAL MEDIATION CONCILIATION SERVICES BEFORE DOROTHY COWSER YANCY, IMPARTIAL ARBITRATOR. THE HEARING TRANSCRIPT WAS RECEIVED ON AUGUST 4, 2014. THE AGENCY FILED IT'S BRIEF ON AUGUST 27, 2014 AND THE UNION FILED IT'S BRIEF ON SEPTEMBER 5, 2014, THE DATE AGREED UPON AT THE HEARING. THE ARBITRATOR SOUGHT A RECEIVED A THREE WORKING DAYS EXTENSION FOR THE RENDERING OF HER OPINION.

APPEARANCES:

UNION:

RYAN SAUNDERS, ESQUIRE - UNION ATTORNEY

AGENCY:

MICHAEL A. MARKIEWICZ - AGENCY ATTORNEY

ALSO IN ATTENDANCE:

TONY BROWN	-	UNION PRESIDENT
L. O. DAVIS	-	UNION VICE PRESIDENT
JASPER SCOTT	-	SENIOR OFFICER SPECIALIST
GILLIAN S. CASSTEVENS	-	HUMAN RESOURCES MANAGER

WITNESSES:

UNION:

TONY BROWN	-	UNION PRESIDENT
DARRELL L. SMITH	-	SENIOR OFFICER SPECIALIST
		LOCAL UNION TREURER
JASPER SCOTT	-	SENIOR OFFICER SPECIALIST
JASON WILLIAMS	-	CORRECTIONAL OFFICER
GARY B. AUSTIN	-	SENIOR OFFICER
KELVIN RUTH	-	SENIOR OFFICER SPECIALIST

AGENCY:

TIMOTHY GEIER	-	SIS LIEUTENANT
ANDREW MANSUKHANI	-	WARDEN, FCI ESTILL, SC
STEVE B. MORA	-	WARDEN, MDC GUAYNABO, PUERTO RICO
BEATRICE BROWN	-	BUSINESS ADMINISTRATOR
GILLIAN CASSTEENS	-	HUMAN RESOURCES MANGER

PERTINENT CONTRACTUL PROVISIONS

ARTICLE 3 – GOVERNING REGULATIONS

SECTION c THE UNION AND AGENCY REPRESENTTIVES, WHEN NOTIFIED BY THE OTHER PARTY, WILL MEET AND NEGOTIATE ON ANY AND ALL POLICIES, PRACTICES, AND PROCEDURES WHICH IMPACT CONDITIONS OF EMPLOYMENT WHERE REQUIRED BY 5 USC 7106, 7114, AND 7117, AND OTHER APPLICABLE GOVERNMENT-WIDE LAWS AND REGULATIONS, PRIOR TO IMPLEMENTATION OF ANY POLICIES, PRACTICES, AND/OR PROEDURES.

ARTICLE 4 – RELATIONSHIP OF THIS AGREEMENT TO BUREAU POLICIES, REGULATIONS, AND PRACTICES

SECTION c. THE EMPLOYER WILL PROVIDE EXPEDITIOUS NOTIFICATION OF THE CHANGES TO BE IMPLEMENTED IN WORKING CONDITIONS AT THE LOCAL LEVEL. SUCH CHANGES WILL BE NEGOTIATED IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT.

ARTICLE 18 – HOURS OF WORK

SECTION p. SPECIFIC PROCEDURES REGARDING OVERTIME ASSIGNMENTS MAY BE NEGOTIATED LOCALLY.

1. WHEN MANAGEMENT DETERMINES THAT IS IT NECESSARY TO PAY OVERTIME FOR POSITIONS/ASSIGNMENTS NORMALLY FILLED BY BARGAINING UNIT EMPLOYEES, QUALIFIED EMPLOYEES IN THE BARGAINING UNIT WILL RECEIVE FIRST CONSIDERTION FOR THESE OVERTIME ASSIGNMENTS, WHICH WILL BE DISTRIBUTED AND ROTATED EQUITABLY AMONG BARGAINING UNIT EMPLOYEES; AND
2. OVERTIME RECORDS, INCLUDING SIGN-UP LISTS, OFFERS MADE BY THE EMPLOYER FOR OVERTIME, AND OVERTIME ASSIGNMENTTS, WILL BE MONITORED BY THE EMPLOYER AND THE UNION TO DETERMINE THE EFFECTIVENESS OF THE OVERTIME ASSIGNMENT SYSTEM AND ENSURE EQUITABLE DISTRIBUTION OF OVERTIME ASSIGNMENTS TO MEMBERS OF THE UNIT. RECORDS WILL BE RETAINED BY THE EMPLOYER FOR TWO (2) YEARS FROM THE DATE OF SAID RECORD.

SECTION q. THE EMPLOYER RETAINS THE RIGHT TO ORDER A QUALIFIED BARGAINING UNIT EMPLOYEE TO WORK OVERTIME AFTER MAKING A REASONABLE EFFORT TO OBTAIN A VOLUNTEER, IN ACCORDNCE WITH SECTION p. ABOVE.

**CDS ROSTER, OVERTIME PROCEDURES
FOR THE FEDERAL CORRECTIONAL INSTITUTION ESTILL, SC
SIGNED APRIL 6, 2011**

MATTER IN DISPUTE

DURNG THE MONTH FEBRUARY 2012, INMATE TATE WAS ASALUTED BY OTHER INMATES AND WAS TRANSFERRED TO MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC) IN CHARLESTON, SOUTH CAROLNA FOR TRATMENT. HE REMAINED AT MUSC FOR APPROXIMATELY ONE MONTH. FROM FEBRUARY 7, 2012 TO FEBRUARY 14, 2012, THE INMATE WAS GUARDED BY FCI ESTILL EMPLOYEES. AFTER FEBRUARY 14, 2012, EMPLOYEES FROM FCI WILLIAMSBURG ASSUMED THIS ROLE. ACCORDING TO FCI ESTILL OFFICIALS, ALL ELIGIBLE OFFICERS LISTED ON THE ELECTRONIC

OVERTIME ROSTER AT FCI ESTILL WERE UNAVAILABLE. BOTH PARTIES AGREED THAT APPROPRIATE SECURITY WAS TWO EMPLOYEES PER SHIFT WHO WERE CERTIFIED IN BASIC PRISONER TRANSPORT (BPT), MEANING THAT THEY WERE CERTIFIED TO HANDLE AT MINIMUM A 9 MILLIMETER PISTOL, AN M 14 RIFLE AND A SHOTGUN.

ACCORDING TO MANAGEMENT, DURING THE FIRST TWO WEEKS OF THE INMATE'S HOSPITALIZATION, FCI ESTILL STAFF ACCEPTED AND WORKED OVER TIME. HOWEVER, MANAGEMENT CLAIMED THAT AROUND FEBRUARY 13-14, 2012 STAFF AT FCI ESTILL BEGAN TO REFUSE OVERTIME. THUS, MANAGEMENT CLAIMED THAT DUE TO EXTENUATING CIRCUMSTANCES IT WAS FORCED TO ASK ANOTHER BOP INSTITUTION, FCI WILLIAMSBURG TO PROVIDE QUALIFIED SECURITY.

PRIOR TO HIRING THE FCI WILLIAMSBURG EMPLOYEES, THE UNION CLAIMED THAT IT WAS NOT ALERTED ABOUT THE AGENCY'S INABILITY TO FIND AVAILABLE FCI ESTILL BARGAINING UNIT EMPLOYEES. ON FEBRUARY 15, 2012, ACTING UNION PRESIDENT D. L. SMITH EMAILED WARDEN RIVERA TO INDICATE THAT THE UNION WAS NOT NOTIFIED OF THE TRANSFER OF SUPERVISION PRIOR TO THE ACTION AND STATED THAT THE AGENCY WAS IN VIOLATION OF THE MASTER AGREEMENT AND THE OVERTIME PROCEDURE FOR THE FEDERAL CORRECTIONAL INSTITUTE ESTILL, SC MEMORANDUM OF UNDERSTANDING (MOU). ON FEBRUARY 21, 2012, UNION PRESIDENT TONY BROWN, ATTEMPTED AN INFORMAL SOLUTION OF THE DISPUTE WITH WARDEN MILDRED RIVERA. THE UNION ARGUED THAT THE UNILATERAL TRANSFER OF CUSTODY, WITHOUT UTILIZING THE OVERTIME ROSTER VIOLATED THE MASTER AGREEMENT (SEE JOINT #2). THE AGENCY STATED THAT IT HAD UTILIZED THE ELECTRONIC ROSTER. THE AGENCY FURTHER ASSERTED IT'S RIGHTS IN THE MASTER AGREEMENT, ARTICLE 5 – RIGHTS OF THE EMPLOYER, TO “ASSIGN WORK, TO MAKE DETERMINATIONS WITH RESPECT TO CONTRACTING OUT, AND TO DETERMINE THE PERSONNEL BY WHICH AGENCY OPERATIONS SHALL BE CONDUCTED” (SEE JOINT #2).

ON FEBRUARY 23, 2012, THE UNION FILED A GRIEVANCE CLAIMING THAT THE WARDEN HAD REMOVED ALL OVERTIME FROM FCI ESTILL GIVING IT TO FCI WILLIAMSBURG UNILATERALLY WITH “NO DECLARED EMERGENCY.” THE UNION CLAIMED A VIOLATION OF 5 U.S.C., FLSA, MASTER AGREEMENT AS WELL AS ARTICLES 3,4,6, AND ARTICLE 18 (OVERTIME AND OVERTIME PROCEDURES). ON MARCH 23, 2012, THE AGENCY REJECTED THE UNION'S GRIEVANCE.

AT THE HEARING THE PARTIES COULD NOT AGREE ON THE ISSUE, LEAVING IT TO THE ARBITRATOR TO DECIDE. IT IS THE ARBITRATOR'S OPINION THAT THE ISSUE IS “WHETHER OR NOT THE AGENCY VIOLATED ARTICLE 3, SECTION C; ARTICLE 4 SECTION C AND /OR ARTICLE 18 HOURS OF WORK, SECTION P AND THE (MEMORANDUM OF UNDERSTANDING) OF LABOR AGREEMENT WHEN IT HIRED EMPLOYEES FROM FCI WILLIAMSBURG TO MONITOR A FCI INMATE IN MUSC HOSPITAL FROM FEBRUARY 14, 2012 TO MARCH 3, 2014, AND IF SO, WHAT SHALL THE REMEDY BE?”

POSITION OF THE PARTIES

UNION:

IT IS THE UNION'S POSITION THAT FCI ESTILL VIOLATED THE MASTER AGREEMENT WHEN IT FAILED TO GIVE OVERTIME TO AVAILABLE BARGAINING UNIT EMPLOYEES AT FCI ESTILL FROM FEBRUARY 14 – MARCH 3, 2012. THE UNION ASSERTS THAT THE AGENCY VIOLATED ARTICLES 3, SECTION C; ARTICLE 4, SECTION C AND ARTICLE 18, HOURS OF WORK, SECTION P AND THE APRIL 6, 2011 MOU NEGOTIATED AND SIGNED BY THE AGENCY AND THE UNION. ACCORDING TO THE MOU, ELIGIBLE EMPLOYEES AT FCI ESTILL MUST BE GIVEN FIRST CONSIDERATION TO FILL AVAILABLE OVERTIME. THE UNION ASSERTS THAT THE AGENCY UNILATERALLY TRANSFERRED OR OUTSOURCED AVAILABLE OVERTIME TO FCI WILLIAMSBURG WITHOUT CONSULTING THE UNION WHICH IT CLAIMS IS A VIOLATION OF THE MASTER AGREEMENT. THE UNION MAINTAINS THAT ELIGIBLE, QUALIFIED FCI ESTILL EMPLOYEES WERE WILLING AND ABLE TO WORK OVERTIME TO GUARD INMATE TATE AT MCSC. THE UNION ASSERTS THAT THE AGENCY CLAIMED THAT IT COULD NOT FILL THE AVAILABLE OVER TIME ON FEBRUARY 14. HOWEVER, THE UNION MAINTAINS THAT THE COMPANY GAVE NO EXPLANATION AS TO WHY IT CONTINUED TO USE FCI WILLIAMSBURG EMPLOYEES FROM FEBRUARY 15 UNTIL MARCH 3, 2012.

THE UNION ASSERTS THAT THE AGENCY SIMPLY FAILED TO COMPLY WITH THE REQUIREMENTS SPELLED OUT IN THE MASTER AGREEMENT REGARDING THE ASSIGNMENT OF OVERTIME AND ALL AFFECTED EMPLOYEES ARE ENTITLED TO BACK PAY FOR THE OVERTIME OPPORTUNITIES DENIED. THE UNION REQUEST THAT THE AFFECTED EMPLOYEES RECEIVE BACK PAY.

AGENCY:

THE AGENCY ASSERTS THAT IT IS NOT IN VIOLATION OF THE MASTER AGREEMENT OR THE MOU REGULATING THE PROCESS FOR OVERTIME. THE AGENCY MAINTAINS THAT THE ENTIRE UNION'S CASE IS BASED ON THE MISPERCEPTION THAT INMATES ARE ASSIGNED TO EMPLOYEES. THE AGENCY ASSERTS THAT INMATES ARE ASSIGNED TO THE AGENCY.

THE AGENCY ASSERTS THAT IN THE INSTANT CASE THERE WERE EXTENUATING CIRCUMSTANCES. THE AGENCY ASSERTS THAT THE ASSIGNMENT REQUIRED BPT QUALIFIED EMPLOYEES AND FCI ESTILL QUALIFIED EMPLOYEES NO LONGER WANTED TO WORK OVERTIME TO GUARD INMATE TATE AT MUSC. THE AGENCY ASSERTS THAT IN ORDER TO ASSURE NO LAPSE IN SECURITY COVERAGE, THE WARDEN AT FCI ESTILL ASKED THE WARDEN AT FCI WILLIAMSBURG TO ALLOW HIS STAFF TO PROVIDE SECURITY FOR THE INMATE LOCATED AT MUSC.

THE AGENCY MAINTAINS THAT THE UNION WAS ATTEMPTING TO CLOSE THE AGENCY'S HANDS BY ARGUING THAT MANAGEMENT WOULD HAVE TO BARGAIN ANY CHANGE ON OVERTIME ASSIGNMENTS. THE AGENCY ASSERTS THAT THE AGENCY HAD NO DUTY TO BARGAIN WITH THE

UNION TO USE EMPLOYEES FROM ANOTHER BOP INSTITUTION. THE ACTION TAKEN WAS NOT A PLANNED DECISION BUT RATHER A REACTION FO THE FACT THAT QUALIFIED FCI ESTILL BARGAINING UNITE EMPLOYEES WERE UNWILLING TO ACCEPT OVERTIME ASSIGNMENTS.

FURTHER THE AGENCY CLAIMS THAT IT DID NOT REMOVE ALL HOSPITAL OVERTIME AS ASSERTED IN THE GRIEVANCE. RATHER OVERTIME AT MUSC FROM FEBRUARY 14-MARCH 3 WAS REMOVED, BUT OVERTIME AT HOSPITALS CLOSER TO FCI ESTILL WAS STILL AVAILABLE. FURTHER, AFTER MARCH 3, 2012 OVERTIME AT MUSC WAS RETURNED TO FCI ESTILL.

THE AGENCY ARGUED THAT THERE WAS NO PAST PRACTICE OF LOCAL HOSPITAL ASSIGNMENTS SINCE ALL DEPENDED UPON THE NEEDS OF THE INMATE. THE AGENCY ARGUED THAT AT NO TIME IN THE PAST HAD EMPLOYEES REFUSED OVERTIME ASSIGNMENTS OR QUALIFIED EMPLOYEES WERE NOT AVAILABLE.

THE AGENCY ASSERTS THAT ALL BOP EMPLOYEES ARE COVERED BY THE MASTER AGREEMENT AND AS SUCH THERE IS NO DUTY TO BARGAIN IN THE INSTANT CASE DUE TO THE "COVERED BY "DOCTRINE. THE AGENCY CLAIMS THAT ARTICLE 18. SECTION P "DOES NOT STATE THAT QUALIFIED EMPLOYEES IN THE BARGAINING UNIT AT THE PARTICULAR INSTITUTION RECEIVE FIRST CONSIDERATION" (SEE UNION BRIEF P. 5). FURTHER, THE AGENCY ASSERTS THAT ARTICLE 9 OF THE MASTER AGREEMENT INDICATES THAT THE AFOREMENTIONED PROVISIONS APPLY TO ALL BARGAINING UNITS IN THE BOP, NOT JUST FCI ESTILL. MANAGEMENT ALSO ASSERTS THAT IT HAS THE ULTIMATE RIGHT TO DETERMINE WHETHER OVERTIME WILL OR WILL NOT BE USED TO FILL POSTS. THE AGENCY CITES ARTICLE 18 SECTIONS P; SECTION N; AND SECTION R TO SUPPORT IT'S POSITION. IT ALSO ASSERTS 5 USC CHAP 7106 WHICH IS INCORPORATED IN THE MASTER AGREEMENT, ARTICLE 5, WHICH GIVE IT THE RIGHT TO "HIRE, ASSIGN, DIRECT...THE RIGHT TO ASSIGN WORK... AND THE RIGHT TO DETERMINE THE PERSONNEL BY WHICH AGENCY OPERATIONS SHALL BE CONDUCTED."

THE AGENCY ASSERTS THAT INMATES ARE ROUTINELY MOVED FROM ONE FACILITY TO ANOTHER AND STAFF FROM THE CLOSEST BOP FACILITY CAN THEN PROVIDE SECURITY COVERAGE.

THE AGENCY CITES THE FOLLOWING CASES IN SUPPORT OF IT'S POSITION THAT PRISON ADMINISTRATORS ARE ENTITLED TO DEFERENCE ON SECURITY ISSUES: BELL V. WOLFISH, 141 U.S. 520, 547 (1979) AND RHODES V. CHAPMAN, 452 U.S. 337 (1981); AFGE, AFL-CIO, LOCAL 683 AND DEPARTMENT OF JUSTICE, FEDERAL CORRECTIONAL INSTITUTION SANDSTONE, MINNESOTA, 30, FLRA 497, 500-01 (1987). CASES SUPPORTING MANAGEMENT'S RIGHT NOT TO FILL VACANCIES WERE ALSO CITED: INTERNATIONAL PLATE PRINTERS, DIE STAMPERS, AND ENGRAVERS UNION OF NORTH AMERICA, AFL-CIO, LOCAL 2 AND DEPARTMENT OF THE TREASURY, BUREAU OF ENGRAVING AND PRINTING WASHINGTON, DC, 25 FLRA 113, 144-46 (1987) AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1923 AND US DEPARTMENT OF HEALTH AND HUMAN SERVICES, HEALTH CARE FINANCING ADMINISTRATION, BALTIMORE, MARYLAND, 44 FLRA 1405, 1465-68 (1992)

THE AGENCY CITED THE FOLLOWING CASES TO SUPPORT IT'S POSITION ON THE RIGHT TO ASSIGN WORK AND TO DETERMINE WHEN OVERTIME WILL BE PERFORMED: NATIONAL EDUCATION ASSOCIATION, OVERSEAS EDUCATION, LAUREL BAY TEACHERS ASSOCIATION AND U.S. DEPARTMENT OF DEFENSE, DEPARTMENT OF DEFENSE DOMESTIC SCHOOLS, LAUREL BAY DEPENDENTS SCHOOLS, LAUREL BAY, SOUTH CAROLINA, 51 FLRA 733,739 (1996) AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3157 AND US. DEPARTMENT OF AGRICULTURE, FEDERAL RAIN INSPECTION SERVICE, 44 FLRA 1570, 1596 (1992). OTHER CASES CITED REGARDING OVERTIME DUTY INCLUDED AMERICAN FEDERATION OF GOVERNMENT

EMPLOYEES, AFL-CIO, LOCAL 1625 AND DEPARTMENT OF THE NAVY, NAVAL AIR STATION, OCEANA, VIRGINIA, 30 FLRA 1105 (1988).

MANAGEMENT CITED THE FOLLOWING CASES TO SUPPORT IT'S CLAIM THAT IT CAN DETERMINE INTERNAL SECURITY PRACTICES: AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, FEDERAL PRISON COUNCIL 33 AND U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, 51 FLRA 1112, 1115 (1996); NATIONAL TREASURER EMPLOYEES UNION AND U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE, 53 FLRA 539, 581 (1997); AND FRATERNAL ORDER OF POLICE LODGE 1F AND VETERANS ADMINISTRATION, VETERANS, ADMINISTRATION MEDICAL CENTER PROVIDENCE, RHODE ISLAND, 32 FLRA 944, 957—58 (1988).

THE AGENCY ASSERTS THAT ARBITRATORS AGREE, THAT EXCEPT WHERE RESTRICTED BY THE AGREEMENT, THE RIGHT TO SCHEDULE WORK REST WITH MANAGEMENT. FURTHER, THE AGENCY ASSERTS THAT MANAGEMENT IS NOT RESTRICTED BY LAW, REGULATIONS OF THE MASTER AGREEMENT FROM USING QUALIFIED BOP EMPLOYEES FROM ANY INSTITUTION. THE AGENCY REQUESTS THAT THE GRIEVANCE BE DENIED.

DISCUSSION

THE ARBITRATOR HAS DETERMINED THAT THE ISSUE BEFORE HER IN THE INSTANT CASE IS "WHETHER OF NOT THE AGENCY VIOLATED ARTICLE 3, SECTION C; ARTICLE 4, SECTION C AND OR ARTICLE 18, SECTION 18 HOURS OF WORK, SECTION P AND THE MEMORANDUM OF UNDERSTANDING, OF THE LABOR AGREEMENT WHEN IT HIRED EMPLOYEES FROM FCI WILLIAMSBURG TO MONITOR A FCI ESTILL INMATE IN MUSC HOSPITAL FOR FEBRUARY 14 – MARCH 3, 2012, AND IF SO, WHAT SHALL THE REMEDY BE"?

THE UNION CLAIMS THAT THE AGENCY VIOLATED THE AGREEMENT WHEN IT FAILED TO GIVE OVERTIME TO AVAILABLE QUALIFIED UNIT EMPLOYEES AT FCI ESTILL AND WAS THUS A VIOLATIONS OF THE ABOVE MENTIONED SECTIONS OF THE MASTER AGREEMENT. THE UNION ASSERTS THAT THE AGENCY UNILATERALLY TRANSFERRED OR OUTSOURCED OVERTIME TO FCI

WILLIAMSBURG WITHOUT CONSULTING THE UNION WHICH IT CLAIMS IS A VIOLATION OF THE AGREEMENT. THE UNION ARGUED THAT QUALIFIED FCI ESTILL EMPLOYEES WERE AVAILABLE. ALTHOUGH THE AGENCY CLAIMS THAT AVAILABLE QUALIFIED FCI EMPLOYEES WERE NOT AVAILABLE.

A REVIEW OF THE TESTIMONIES INDICATE THAT ALL AGREE THAT THE MASTER AGREEMENT COVERS ALL BARGAINING UNIT MEMBERS IN THE SYSTEM. HOWEVER, THE REAL ISSUE IN THE INSTANT CASE IS WHETHER OR NOT THE EMPLOYEES AT FCI ESTILL WERE AVAILABLE FOR OVERTIME AT MUSC CHARLESTON TO COVER THE SECURITY OF INMATE TATE.

TESTIMONIES GIVEN AT THE HEARING MADE IT CLEAR THAT ONLY CERTAIN EMPLOYEES WERE QUALIFIED TO SECURE INMATE TATE. IN FACT, SIX (6) EMPLOYEES PER 24 HOURS ON SHIFTS FROM 12:00-8:00 AM; 8:00-4:00 PM AND 4:00 TO 12:00 MIDNIGHT WERE NEEDED TO TAKE CARE OF SECURITY. THE RECORD SHOWS THAT COMMENCING FEBRUARY 13, 2012, EMPLOYEES AT FCI ESTILL WERE REQUIRED TO ATTEND A ONE WEEK ANNUAL REFRESHER TRAINING (ART). THE CLASS INCLUDED SEVERAL EMPLOYEES WHO WERE BASIC PRISONER TRANSPORTATION (BPT) CERTIFIED. MEANING THAT THEY COULD OPERATE A NINE MILLIMETER FIREARM, SHOOT A M14 RIFLE AND A SHOTGUN (TRANSCRIPT P. 16). THE ARBITRATOR NOTES THAT SEVERAL BPT EMPLOYEES I.E. AUSTIN, LAVANT, BELLAND, JOHNSON C., PLATTS AND WILLIAMS J., WERE MEMBERS OF THE CLASS IN TRAINING (SEE UNION EXHIBIT #2, 7/12). THE AGENCY ARGUED THAT THESE EMPLOYEES WERE NOT AVAILABLE TO SECURE INMATE TATE BECAUSE OF THE OVERLAP IN TRAINING HOURS WITH THE REQUIRED OVERTIME SCHEDULED HOURS. SPECIFICALLY, TRAINING WAS FROM 7:30 AM UNTIL 4:00 PM FOR THE WEEK OF FEBRUARY 13. AND AS INDICATED EARLIER OVERTIME HOURS WERE FROM 12:00- 8:00, 8:00 TO 4:00 AND 4:-12:00 EACH DAY. THUS, THE AGENCY ARGUED THAT THE 12:00 TO 8:00 SHIFT ENDED 30 MINUTES AFTER THE TRAINING STARTED. PLUS, ONE NEEDED TWO HOURS TO COMMUTE TO CHARLESTON. ALL OF THIS SOUNDED REASONABLE TO THE ARBITRATOR UNTIL THE AGENCY'S WITNESS TIMOTHY GEIER, SIS LIEUTENANT IN CHARGE OF THE OVERTIME ROSTER TESTIFIED "THERE'S TIME WHEN THERE'S STAGGERING OVERTIME." (TRANSCRIPT P. 105). WHEN SPECIFICALLY ASKED IF IT WERE POSSIBLE FOR PEOPLE DURING TRAINING TO WORK THE OVERTIME IF TIMES ARE STAGGERED? THE ANSWER WAS "YES." (TRANSCRIPT P. 105). THE ARBITRATOR NOTES THAT GEIER'S CLAIM WAS NOT DENIED BY THE AGENCY THUS, IT STANDS AS FACT. MOREOVER, THE ARBITRATOR NOTES THAT THE AGENCY DID NOT "STAGGER" THE OVERTIME TO MAKE IT POSSIBLE FOR THOSE IN ANNUAL TRAINING TO ACCEPT SAME.

THE ARBITRATOR NOTES THAT THE MOU STATING THE PROCEDURE FOR ASSIGNING OVERTIME, WAS NEGOTIATED BY THE PARTIES AND FINALIZED IN 2011. THE PROCESS REQUIRED THAT ALL EMPLOYEES SIGNED UP FOR OVERTIME BE CALLED AND THE RECORD MAINTAINED BY THE AGENCY WOULD INDICATED WHETHER "OT WAS "BY PASSED", MEANING A MESSAGE WAS LEFT; "OT WAS REFUSED", MEANING THE EMPLOYEE ANSWERED AND STATED "NO" OR WHETHER "OT ASSIGNED" MEANING THE EMPLOYEE ACCEPTED. A REVIEW OF AGENCY # 4 AND UNION #3 GIVES A DETAIL ACCOUNT OF OVERTIME. BOTH ARE OVERTIME LOGS OF CALLS MADE BETWEEN 2/8/2012 AND 2/15/2012 FOR SHIFT DATES BETWEEN 2/8/2012 AND

2/15/2012. INCLUDED IN THESE ROSTERS ARE ALSO REFERENCES AS TO WHERE OVERTIME WAS TO TAKE PLACE OR ASSIGNED.

THE ARBITRATOR REVIEWED THESE ROSTERS CAREFULLY TO SEE IF THE AGENCY'S CLAIM THAT EMPLOYEES AT FCI ESTILL WERE NOT AVAILABLE FOR OVERTIME TO GUARD INMATE TATE, AND SINCE THEY WEREN'T ALLEGEDLY NOT AVAILABLE, A DECISION HAD TO BE MADE TO TRANSFER THE INMATE'S CUSTODY FOR SECURITY TO FCI WILLIAMSBURG. HOWEVER, THE UNION ASSERTS THAT FCI ESTILL EMPLOYEES WERE AVAILABLE. PLEASE NOTE THAT THE INMATE CONTINUED TO BE A PATIENT AT MUSC HOSPITAL AFTER CUSTODY WAS TRANSFERRED.

THE ARBITRATOR NOTES, THAT ALTHOUGH THE AGENCY CLAIMED THAT QUALIFIED EMPLOYEES IN ANNUAL TRAINING WERE NOT AVAILABLE FOR OVERTIME, THE RECORD INDICATES THAT THEY WERE CONSTANTLY CALLED TO SEE IF THEY WERE AVAILABLE FOR OVERTIME SHIFTS ON FEBRUARY 13, 14, AND 15. SPECIFICALLY LEVANT, WILLIAM J., BELLAND AND PLATTS WERE CALLED FOR OVERTIME ON 2/14 FOR 2/15 IN UNIT D-A, ESC NEEDELMAN AND ESC. JONES. WHY WERE THEY CALLED IF THERE WERE NOT AVAILABLE BECAUSE OF ART TO DO OVERTIME? YET, AT THE SAME TIME, THE ARBITRATOR NOTES THAT ONLY ONE CALL ON 2/14 WAS MADE. MR. BROWN, WAS ASSIGNED OVERTIME FOR INMATE TATE. NO OTHER CALLS TO FCI ESTILL EMPLOYEES TO CONSIDER OVERTIME TO SECURE INMATE TATE ON FEBRUARY 14 WERE MADE WHETHER THEY WERE IN ART, ANNUAL LEAVE, ETC. IF OTHER CALLS WERE MADE, NOTATIONS IN THE LOG WERE NOT MADE BY LT. GEIER, AS HE INDICATED AT THE HEARING THAT HE ALWAYS DOES. FURTHER, A REVIEW OF THE LOGS, INDICATES THAT HE DOES MAKE NOTATIONS. FURTHER ON FEBRUARY 13, ONLY ONE CALL WAS MADE TO INQUIRE ABOUT AVAILABILITY FOR SECURITY FOR INMATE TATE. A CALL WAS MADE TO GREY AND AN ASSIGNMENT WAS MADE FOR FEBRUARY 14. THUS WE SEE ONE CALL ON 2/13 AND ONE CALL ON 2/14 TO GET EMPLOYEES TO SECURE TATE.

THE SAME SCENARIO IS TRUE FOR FEBRUARY 12. CALLS WERE MADE FOR FEBRUARY 14 OT ASSIGNMENTS FOR INMATE TATE. THE FOLLOWING CALLS WERE MADE TO FOLK IN ANNUAL TRAINING: LEVANT 4 CALLS; WILLIAM J. 4 CALLS; PLATT 3 CALLS; JOHNSON 1 CALL; AND BELLAND 1 CALL. THEY ALL "BY PASSED" AND FOR GOOD CAUSE SINCE THEY WERE SCHEDULED FOR ANNUAL TRAINING ON THAT DATE. AUSTIN HAD A DAY OFF AND "BY PASSED" WHEN CALLED, MEANING A MESSAGE WAS LEFT.

ALL OF THE ABOVE DRAWS INTEREST BECAUSE OF THE FOLLOWING DOCUMENT. ON FEBRUARY 13, 2012, SSI GEIER SENT AN EMAIL TO GREGORY S. BONDURANT AT 7:55 PM STATING THE FOLLOWING:

LT. GREY AGREED TO WORK OT ON TUESDAY 2/14/2012 ON E/W AT CHARLESTON. I EXHAUSTED ALL OT LISTS AND THE DAYS OF LIST BEFORE HIRING HER. I TOOK OFFICER T. MARTIN OFF HOSPITAL DUTY. OFFICER M. HILL WAS LEFT ON. HE COMPLAINED TO LT. HORTON THE DAY BEFORE ABOUT GOING TO THE HOSPITAL.

FURTHER ON 2/14/2012, AT 8:45 PM, LT. GEIER WROTE AN EMAIL TO GREGORY S. BONDURANT INDICATING:

WHEN I ATTEMPTED TO HIRE STAFF FOR MUSC ON MONDAY, FEBRUARY 13, FOR SHIFTS ON FEBRUARY 14, I WAS UNABLE TO GET ANYONE FROM THE OVERTIME LIST, WHO WERE NOT ALREADY WORKING A SHIFT, T WORK OVERTIME. I THEN CALLED EVERY OFFICER N DAY OFF STATUS WHO WAS BPT CERTIFIED AND RECEIVED A NEGATIVE RESPONSE FROM EVERYONE WHO ANSWERED.

HOWEVER, A REVIEW OF THE OVERTIME LOG DOES NOT REFLECT THE ABOVE SINCE ONLY ONE CALL WAS MADE REGARDING OVERTIME TO COVER INMATE TATE ON ALL OF FEBRUARY 13 AND ONE CALL WAS MADE ON FEBRUARY 14 AT 5:04 ASSIGNING OVERTIME TO BROWN TO COVER INMATE TATE (SEE UNION EXHIBIT #3 PAGE 2; AGENCY #4 P. 3)... FURTHER GEIER TESTIFIED THAT EMPLOYEES CAN WORK 16 HOURS HAVE 8 HOURS OFF AND WORK ANOTHER 16 HOURS. (TRANSCRIPT 107). FURTHER IF THEY ARE ON THE OVERTIME LIST, THEY CAN BE CALLED FOR ANY AVAILABLE OVERTIME.

THE AGENCY STATED THAT IT FELT THAT FCI ESTILL EMPLOYEES DID NOT RESPOND TO THE MUSC OVERTIME BECAUSE THERE HAD BEEN A CHANGE IN THE USE OF GOVERNMENT VEHICLES. THE ARBITRATOR NOTES THAT THE CHANGE, WHICH INDICATED THAT GOVERNMENT VEHICLES WOULD NO LONGER BE USED FOR OVERTIME DUTIES AT HOSPITALS WAS ISSUED BY WARDEN RIVERA NOVEMBER 17, 2011 (AGENCY #14) WELL BEFORE THE INSTANT CASE. WHEN ASKED IF ANY OF THE EMPLOYEES SOUGHT GOVERNMENT CARS DURING THIS PERIOD, THE HUMAN RESOURCES OFFICIAL INDICATED THAT SHE HAD NO IDEA IF ANY WERE REQUESTED (TRANSCRIPT P. 151). LT. GEIER ALSO THOUGH THAT THIS MIGHT HAVE HAD SOMETHING TO DO WITH EMPLOYEES NOT RESPONDING TO HIS REQUEST. YET, HE TOO HAD NO EVIDENCE TO PROVE HIS SUSPICIONS. IT IS NOTED THAT THE UNION DID FILE A ULP AND THE PARTIES SETTLED THE DISAGREEMENT. HOWEVER, THE PARTIES DID NOT GIVE THE DATE OF THE SETTLEMENT.

THE RECORD SHOW THAT INMATE TATE'S SECURITY WAS TRANSFERRED TO FCI WILLIAMSBURG ON FEBRUARY 15 AT 8:45.

WHO MADE THE DECISION TO TRANSFER CUSTODY? THE ARBITRATOR NOTES THAT NEITHER WARDEN MILDRED RIVERA NOR ANY OTHER DECISION MAKER, IN THE INSTANT CASE, WAS MADE AVAILABLE AT THE HEARING BY THE AGENCY. ALTHOUGH RETIRED, THE AGENCY PRESENTED NO TESTIMONY TO INDICATE THAT THERE WAS ANY ATTEMPT TO HAVE WARDEN RIVERA AT THE HEARING. THE AGENCY RELIED UPON THE TESTIMONY OF TWO WARDEN WHO WERE NOT EMPLOYEES OF FCI ESTILL AT THE TIME OF THE INCIDENT NOR WERE THEY INVOLVED IN THE DECISION MAKING. WARDEN ANDREW MANSUKHANI AND WARDEN STEVE MORA, IN THE ARBITRATOR'S OPINION, COULD ONLY TESTIFY AS TO WHAT THEY WOULD HAVE DONE IF THEY HAD BEEN INVOLVED. FURTHER, ACTING PRESIDENT DARREL L. SMITH AT THE TIME OF THE INCIDENT AND PRESENTLY THE UNION TREASURER, TESTIFIED THAT L. O. DAVIS, CHIEF STEWARD, CONTACTED HIM BY PHONE TO STATE THAT THE WARDEN RIVERA HAD

STATED THAT "I GAVE HER PERMISSION AS THE UNION TO SEND INMATE TATE - - SEND THE CUSTODY OF INMATE TATE TO WILLIAMSBURG" (TRANSCRIPT 30). MR. DAVIS STATED EMPHATICALLY THAT HE HAS NEVER HAD A CONVERSATION WITH THE WARDEN ABOUT THE CUSTODY OF INMATE TATE. HE FURTHER TESTIFIED THAT THIS KIND OF TRANSFER OF CUSTODY HAD NEVER HAPPENED AT FC ESTILL. THE ARBITRATOR NOTES THAT THE ASSERTIONS WERE NOT REFUTED.

WARDEN MANSUKHANI TESTIFIED THAT HE HAS BEEN THE WARDEN AT FC ESTILL SINCE NOVEMBER 2013, TO PRESENT WELL AFTER THE INCIDENT. WHEN THE INCIDENT OCCURRED HE STATED THAT HE WAS THE DEPUTY REGIONAL DIRECTOR IN THE SOUTHEAST REGION. HE TESTIFIED THAT HE RECALLED WARDEN MILDRED RIVERA CALLING HIM ABOUT THE FACT THAT SHE COULD NOT GET COVERAGE FOR AN INMATE AND THAT SHE WAS GOING TO HAVE WILLIAMSBURG PROVIDE THE COVERAGE. HE TESTIFIED THAT THIS WAS NOT UNCOMMON. HE INDICATED THAT TRANSFERS TAKE PLACE ALL OF THE TIME. HOWEVER, HE COULD NOT GIVE AN EXAMPLE LIKE THE CURRENT ONE WHERE AN INMATE STAYED IN THE SAME HOSPITAL AND CUSTODY WAS TRANSFERRED FROM THE HOME INSTITUTION TO ANOTHER INSTITUTION. HE STATED WHILE HE WAS AT BENNETTSVILLE, SC AN INMATE WAS SENT TO THE AUGUSTA, GA BURN UNIT AND WAS MONITORED BY FCI EDGEFIELD, WHICH WAS NEAR BY. THE ARBITRATOR DOES NOT FIND THESE INSTANCES SIMILAR. THE INMATE WAS TRANSFERRED AWAY FROM BENNETTSVILLE'S CUSTODY AND EDGEFIELD WAS THE CLOSEST FACILITY TO PROVIDE SECURITY. THE INSTANT CASE DOES NOT INVOLVE THE TRANSFER OF AN INMATE. IT INVOLVES THE TRANSFER OF CUSTODY. FURTHER, THE ARBITRATOR NOTES THAT WARDEN MANSUKHANI WAS NOT INVOLVED IN THE GRIEVANCE PROCESS FOR THIS ISSUE.

WARDEN MORA, FCI ESTILL WARDEN FROM NOVEMBER 2012 TO AUGUST 2013, ALSO TESTIFIED ABOUT THE DECISION TO TRANSFER CUSTODY. HE ADMITTED THAT HE WAS NOT INVOLVED IN THE DECISION MAKING. WHEN ASKED "HAVE YOU HAD—KNOWN OF INSTANCE IN YOUR CAREER WHERE AN INMATE WAS MOVED TO A CERTAIN LOCATION AND STAFF FROM ANOTHER INSTITUTION SUPERVISED THE INMATE?" THE RESPONSE WAS "NOT PARTICULARLY IN MY INSTITUTION" (TRANSCRIPT P.123). THE ARBITRATOR NOTES THAT THE AGENCY ASSERTS THAT INMATES ARE ASSIGNED TO THE AGENCY AND THE ARBITRATOR AGREES. YET, A CLEAR READING OF ARTICLE 18 HOURS OF WORK SECTION P REFERENCES LOCAL OVERTIME PROCEDURES NEGOTIATED LOCALLY. MEANING OVERTIME PROCEDURES FOR EMPLOYEES AT THE LOCAL INSTITUTION, IN THIS CASE FCI ESTILL. IT IS NOTED THAT THE TWO WARDENS BETWEEN THEM HAD OVER 30 YEARS EXPERIENCE IN THE SYSTEM, YET NEITHER COULD GIVE A COMPARABLE EXAMPLE TO THE INSTANT CASE,

BOTH WARDENS TALKED ABOUT COST EFFICIENCIES. THE ARBITRATOR NOTES EXECUTIVE ORDER 13589 – PROMOTING EFFICIENT SPENDING WAS ISSUED NOVEMBER 9, 2011 (AGENCY EXHIBIT #5). THE ORDER INDICATES THE COMMITMENT OF THE FEDERAL GOVERNMENT TO CUT WASTE. HOWEVER, THE ARBITRATOR NOTES THAT THE AGENCY DID NOT PROVE THE CASE OF EFFICIENCY BROUGHT ON BY ITS DECISION. RATHER, THE AGENCY PRODUCED TOTAL NUMBERS FOR FISCAL YEARS 2012 AND 2013 OF THE COST OF PROVIDING CARE FOR INMATES

OFF SITE IN HOSPITALS. THE NUMBERS WERE NOT BROKEN DOWN BY HOSPITALS, INMATES. ETC. (AGENCY EXHIBITS 6-12). FURTHER, WHEN ASKED WHO PAID WILLIAMSBURG FOR COVERAGE, BEATRICE BROWN, THE BUSINESS ADMINISTRATOR, INDICATED THAT FCI ESTILL DID. HOWEVER, SHE HAD NO IDEA OF COST (TRANSCRIPT P. 145). THUS, THERE WAS NO COMPARISON TO THE PRIOR WEEK WHEN FCI ESTILL EMPLOYEES SPENT TIME TAKING CARE OF SECURITY AND THE PERIOD FROM FEB 14, 2012 WHEN FCI WILLIAMSBURG TOOK CARE OF SECURITY. FURTHER, ONE MIGHT QUESTION THE NUMBERS, SINCE THE PERSONS ENTERING THE CODES WERE NOT AVAILABLE. MS. BROWN, THE EXPERT WITNESS ON COST SAVINGS, WHEN ASKED ABOUT OVERTIME AND TRAVEL CODING STATED "YES. I'M NOT SURE. IT DEPENDS ON WHICH ONE IT – I NEVER – IT'S IN B2 OR E1, I'M NOT CERTAIN HOW THEY'RE CODING IT. ONE MINUTE – IT WAS CODED AS E1 AND THEN I THINK IT WAS STARTING TO BE CODED TO B2' (TRANSCRIPT 142). IT MUST BE NOTED THAT SHE DID NOT KNOW WHEN THE CHANGE IN CODING TOOK PLACE, NOR DID THE AGENCY PRODUCE ANYONE TO EXPLAIN WHO MIGHT KNOW.

THE ARBITRATOR HAS READ ALL OF THE CASES PROVIDED BY THE AGENCY TO SUPPORT IT'S POSITION. IT IS A WELL ESTABLISHED PRINCIPLE THAT THE RIGHT TO ASSIGN WORK UNDER SECTION 7106 (A) (2) (B) OF THE STATUTE ENCOMPASSES THE RIGHT TO DETERMINE THE PARTICULAR DUTIES TO BE ASSIGNED, AND WHEN THE WORK ASSIGNMENTS WILL OCCUR. FURTHER, IT IS WELL UNDERSTOOD THAT MANAGEMENT HAS AN OBLIGATION TO PROVIDE A SAFE SECURE PLACE FOR INMATES, EMPLOYEES AND THE GENERAL PUBLIC. FURTHER THE RIGHT TO ASSIGN OVERTIME INCLUDES THE RIGHT TO DETERMINE WHEN THE OVERTIME WILL BE PERFORMED IS A RIGHT OF MANAGEMENT. YET, THE ARBITRATOR NOTES THAT ARTICLE 4, SECTION C CLEARLY STATES THAT "THE EMPLOYER WILL PROVIDE EXPEDITIOUS NOTIFICATION OF THE CHANGES TO BE IMPLEMENTED IN WORKING CONDITIONS AT THE LOCAL LEVEL. SUCH CHANGES WILL BE NEGOTIATED IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT." IN THE INSTANT CASE, THE CHANGE TO MOVE THE SECURITY COVERAGE OF INMATE TATE TO FCI WILLIAMSBURG FROM FCI ESTILL WAS NOT DISCUSSED WITH ANYONE. IN FACT LT. GEIER, THE EMPLOYEE RESPONSIBLE FOR MONITORING THE OVERTIME ROSTER, SEEMED NOT TO BE AWARE OF THE CHANGE UNTIL 2/15/2012 WHEN HE BEGAN TO UNASSIGNED FOLK PREVIOUSLY ASSIGNED TO PROVIDE SECURITY FOR INMATE TATE (SEE UNION #3). LT. GEIER WAS NOT INVOLVED IN THE DECISION TO MAKE THE CHANGE (P. 99).

CLEARLY MANAGEMENT CAN END OVERTIME ASSIGNED FOR REASONS OF EFFICIENCY, AND ECONOMY AND EMERGENCIES. YET, IN THE INSTANT CASE, NEITHER OF THE AFOREMENTIONED WAS DECLARED. BASED ON THE DOCUMENTATION AND TESTIMONIES PROVIDED, THERE WAS NO PROOF OF EFFICIENCIES AND ECONOMY GAINED BY THE DECISION. IN FACT, THERE IS APPROXIMATELY A 30 MILES DIFFERENCE, AS THE CROW FLIES, IN THE MILEAGE FROM WILLIAMSBURG TO CHARLESTON AND ESTILL TO CHARLESTON. IF THERE WERE INDEED SUCH EFFICIENCIES, MANAGEMENT WOULD HAVE CONTINUED TO ALLOW FCI WILLIAMSBURG TO MONITOR FCI ESTILL INMATES IN CHARLESTON AFTER TATE WAS RETURNED TO HIS CELL SINCE THE EXECUTIVE ORDER IS STILL OPERATIONAL. YET, THE RECORD SHOWS THAT AFTER MARCH 3, 2012 AND UNTIL NOW, FCI ESTILL EMPLOYEES MONITOR ESTILL INMATE AT THE CHARLESTON FACILITY.

FCI ESTILL DID NOT DECLARE AN EMERGENCY BECAUSE THERE WAS NOT ONE. A REVIEW OF MANAGEMENT'S OPTIONS CLEARLY SHOWS THAT IT CHOSE NOT UTILIZE PROCEDURES USED IN THE PAST. FOR EXAMPLE, IF THERE WAS AN ALLEGED SHORTAGE OF BTP EMPLOYEES AND EVERYONE UNDER THE SUN KNEW THAT THEY WERE IN TRAINING, THE AGENCY'S WITNESS TESTIFIED THAT "STAGGERED" OVERTIME HOURS HAD BEEN USED IN THE PAST. WHY NOT NOW? FURTHER, THE FACT THAT THE UNION WAS NOT INFORMED OF ANY EMERGENCY OR THE FACT THAT A CHANGE WAS ABOUT TO BE MADE IS ALSO CLOUDY SINCE THE MAIN WITNESS WAS NOT MADE AVAILABLE. A REVIEW OF THE OVERTIME ROSTER SHOWS THAT MANAGEMENT DID NOT EXHAUST ITS INTERNAL ABILITY TO FILL THE OVERTIME NEEDED. SEVERAL WITNESS WHO WERE IN TRAINING TESTIFIED THAT THEY WERE WILLING AND READY TO PERFORM OVERTIME BUT WERE NOT ASKED. THEY WERE PHYSICALLY PRESENT ON THE INSTITUTIONS PREMISES IN THE TRAINING ROOM AND NOT HARD TO FIND. THE ELECTRONIC ROSTER LOOKS LIKE EVERYONE WAS UNWILLING TO WORK UNTIL ONE DRILLS DOWN AND CONCLUDES THAT THERE WERE EMPLOYEES WILLING, QUALIFIED AND ABLE IF MANAGEMENT HAD ENGAGED IN FLEXIBLE OVERTIME HOURS AS IT HAD AT TIMES IN THE PAST. THE ARBITRATOR NOTES, THAT MANAGEMENT NEVER GAVE ANY REASONABLE EXPLANATION AS TO WHY THEY WERE INFLEXIBLE. EMPLOYEES WHO WERE BPT TRAINED WORKED OVERTIME THE FIRST WEEK OF INMATE TATE'S STAY IN CHARLESTON. MANY WERE IN TRAINING THE SECOND WEEK. THERE IS NO REASON TO BELIEVE THAT IF GIVEN THE OPPORTUNITY, TO HAVE A STAGGERED OVERTIME SCHEDULE, AS THE AGENCY'S WITNESS TESTIFIED HAD HAPPENED IN THE PAST (TRANSCRIPT P.105) THE OVERTIME COULD HAVE BEEN FILLED BY FCI ESTILL EMPLOYEES.

IN THE INSTANT CASE, THERE WAS AN ATTEMPT BY MANAGEMENT TO RE-INTERPRET THE RULES REGULATING OVERTIME WHICH WOULD HAVE CREATED A NEW MANAGEMENT RIGHT WHICH WOULD BE IN CONFLICT WITH THE MASTER AGREEMENT AS WELL AS THE MOU WHICH WAS NEGOTIATED. IN THE INSTANT CASE, MANAGEMENT CHOSE TO UNILATERALLY ENGAGE FCI WILLIAMSBURG FOR SECURITY WHEN IT HAD NOT EXHAUSTED ITS INTERNAL OPTIONS. CLEARLY THE AGENCY RETAINS THE RIGHT TO ASSIGN OVERTIME AND TO DETERMINE WHEN OVERTIME WILL BE USED AS WELL AS CONTROL INTERNAL SECURITY. HOWEVER, IN THE INSTANT CASE, MANAGEMENT DID NOT EXHAUST THE OVERTIME ROSTER AND THEREFORE FAILED TO PROPERLY ASSIGN OVERTIME TO AVAILABLE BARGAINING UNIT EMPLOYEES OF FCI ESTILL. FURTHER, THE ARBITRATOR NOTES THAT ARTICLE 18 SECTION Q, GAVE MANAGEMENT THE RIGHT TO ORDER QUALIFIED BARGAINING UNIT EMPLOYEES TO WORK OVERTIME IF IT HAS MADE A REASONABLE EFFORT TO OBTAIN VOLUNTEERS AND CAME UP LACKING. IN THE INSTANT CASE, IT HAD NOT FULFILLED ITS OBLIGATION UNDER ARTICLE 18, SECTION P AND THE MOU OF THE AGREEMENT. ACCORDING TO THE AGREEMENT, SECTION Q, IN ACCORDANCE WITH SECTION P, WAS AN OPTION THAT WAS AVAILABLE TO MANAGEMENT PRIOR TO ITS DECISION TO FARM OUT OVERTIME.

THUS, AFTER CAREFUL CONSIDERATION OF THE EVIDENCE PRESENTED AT THE HEARING, AS WELL AS ARGUMENTS PRESENTED IN THE PARTIES BRIEFS, AND IN LIGHT OF ALL OF THE AFOREMENTIONED, THE ARBITRATOR FINDS THAT THE AGENCY VIOLATED ARTICLE 3 SECTION

C; ARTICLE 4, SECTION C AND ARTICLE 18 HOURS OF WORK, SECTION P AND THE MEMORANDUM OF UNDERSTANDING OF THE LABOR AGREEMENT WHEN IT HIRED EMPLOYEES FROM FCI WILLIAMSBURG TO MONITOR AN FCI ESTILL INMATE IN MUSC HOSPITAL FROM FEBRUARY 14, 2012 TO MARCH 3, 2012.

AWARD

THE ARBITRATOR FINDS THAT QUALIFIED EMPLOYEES AT FCI ESTILL WERE WILLING TO WORK FROM FEBRUARY 14, 2012 TO MARCH 3, 2012. BACK PAY IS AWARDED TO THE IMPACTED EMPLOYEES. THE ARBITRATOR IS DIRECTING FCI ESTILL AND THE LOCAL UNION TO WORK TOGETHER TO DETERMINE WHAT OVERTIME PAY IS OWED.

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