

## FEDERAL MEDIATION AND CONCILIATION SERVICE

In the Matter of Arbitration	:	Before: J. J. PIERSON, Esq.
	:	Arbitrator
between	:	
	:	
U. S. DEPARTMENT OF JUSTICE,	:	
FEDERAL BUREAU OF PRISONS,	:	
FEDERAL CORRECTION CENTER,	:	OPINION and AWARD
COLEMAN, FLORIDA ("Agency"/"Employer"):	:	
	:	
-and-	:	
	:	
AMERICAN FEDERATION OF GOVERNMENT:	:	
EMPLOYEES, COUNCIL OF PRISON LOCALS:	:	FMCS Case No. 08-56532
LOCAL 506, COLEMAN, FLORIDA ("Union") :	:	Grievance of Johnny Phillips
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The undersigned derives jurisdiction as Arbitrator of this matter from appointment by the parties pursuant to Article 32 ("Arbitration") of the effective Collective Bargaining Agreement ("Master Agreement" or "Agreement", entered into the record as J-1<sup>1</sup> ) between the parties. The appointment directs the Arbitrator to conduct a hearing and issue a final and binding decision on the issue presented. A hearing was conducted on February 19, 2009 at the Federal Correctional Complex, Coleman, Florida, after due notice was forwarded to the parties by the Arbitrator. The parties were afforded full opportunity to present evidence (and post hearing submissions) in support of their positions on the following: ISSUE<sup>2</sup>:

Did the Agency, as Employer, violate the Master Agreement by reassigning Officer Johnny Phillips to work outside the institution during the period he was being investigated for his conduct of February 10, 2008 and by denying him the opportunity to work overtime between February 11, 2008 and June 18, 2008? If so, what shall be the remedy?

Appearing for the Agency:

Andrea Geiger, Esq., Agency Representative  
David Honsted, Services Specialist  
D. B. Drew, Complex Warden

Appearing for the Union:

Daniel Bethea, Union Advocate  
Jim Seidel, Chief Steward Complex  
Johnny Phillips, Grievant

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1. Exhibits are marked (J- ) for Joint Exhibits; (E- ) for Employer Exhibits; and (U- ) for Union Exhibits.
  2. The parties could not stipulate to an Issue and, accordingly, this Arbitrator framed the Issue for the parties.

Witnesses Appearing for the Agency

Drusilla Wiggins, Employee Service Specialist  
Jennifer Vaughn, Special Agent - CAB  
Kevin Rison, Employee Service Manager  
Wendall Dulay, Special Agent - OIG, USDJ  
(by Telephone)  
Robert Westbrook, Special Agent, OIA,

Witnesses Appearing for the Union

Cecil Howard, President, Local 506  
Jim Seidel, Chief Steward - USP-2  
Tina Summerton, Capt - Security  
Jose Castillo, Sr. Officer Specialist  
Capt. Clinton Smith, Complex Captain  
Anthony Ryals, Material Handler- Supervisor  
Taronica White, Correction Officer Specialist

**BACKGROUND**

The Federal Bureau of Prisons (the, "BOP" or "Agency", as the "Employer") and the Council of Prison Locals, including the American Federated of Government Employees, Local 506 (the "Union") are parties to the Master Agreement, which applies to the Federal Correctional Complex at Coleman, Florida (hereinafter, "Coleman" or the "Complex").

Correction Officer Johnny Phillips (hereinafter, "Officer Phillips" or the "Grievant") has been employed by the BOP for 8½ years, performing at the Coleman complex for three years and previously assigned to the Atlanta, Georgia complex, for five years.

The matter herein arose from an incident occurring at the Coleman complex on February 10, 2008 as Officer Phillips entered the screening area at USP-2 to start his work shift. When Officer Phillips' personal possessions were screened through a metal detector, it was discovered that he had a cell phone and charger in his lunch bag. Once revealed and retrieved, Officer Phillips returned the cell phone and charger to his personal automobile. He proceeded through screening and began his workday. The officer manning the metal detector informed Operations of the incident and followed with a written report. (See A-9).

On February 11, 2008, the Agency gave Officer Phillips notice that he was being placed under investigation and reassigned to the central administrative building (CAB). Officer Phillips was not permitted to work overtime and not allowed to work the hospital, perimeter patrol, or any other correctional post on the USP-2 roster.

The following chronological dates are also relevant to the present matter:

- March 6, 2008: Officer Phillips was interviewed by Special Agents Dulay and Brunner of the Office of Inspector General ("OIG").
- April 11, 2008: The Union filed a grievance on behalf of Officer Phillips, requesting he be made whole for lost compensation. (See J-2).
- In May 2008: Officer Phillips was interviewed by Special Agent R. Westbrook of the Office of Internal Affairs.
- May 12, 2008: The Agency responded by procedurally rejecting the grievance for failing to articulate a violation of the Master Agreement. The Agency added that, "As to the merits of your claim, please be advised that you are currently being treated fairly and equally, based on similarly situated employees." (See J-3).
- May 27, 2008: The Union invoked arbitration for Officer Phillips. (See J-4).
- June 19, 2008: Officer Phillips was returned to regular duty status.
- June 23, 2008: The Union requested an update to the status of the OIA investigation.
- July 2, 2008: Mr. Aguirre responded: "Your case is pending closure by OIA... once closed, you will be receiving a letter from the warden." (See U-3).
- July 8, 2008: Warden D.B. Drew issued a letter stating "The Office of Internal Affairs has concluded their investigation and determined the charge/allegation to unfounded. Therefore, the case has been closed." (See U-4).
- February 11, 2009: Union Representative Daniel Bethea received notice from ESM, Kevin Rison's memo (dated July 8, 2008), attaching Warden Drew's letter advising Officer Phillips that the case was closed and he was cleared of any wrongdoing.

The Union contended that, beginning February 11, 2008, the Agency took action against Officer Phillips which had not taken against other employees similarly charged and violated Article 6 and Article 18 of the Master Agreement by failing to treat Officer Phillips fairly and equitable.

According to the Union, during the period between February 12, 2008 and June 18, 2008, Mr. Phillips was unjustly removed and reassigned from his regular work location and not allowed to work overtime or night differential.

The Union maintained that Officer Phillips was taken out of his regular duty status for a period of 121 days and bypassed for a total of 972 times at eight hours per shift. It was the position of the Union that Officer Phillips is entitled to the number of overtime hours worked (a total of 486 overtime hours) for the 121 days previous to his removal from the complex.

The Union requested the Arbitrator to find the Employer in violation of the Agreement and to award Officer Phillips lost overtime compensation in the amount of 461 hours, with interest permitted by statute.

The Agency contended that, on February 10, 2008, Officer Phillips entered the electronic search area in USP2 at the Coleman Complex, improperly carrying contraband (a cell phone and charger), arousing security concerns and causing the investigation of his actions.

Initially, the Agency relied on two cases in support of its position that Officer Phillips was removed from regular duties “as a security measure based upon allegations involving the grievant.”<sup>3</sup> The Agency contended that, by moving the Grievant to a temporary assignment during the period of investigation of the allegations, security concerns justified the denial of overtime opportunities during the period of temporary reassignment and pending the investigation.

The Agency further maintained that the Union could not meet its burden of proof in the first prong of the back pay test because “the personnel actions were not unjustified or unwarranted”.<sup>4</sup>

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3. United States Department of Justice Federal Bureau of Prisons United States Penitentiary, Marion, Illinois (Agency) and American Federation of Government Employees Local 2343 Council of Prison Locals (Union), 60 FLRA No. 138, 2005 WL 675407 (F.L.R.A.) (March 14, 2005); and United States Department of Justice Federal Bureau of Prisons United States Penitentiary, Beaumont, Texas (Agency) and American Federation of Government Employees Local C-33 Council of Prison Locals (Union), 59 FLRA No. 75, 2003 WL 22964329 (F.L.R.A.) (Dec.8, 2003).

4. The Agency referred to the definition under the Code of Federal Regulations (5 C.F.R. 550.803): “Unjustified or unwarranted personnel action means an act of commission or an act of omission (i.e., failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination).”

According to the Agency, the investigation of Officer Phillips (including his removal from the complex and reassignment without overtime opportunity) was justified when it was reported that an electronic search of his personnel items revealed a cell phone and charger.

Moreover, the Agency contended that, even if its personnel action in removing Officer Phillips from the complex and denying his overtime opportunities was unwarranted or unjustified, the Union could not meet its burden of proof for awarding compensation. According to the Agency, the Union could not prove that Officer Phillips would have been offered specific overtime assignments on specific dates. It was the position of the Agency that the Union's demand for lost overtime is speculative and overtime available for staff markedly decreased.

The Agency requested the Arbitrator to find that its actions in investigating the incident, reassigning Officer Phillips and not allowing him to work overtime, was neither unjustified nor unwarranted when considering its security concerns; and, notwithstanding a finding in the alternative, to find that the lost compensation remedy sought by the Union is speculative and does not meet the legal criteria for back pay. Finally, the Agency requested the Arbitrator to deny the grievance.

### **RELEVANT CONTRACT LANGUAGE**

#### **Article 30 - Disciplinary and Adverse Actions**

Section d. Recognizing that the circumstance and complexities of individual cases will vary, the parties endorse the concept of timely disposition of investigation and disciplinary/adverse actions.

2. employees who are the subject of an investigation where no disciplinary or adverse will be proposed will be notified of this decision within seven (7) working days after the review of the investigation by the Chief Executive Officer or designee. This period of time may be adjusted to account for period of leave.

Section g. The Employer retains the right to respond to an alleged offense by an employee which may adversely affect the Employer's confidence in the employee or the security or orderly operation of the institution. The Employer may elect to reassign the employee to another job within the institution or remove the employee from the institution pending investigation and resolution of the matter, in accordance with application laws, rules, and regulations.

## EXHIBITS

### JOINT

### DESCRIPTION

J-1	Master Agreement
J-2	Grievance
J-3	5/5/08 Warden Drew: Response to grievance
J-4	Invocation of arbitration

### UNION

U-1	Memo of investigation
U-2	5/6/08 administrative inquiry
U-3	7/2/08 G. Aguirre e-mail to Mr. Phillips
U-4	7/8/08 Warden Drew letter to Mr. Phillips
U-5	2/14/08 Latorsha Peters e-mail to Mr. Phillips
U-6	11/8/07 Electronic searches procedures
U-7	Review of Federal Bureau of Prisons' Disciplinary system Report I-2004-008
U-8	4/1/08 J. Seidel meeting memo
U-9	6/23/08 J. Seidel to Warden Drew Case Update
U-10	Memo of understanding between Union and Management overtime roster program
U-11	2/17/09 Taronica White overtime Summation
U-12	Officer Phillips was assigned to the CAB from 2/12 until 2/19
U-13	6/20/08 overtime log
U-14	6/20/08 total overtime paid for 2/11/08 through 6/21/08
U-15	Yearly pay scale for the GS-3 through GS-10

### AGENCY

A-1	2/10/08 memo
A-2	Policy statement on the standards of employee conduct
A-3	2/18/09 Jerry Sloan to Kevin Rison Overtime Memo
A-4	Fiscal Year Employee Summary: Total salaries paid out to Mr. Phillips (4 months prior to investigation)
A-5	2007 DOJ Payroll Calendar
A-6	2008 DOJ Payroll Calendar
A-7	Fiscal Year Employee Summary: Total salaries paid out to Mr. Phillips (4 months subsequent to investigation)
A-8	New search procedures
A-9	2/10/08 A.R. Temples Incident Involving staff search memo
A-10	2/10/08 M. Tejera memo to Mr. Temples

## **REVIEW OF RECORD**

Officer Johnny Phillips, employed by the BOP for eight-and-a-half years (at the time of hearing), testified on his own behalf, describing his employment history and the incident of February 10, 2008. Working at the Coleman Complex for more than three years, Officer Phillips was previously assigned to the Atlanta, Georgia complex (USP2) for five years. As Officer Phillips explained, he transferred from Atlanta to Coleman to pursue the opportunity for promotion to GS-8. (Tr.20).<sup>5</sup>

Officer Phillips testified that, on February 10, 2008, he reported for work after working a double shift the prior day. (Tr.22) He was scheduled to relieve another officer working in the tower post. According to the Grievant, he was running behind and left his vehicle in a rush. As he entered the front lobby entrance,

... I placed all my equipment in the number one bin and set my food items on the counter to the trainers<sup>6</sup>. ... As I walked through the ex-ray metal detector and I began dressing back for my duty<sup>7</sup>, there was - - Mr. Temples told me your bag we need to check out what's in your bag that the metal detector is going off. So I said, okay. So I started pulling items out of my bag and I opened one bag up and discovered I had forgot my cell phone and charger was in there. And I told him I said, "Sorry about that. That's my cell phone and charger." (Tr.22)

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5. Leaving his family in Atlanta, Officer Phillips first roomed with another transferee in the Coleman, then became transient. When not working overtime, the Grievant returned to Atlanta on his days off. As Officer Phillips explained, he stayed with his brother in St. Petersburg, Florida when working overtime or "living out of my car doing the overtime sending money home." (Tr.21). As the Grievant later confirmed, because he worked a lot of overtime and did not have a residence at the Complex, he often slept in his car between shifts and showered in the training center. (Tr.28).

6. On cross-examination, the Grievant maintained that he had a lunch bag and a grocery bag. (Tr.48). He placed the lunch bag on the conveyor belt to go through the x-ray and the other bag was given to the screener. (Tr.49). The grocery back contained a gallon of milk, a box of Ritz Crackers, and a third item. (Tr.49)

7. On cross-examination, the Grievant explained that getting dressed and 'gearing up' meant putting back on his belt and clips holders. (Tr.50).

On cross-examination, Officer Phillips explained how the phone and charger got into the bag. He described how he worked a double shift the day before and was at a hospital when he got relieved earlier than expected. Thus, he gathered up and threw his belongings in his bag. It ended up in the plastic bag into another bag with the box of crackers. (Tr.53). According to the Grievant, the cell phone placed in the plastic bag ended up in the box of crackers also placed in the plastic bag. (Tr.55).

The Grievant testified that he returned the phone and charger to his car, then re-entered the building and cleared the metal detector. (Tr.23). He commenced his sixteen hour tour.

Officer Phillips testified that, on the following day (February 11, 2008), while working in the G-1 housing unit 62, he was relieved and directed to the report to the CAB building. (Tr.23). Officer Phillips related that he was walked out of his office and advised "that the only thing I would be doing per Captain Jenkins would be 7:30 to 4:00 Monday through Friday and I would not be doing nothing else." (Tr.24). The Grievant was not permitted to work in the hospital and was asked to take himself off the overtime list.<sup>8</sup>

When Officer Phillips was questioned about his overtime prior to February 10<sup>th</sup>, he stated, I normally worked any overtime they had available Monday through Friday on my regular 5-day work week and on my days off I would do doubles. (Tr.25).

Officer Phillips testified that, after he was removed from the institution, he first worked in the administrative area (a conference room, "out of sight"), monitoring phones, and then moved to the "front lobby area." (Tr.32). According to the Grievant,

... I felt kind of embarrassed and humiliated and kind of disgusted because you have to wear headphones to do phone monitoring and not do it on the speaker phone because they prison inmates, female inmates around where you couldn't allow them to hear the conversation about the inmates' population. And people would come in and ask me they said, what are you doing up here?" (Tr.33).

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8. The request was made by Lieutenant Hughes, USP-1 Admin Lieutenant. (Tr.24). As the Grievant acknowledged, he did not take his name off the overtime list and signed up for overtime during the whole quarter. (Tr.25).



And then some people would come in and stop in the front door before they come in and ....I could tell they was of like, "This is the guy." or they would come in and look at me a certain way. I felt really frustrated sitting out there after being - - the normal procedure was out of sight in a side room for phone monitoring. But about a month in I was moved out front. (Tr.34).

I was really frustrated about the situation, but I had to let it run its course because my wife ..... my wife was really upset and stressing at the time. ...it really hurt me to sit there and have to go through this day-in and day-out. ... People won't speak to me like they used to. ... (Tr.36).

Officer Phillips also testified that he fully cooperated with the Office of the Inspector General and its announced investigation (approximately one month after the February 2008 incident) by "Mr. Dulay and Mr. Brunner." (Tr.26).<sup>9</sup> According to the witness, he also provided cell phone records. (Tr.27). After the discussion with the two agents, he was assured by his conduct was "a simple mistake" and told by the OIG agents that they would "defer and not pursue" the matter further. (Tr.29). Officer Phillips later received the OIG report.<sup>10</sup> He was allowed back into the institution on June 19, 2008, when informed by Lieutenant Shaw. (Tr.29 and Tr.31). From that point in time, Officer Phillips was also permitted to work overtime. (Tr.32). He had been out his position and not permitted to work overtime for a period of 121 days. (Tr.36).

Upon returning to the institution, Officer Phillips requested information from George Aguirre about his status, but was informed that the investigation was still open. As Officer Phillips confirmed, it was not until February 2009 that he received confirmation the investigation was completed and he was cleared. (Tr.38 and see U-4). Thus, while the investigation was closed in July 2008, Officer Phillips was not given notice of the closure until February 2009. (Tr.39).<sup>11</sup> According to the Grievant, considering that being out of work set him back and damaged his quality of life and that of his family in Atlanta (Tr.43).

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9. Wendall Dulay and Jeffrey Brunner, Special Agents - U.S.Dept.of Justice, Office of Inspector General.

10. Officer Phillips testified that, prior to returning to the institution on June 19th, he also spoke to Robert Westbrook, Special Agent of the Office of Internal Affairs. (Tr.30).

11. The Grievant acknowledged that he was not on leave between July 8, 2008 and February 2009. (Tr.41).

The Union also presented the testimony of Cecil Howard, employed by the Agency for sixteen years (presently, an Electrical Worker Supervisor) and the Union President (for six years). The witness expressed his familiarity with the "entrance search procedures of BOP employees at the facility" and identified the written procedures. (Tr.61 and see U-6<sup>12</sup>). As Mr. Howard recognized, the purpose of the procedures was to prevent unauthorized items coming into the institution.<sup>13</sup> (Tr.67).

When questioned as to the application of the procedures, Mr. Howard related that an employee setting off the metal detector (with something in their pocket, including a cell phone) would be permitted to return the item to their car.<sup>14</sup> (Tr.70). Nevertheless, he testified that Officer Phillips, under similar circumstances, was accused of attempting to introduce contraband into the institution. (Tr.72). Responding to questions relating to other staff members placed under investigation for alleging introduction of contraband<sup>15</sup>, Mr. Howard related that two employees were permitted to continue to work their post and to work overtime.<sup>16</sup> (Tr.77-78).

Jim Seidel, employed by the Agency since 1994, is a Senior Officer Specialist in the USP-2 Coleman and the Chief Steward for the Union. (Tr.94 and Tr.96). Mr. Seidel represented Officer Phillips during the grievance procedure (and during the investigations). (Tr.96).

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12. Executed by the Bureau of Prisons' National Central Office and the Council President.

13. As the witness testified, "... it was necessary for the Agency to put this in place to stop the substances from entering into the institution that shouldn't be gone in, such as contraband or whatever else." (Tr.69).

14. While the Agency objected to the opinion of the witness being offered in evidence, this Arbitrator accepted Mr. Howard competent to testify above his observations.

15. Mr. Howard, with knowledge of the incidents resulting from his position as Union President, testified that the first employee, Officer Viera (employed in the FCI low security level) was placed under investigation for introduction of contraband.

16. While attempting to preclude testimony relating to the investigations for "introduction of contraband," the Agency acknowledged that this Arbitrator is permitted to determine, on its face, whether preclusion from work and preclusion from overtime was reasonable. (Tr.80).

As Mr. Seidel testified, he was with Officer Phillips during the OIG investigation and concluded from his questions to the investigators that the incident was considered “a simple mistake.” (Tr.97). According to the witness, the OIG report confirmed that having the cell phone and charger on his possession as he entered the institution was a mistake.

Mr. Seidel testified that he also filed a grievance on behalf of Officer Phillips in April 2008, not only because he was assigned to the CAB building, but also because he was taken off the overtime list. (Tr.100). During the subsequent period, he made attempts to determine the status of the investigation. He acknowledged that Officer Phillips was ‘brought back to duty’ on June 19, 2008. (Tr.104).

On June 23, 2008, Mr. Seidel forwarded a memo to Warden Drew, reviewing the incident over the period of time between February and the date of Officer Phillip’s return to work and requesting the status of the case.<sup>17</sup> As Mr. Seidel testified, he never received a response from Warden Drew. (Tr.106). To the Union, there remained a question of “what was the change?”, since Officer Phillips was “put back, just no ifs, and or buts, right back to duty status.” The Agency gave no explanation. (Tr.108). According to the email forwarded from the Agency<sup>18</sup> through

Mr. Seidel also identified the letter dated July 8, 2008, addressed to Officer Phillips from D.B.Drew, Complex Warden (see U-4), which stated:

“On February 10, 2008, an allegation of Unauthorized Electronic Device Introduction was made against you. The Office of Internal Affairs has concluded their investigation and determined the charge/allegation to be unfounded. Therefore, the case is closed.

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17. Specifically asking about “... the status of this case, to include whether or not it is still active.” (See U-9). In part, the Union was pursuing its representative duties. (Tr.107).

18. According to the witness, on February 11, 2009, he received a fax from ESM, Kevin Rison, attaching Warden Drew’s July 8, 2008 letter advising Officer Phillips that the case was closed and Officer Phillips was cleared of any wrongdoing. (Tr.109).

We fully understand the anxiety and apprehension that staff feels when an allegation is made against them. However, in order to maintain the integrity of our working environment, we must thoroughly investigate every accusation brought to our attention. We sincerely appreciate your cooperation in bringing this to a close. ...”

Tina Summerton, employed by the BOP for eight-and-one-half years, presently holds the position of Captain Secretary at the Coleman Complex. (Tr.115). Ms. Summerton testified she was previously under investigation for “introduction of contraband.”<sup>19</sup> (Tr.115). She also testified that she was allowed to work overtime during the period of her investigation, but chose not to. Likewise, she was not taken off her post nor place in the front lobby of the CAB. (Tr.116). She was recently cleared of “bringing in cigarettes to an inmate.”<sup>20</sup> (Tr.116). Nevertheless, during that period of time, she was permitted to work inside the institution.

Jose Castillo is a Senior Officer Specialist, employed by the BOP for nine-and-a-half years. While working at other facilities, Mr. Castillo has been at the Coleman Complex since 2005. (Tr.120). Mr. Castillo testified that he worked as a telephone monitor in February 2008 and was directed to make a CD of the tape of the incident of February 10<sup>th</sup>. (Tr.122). According to the witness, when observing the tape, he noticed that Officer Phillips did not seem nervous nor agitated as he proceeded through the metal detector.<sup>21</sup> (Tr.124).

Mr. Castillo was also questioned about his observations of other employees taking items through the metal detector. As the witness testified, once discovered, employees were permitted to return the items to their cars. (Tr.124). He added that, since Officer Phillip’s incident, “everybody is really scared about it ... before they get to the door, they are touching themselves, shaking themselves down and go back to the vehicle.” (Tr.124-125).

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19. The investigation began in February 2007. (Tr.117).

20. She received a letter on February 2, 2009. (Tr.118).

21. While asked to describe his observations of the tape, the witness mentioned there were obstructions in viewing Officer Phillips conduct. The Agency noted that the witness testified that he also lost sight of the Grievant during times he was passing through the metal detector. (Tr.126).

Clint Smith also testified for the Union and, as Complex Captain (employed by the BOP for fourteen years), could not recall anybody (other than Officer Phillips) being placed in the front lobby while under investigation. (Tr.128). Captain Smith had a recollection of a staff member bringing in a cell phone into the institution and, once notified, allowed to return the item to their car. An investigation was commenced at the time it was reported. (Tr.133). He was aware that somebody had been pulled off their post and placed in the CAB building while under investigation. He was not aware of anyone being assigned to the lobby while under investigation. (Tr.143).

Anthony Ryals, employed by the BOP for one year and seven months, holds the position of Material Handler supervisor. He is currently (at the time of the hearing) under investigation on two charges. (Tr.145). Mr. Ryals testified that he is permitted to work overtime and is working his normal job. (Tr.147 and 148).

The Union also called Complex Warden Darryl Drew to testify. In the position of warden since 2003 (initially at the FCI Ray Brook, New York facility.), Warden Drew has been in his present capacity as Warden at FCC Coleman since January 2008. (Tr.150). The Warden was questioned as to his knowledge concerning Officer Phillips' investigation, being placed outside the institution and denied overtime during the period of his investigation through June 23, 2008.

As Warden Drew testified, it was his decision to place Officer Phillips outside the secure perimeter during the investigation. He also referred Officer Phillips to the OIA for allegations of misconduct for an attempted introduction of contraband into the facility. (Tr.152).

Warden Drew recognized that the electronic search procedures for entry into the institution (U-6) and the specific provision which allowed BOP employees setting off the metal detector to take the item to their vehicle in order to clear the metal detector. (Tr.153). He acknowledged it was "possible" that an employee could forget a cell phone and charge was in his possession when passing through the metal detector. (Tr.158).

Finally, when questioned if he was aware of anyone else in the position of being investigated was placed outside of the institute or denied the opportunity to work overtime hours, aside from Officer Phillips, Warden Drew acknowledged, "No, ... none that I supervise." (Tr.159). Nor did he have knowledge that the letter declaring Officer Phillip's investigation and case closed (dated July 8, 2008) had not been received by Officer Phillips or the Union until February 11, 2009. (Tr.161).

Counsel for the Agency also questioned Warden Drew. Of note, the witness described the Coleman complex as five institutions, including a central administration building. There were four wardens supervising the five institutions. In addition to the title of "Complex Warden", Warden Drew has operational authority of Pen 2; while Warden Middlebrooks has operational authority of Pen 1. Together, the two warden has supervisory authority of the Central Administration Building. Pen 1 and Pen 2 are the "high security" institutions.<sup>22</sup> (Tr.165-166). In referring to the investigation of Officer Phillips, Warden Drew explained:

It was reported by staff members that there was an incident that occurred at the front lobby. And staff outline, in the memos, their concerns as well as their perceptions of an attempt of introduction of a cell phone into the facility. The information and the allegations were referred to the Office of Internal Affairs and they subsequently did an investigation on those allegations. ... It was noted that it was very suspicious (Tr.166-167).

... it's a requirement that it be referred to the Office of Internal Affairs by all of us. But the instances that were detailed in terms of the activity, the behavior, and the overall detection of a cell phone and charger in a box, rose to the level of being a concern for management.

... If cell phones are introduced into the facility then it directly jeopardizes our ability to be able to ensure the safety of the public, staff, the inmates, and the orderly running of the institution. An inmate would have the ability to communicate without being monitored, which is a requirement within the Bureau of Prisons. They could facilitate murder for hire, sell it on the black market, record information, send out pictures, expose the identities of inmates and staff alike. It's a serious concern (Tr.168-169).

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22. Warden Pastrana has authority of the Medium security institution and the "Camp". Warden Jarvis has authority over the Low security institution. (Tr.165).

Warden Drew also explained the security concern when considering Officer Phillip's post in "Tower 7", location in the center of the recreation yards and the center of the institution. As the Warden described, Tower 7 "provides oversight of our staff in terms of firearms, weaponry oversight of the entire compound. (Tr.172).

Warden Drew confirmed that, based on his rights under Article 20, section g, he removed Officer Phillips from Pen 2 and reassigned him to the central administrative building, pending the determination of the investigation. (Tr.176). However, on cross-examination, the Warden acknowledged there had been a number of investigations going on at the time and it was only Officer Phillips who was not allowed back into the institution during his investigation. (Tr.183). And, in addition, the Warden could not state why the decision was made to allow Officer Phillips back into the institution on June 19<sup>th</sup>. (Tr.184). The Warden did not respond to the Union's pointed question regarding Officer Phillips being treated differently than other cases.

The Union also called Taronica White to testify to damages experienced by Officer Phillips. Working in the BOP since 1996, Ms. White has been assigned to Coleman FCC since 2005. She is currently a Senior Officer Specialist and also the Union Secretary. In the later position, she oversees the overtime procedures, the rosters and any officers' issues dealing with shift conflicts. (Tr. 186-187).

Referencing the MOU (Memorandum of Understanding between the Union and Management on the overtime roster program, see U-10), Ms. White testified that she reviewed Officer Phillips' overtime roster printout (daily assignments) as to the 121 days prior to February 10, 2008. (Tr.189). Ms. White testified that she generated the document regarding Officer Phillips' overtime. (See U-11).

Based on Ms. White's records and calculations, Officer Phillips worked 486 hours in 81 total assignments during the 121 days prior to February 10<sup>th</sup>. (Tr.194). He did not work overtime between February 11<sup>th</sup> and June 18<sup>th</sup>, 2008. (Tr.196). Ms. White confirmed there were 972 lost overtime opportunities during that same period of time, although not all were available to Officer Phillips.<sup>23</sup> (Tr.200). She calculated that Officer Phillips lost 72 hours of overtime opportunity each week during the period February 11<sup>th</sup> to June 19<sup>th</sup>, 2008.<sup>24</sup>

Officer Phillips was recalled to testify that his pay rate as a G-8, Step 6 (as of February 2008) was \$24.10 per hour and \$36.15 ("capped") for overtime hours. (Tr.213).

In response, the Agency presented the testimony of Dusilla Wiggins, an Employee Services Specialist, responsible for LMR as well as adverse actions. According to her testimony, she prepares the disciplinary letter and is the keeper of records.

Ms. Wiggins was questioned about reassignments pending disciplinary actions. She testified to her knowledge that "at least two staffs" (other than Officer Phillips) have been reassigned to the CAB during investigations. With the exception of the Grievant, Warden Drew was not the warden at the time of reassignment. (Tr.216). On cross-examination, the witness acknowledged that the other employees were not assigned to the CAB lobby during the period they under investigation. (Tr.217).

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23. When asked, Ms. White acknowledged that the total of 7,776 hours of overtime missed when Officer Phillips was bypassed 972 times during the period of February 11<sup>th</sup> through June 19<sup>th</sup> was not accurate in that the bypassed overtime could have occurred five times for the same shift. (Tr.202-203, see U-14).

24. Based on Ms. White's calculation of "maximum" lost overtime opportunities, Officer Phillips lost five overtime opportunities during his work week and two on each day the Grievant was off work (assuming he worked double shifts on each of his two days off). At eight (8) hours per shift, Ms. White calculated that Officer Phillips lost 72 hours of overtime per week. (Tr.210).



The Agency also presented the testimony of Jennifer Vaughn, employed as a Technician in the SIA (Special Investigations Agents') office in the CAB. The SIA is responsible for investigating staff "misconduct" cases. (Tr.219). It was Ms. Vaughn who generated the letter of July 8, 2008 (U-4) to Officer Phillips which advised him the case was closed. According to the witness, she sent two e-mail notifications to Officer Phillips, without response.<sup>25</sup> (Tr.220). She did not recall checking to confirm receipt of the e-mail, since it was not her procedure. (Tr.222).

Kevin Rison, an Employee Service Manager, was also called to testify by the Agency. He confirmed that he was aware of the investigation concerning Officer Phillips and described his attempt to determine its status in June 2008. According to the witness, he contacted the SIA and subsequently learned that the investigation of Officer Phillips "was not sustained and he was allowed at that point to come back to work." (Tr.226-227).

The witness was questioned about "temporary assignments for duty" (TAD). He was aware of two other employees who had been assigned to the CAB for temporary duty, although both were assigned for Worker's Compensation injuries. (Tr.227). On cross-examination, Mr. Rison acknowledged that no staff member under investigation, other than Officer Phillips, was placed at the front desk of the CAB to monitor phones. (Tr.250).

Mr. Rison was also questioned about Officer Phillips' request for a "hardship" transfer to Atlanta during the period of his reassignment. As the witness related, USP Atlanta facility was restructuring ("from a penitentiary .... to a medium security institution") and not hiring officers during that period. (Tr.228).

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25. As she explained, the actual letter is not sent. But a notification to "stop by the SIA offices at their convenience and if they have any questions they could call me and I put my extension on there." (Tr.221).

The witness was further questioned about the overtime hours worked at the Complex preceding, and during, the time frame that Officer Phillips was reassigned. According to Mr. Rison, there was \$900,000 paid in “custody” overtime at the Complex between October 2007 and February 2008, but “only” \$558,000 paid in overtime between March 2008 and July 2008.<sup>26</sup> (Tr.233). With specific reference to Officer Phillips’ overtime and overtime income between October 2007 and February 2008, the witness demonstrated that the Grievant earned more than \$17,000 for approximately 450 overtime hours. (Tr.236 and U-5).

The Agency introduced the testimony of the officer who completed the investigation for the Office of Internal Affairs.<sup>27</sup> Wendall Dulay, a Special Agent with the Department of Justice - Office of Inspector General<sup>28</sup>, performs internal affairs’ investigations. Investigations address both criminal and administrative issues. (Tr.255). His investigation of Officer Phillips, concerning the allegation of “the possible introduction of contraband involving a cell phone,” was conducted on March 6, 2008. (Tr.255). The witness acknowledged that he does not have the authority to decline a case, nor did he refer to Officer Phillips’ case as “a simple mistake.” (Tr.258). However, while not having authority to make a decision regarding the characterization of the case, SA Dulay acknowledged that he is asked for a recommendation by the “deciding official” (of the U.S. Attorney’s office). (Tr.260). Finally, the witness recognized that the U. S. Attorney’s office decided not to do anything with the case. (Tr.260).

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26. As Mr. Rison testified, overtime was reduced due to increasing staff in the correctional services. As the witness acknowledged on cross-examination, overtime figures reflected only “correctional” hours and were actually greater than demonstrated. (Tr.245).

27. The Agency introduced testimony through a telephonic connection, based on the officer attending a training session at another location. (Tr.251).

28. “Internal Affairs”. (Tr.255)

Robert Westbrook, a Special Agent with the Office of Internal Affairs (OIA), investigates misconduct allegations in the BOP. In that capacity, he conducted the investigation of Officer Phillips on May 5, 2008.<sup>29</sup> (Tr.263 and Tr. 265). Mr. Westbrook related that he gathered the information, returned to his office in Washington and wrote his final report.<sup>30</sup> He was aware that the charges were not sustained and, accordingly, the report was sent to Coleman (on July 2, 2008) for final action. (Tr.266).

The final witness introduced by the Agency was Andrew Temples, an Assistant Education Supervisor at USP 2. Mr. Temples identified the email (from the wardens) issuing directions on implementing staff searches. (see A-8). He also testified that he supervised and conducted security searches of staff entering the institution. (Tr.273). On duty the morning of the incident, Mr. Temples described the search of Officer Phillips:

...7:30, 7:45 ... when Officer Phillips arrived ... placed his items on the X-ray machine and had hand me a bag, which appeared to have a gallon of milk and a box of Ritz crackers. ... I took the bag, recognizing that it was food items ... I accepted it and set it on the counter.

Then at that time I picked up the wand. I went over and cleared Ms. Tejera and came back. While I still had the wand in my hand, Mr. Phillips had cleared the metal detector. I just took the wand and I went across both sides of the bag to clear it.

Basically, when I ran the wand against the side with the milk it did not alert. And I ran it along the side with the box of crackers and it did. At that time I asked Mr. Phillips to empty the contents of the bag.

... once the milk cleared, he set it down. ... he was hesitating - - and I said "Could you remove what's in the box?" So he opens the box and he pulled out a sleeve of crackers and held up. Of course I used the wand and items cleared. ...

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29. The purpose of SA Westbrook's investigation was to determine if Officer Phillips had violated rules and regulations by having a cell phone at the institution. (Tr.266).

30. The witness also testified that he gave the warden his preliminary assessment in May 2008 "that I would not be sustaining the charge." (Tr.271).

Testimony presented by the Agency clearly demonstrated a bona fide concern for Complex security and the integrity of the working environment. As a result, a set of rules and procedures were implemented for the prevention of contraband entering the institution. The Agency's introduction of Officer Temples' testimony revealed his suspicion arising through discovery of a cell phone and charger, located within a tightly wound plastic bag, within an open box of Ritz crackers, within a plastic bag carried by Officer Phillips as he passed through the security point and attempted to enter the institution on February 10, 2008. As this Arbitrator viewed the circumstances, Officer Temples' suspicion was neither unreasonable nor unjustified and he took responsible steps in reporting the discovery.

The Agency also introduced evidence to reveal that immediate steps were taken to alleviate security concerns by removing Officer Phillips from his regular assignment and placing him in another assignment. The discovery, suspicion and report of the cell phone and charger entering the institution lead to an investigation which, in the belief of this Arbitrator, was performed within appropriate guidelines. However, it is of significant note that the investigative reports and OIG determination was that the charges/allegations against Officer Phillips were unfounded. Of greater significance was the fact that the Federal Bureau of Prisons closed the case. (See U-4). Officer Phillips was returned to his regular duty assignment in June 2008.

However, in the opinion of this Arbitrator, while the Agency took appropriate steps in following administrative procedures and fulfilling its management obligations, Officer Phillips remained "innocent" of the charges and was entitled to be treated fairly and equitably. Thus, the question remains, when the Agency acted to remove Officer Phillips from his "security" assignment, did the Agency correspondingly treat the Grievant appropriately in reassigning him to CAB and denying Officer Phillips overtime opportunities.

... and then he takes the other sleeve of crackers, which I wanted, which cleared. And, again, there was some delay. ... So again I was waiting for him to continue. At that time he reached in and he pulled out a bag such as this. It was tightly wound. When he pulled it out, he started to unwrap it and held it open. At that time I looked in and I saw a cell phone and a charger.

... as soon as he pulled the bag out, he did say, "Oh, I forgot that was there." And of course, I am giving him the benefit of the doubt. So I said, "You need to go ahead and take that to your vehicle," and he did. Once he came back in he cleared the metal detector and that was it. (Tr.274-279).

Mr. Temples testified that he reported the incident "because I had suspicion." (Tr.280). He prepared a memo. (Tr.281 and A-9).

On cross-examination, Mr. Temples identified Paragraph 3 of the search procedures ("Employees will be allowed to take any times not able to clear back") and acknowledged that Officer Phillips "did comply and take the item to his car." (Tr.291).

### **OPINION**

The burden of proof in the instant matter rested with the Union to establish, by clear evidence, that, by reassigning Officer Phillips to work outside the institution during the period he was being investigated for his conduct of February 10, 2008 and by denying him the opportunity to work overtime between February 11, 2008 and June 18, 2008, the Employer actions were unjustified and unwarranted. In furtherance of its burden of proof, the Union primarily relied on testimonial evidence.

In the opinion of this Arbitrator, the Union's proofs were reliable. Officer Phillips forthrightly described his removal from the institution and ultimate reassignment to phone monitoring in the administration building's lobby/reception area. He testified to being embarrassed and humiliated. Other's joined in his view that it was a post strictly established for John Phillips.

When he was returned to work after the incident, Officer Phillips expressed how he was subject to “co-workers ... some would speak and keep moving on. ... just as if ... I’m going to kind of avoid this guy.” (Tr.43). Moreover, Officer Phillips revealed his embarrassment and humiliation in being assigned to a central administrative building and the lobby area where he was in view of other officers and administrators. As the Union President offered, “it’s not typical for an officer to be in the CAB building front lobby area.”<sup>31</sup> (Tr.86). Further testimony acknowledged that Officer Phillips was told not to sign-up for overtime and denied the opportunity to work overtime hours.

Testimony of both Special Agents further acknowledged that, during the same period of time, Officer Phillips gave full cooperation during their investigations. Oddly, while Agent Westbrook gave the warden his preliminary assessment in May 2008 (Tr.271), Officer Phillips was not returned to duty until late June 2008. And, despite being returned to duty in June 2008, neither he nor the Union received notice the case was closed until February 2009.

Thus, it is this Arbitrator’s determination that, while it may have been reasonable for the Agency to remove Officer Phillips from his Tower 7 assignment and “the center of the recreation yards, in the center of the inner compound” (Tr.172), it was unreasonable for the Agency to assign Officer Phillips to a location of embarrassment and humiliation and unwarranted for the Agency to deny him working overtime for 121 days. There were denials that any other employees or prior allegations of similar conduct were treated in the sam manner as Officer Phillips.

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31. As testimony confirmed, front lobby duty was only used in two previous assignments, when two other employees who were unable to work around inmates or could not have contact with inmates. The example cited were employees on workman’s compensation or short term disabilities. (Tr.86-87)

Despite Warden Drew's earnest comments regarding security concerns (see page 14 of this Award) and the reasoned removal of the Grievant from his regular assignment, this Arbitrator finds that Officer Phillips received treatment different from other employees assigned to the central administration building lobby. In addition, while reassigned from his regular duties, Officer Phillips was denied overtime opportunities. Again, the record revealed that others were not denied overtime opportunities when reassigned from regular duties or under investigation. In the view of this Arbitrator, there was no reason to deny, preclude or prevent Officer Phillips from similar overtime opportunities.

Finally, this record clearly established that, although the Agency closed Officer Phillip's case in July 2008, he was not issued notice that the allegation of "unauthorized electronic device introduction" was determined to be unfounded and the case closed for nearly eight months after he was returned to work in June 2008.<sup>32</sup> Officer Phillips lived under a cloud of suspicion and experienced anxiety and concern for his future. It was not until one week prior to the arbitration hearing that the Union and Officer Phillips learned the "case was closed." In the view of this Arbitrator, Officer Phillips was unreasonably subjected to one-year of personal anguish for an allegation, determined within four months, to be "unfounded."<sup>33</sup>

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32. Indeed, the Agency presented testimony that Officer Phillips was sent two emails in July 2008, advising him that a letter awaited him in the Special Investigations Agents' office. The witness testified that she did not recall checking to confirm receipt of the e-mail, since it was not her procedure. (Tr.222).

33. There should be no question that the experience "damaged the quality of life and (Officer Phillips') family in Atlanta." (Tr.43). Further consider that Officer Phillips requested a hardship transfer to Atlanta, based on his father's terminal illness (pancreatic and liver cancer). His father's subsequent death and his mother living alone was similarly cited. (Tr.44 and see U-5). The Grievant recognized that, because he was under investigation, a transfer was not possible until the investigation cleared him. (Tr.46).

How the Agency can claim that “we fully understand the anxiety and apprehension that staff feels when an allegation is made against them” (written in July 2008, six months prior to its receipt by the Union and Officer Phillips) strains the credibility of this Arbitrator. The letter is conclusively a verse without substance. The words have meaning, but the effect is ethereal. And, while the administration professed its action against Officer Phillips was “to maintain the integrity of our working environment ...,” the claim sounds better than its application. Even if overly concerned for “security”, just three months after the incident (May 2008) the Warden was advised the allegation was unfounded. While the overwhelming concern for safety of the institution was repeatedly expressed, how could the corresponding announcement of the investigation being closed be silent?

It is the impression of this Arbitrator that Officer Phillips, with a personnel record unblemished by prior discipline and a work record of consistent overtime, could have properly been placed in a position where he continued his correctional performance and be available for reasonable overtime. The Agency’s “sincere appreciation” for Officer Phillip’s “cooperation” in bringing his case to a close was not matched with appropriate pronouncement. Instead, by treating Officer Phillips in a manner less than fair and equitable, the Agency’s action can only be characterized as unwarranted and unjustified.

The Union has established, by clear evidence, that, by the manner of reassignment of Officer Phillips and the denial of overtime for his alleged conduct of February 10, 2008, was unreasonable. Moreover, by denying Officer Phillips the opportunity to work overtime between February 11, 2008 and June 18, 2008, the Agency caused the Grievant to lose substantial overtime opportunities and income.



As this Arbitrator has determined, the Union established, by clear and convincing evidence, that the Agency's actions in removing Officer Phillips from the institution and precluding him from overtime opportunity were unjustified, unwarranted, disparate and unreasonable.<sup>34</sup>

Next, this Arbitrator turns to the remedy for the unjustified and unwarranted actions taken against Officer Phillips.<sup>35</sup> With the direct contract authority to issue an appropriate remedy, this Arbitrator directs a compensatory, monetary award. The simple and correct method of remedy in the instant matter shall be an award for lost overtime opportunities, calculated by past records of performance and in response to the actual monetary loss of income by Officer Phillips.

What were the damages incurred by Officer Phillips? The record established that Officer Phillips was off regular duty status for 121 days and, during that period of time, lost repeated overtime opportunities. The Union also demonstrated that overtime opportunities were a regular and routine assignment in the institution and Officer Phillips previously worked an extensive amount of regular and voluntary overtime shifts. Between October 2007 and February 2008, Officer Phillips earned more than \$17,000 for approximately 450 overtime hours (calculated at the overtime rate of \$36 per hour). (Tr.236 and U-5). There was no contention that the Grievant ever refused overtime.

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34. The term of "outrageous" could be added, when characterizing management's treatment of Officer Phillips and considering the Grievant worked six months (after reinstatement) under a cloud of anxiety and suspicion before receipt of actual notice that the charges (of "Unauthorized Electronic Device Introduction") were determined by the Office of Internal Affairs to be unfounded and the case against him closed. However, because this Arbitrator is empowered to remedy the treatment of Officer Phillips through a damage award, further characterization will be avoided.

35. Meeting the first prong of the "two-prong test" advanced by the Agency. The Agency had argued that, because 'the personnel actions were not unjustified or unwarranted' under law Code of Federal Regulations 5 C.F.R. 550.803 (see Footnote 4. above), the Union could not prove that Officer Phillips would have been offered specific overtime assignments on specific dates. It was the position of the Agency that the Union's demand was speculative and the overtime opportunities had been markedly decreased.

Likewise, Ms. White confirmed there were 972 overtime opportunities during the period of his “denial”, although not all would be available to Officer Phillips.<sup>36</sup> (Tr.200). She calculated that Officer Phillips lost 72 hours of overtime opportunity each week during the period February 11<sup>th</sup> to June 19<sup>th</sup>, 2008. As the record reflected, Ms. White based on her calculation on “maximum” lost overtime opportunities, with Officer Phillips losing five overtime opportunities during his work week and two on each day the Grievant was off work (assuming he worked double shifts on each of his two days off). At eight (8) hours per shift, Ms. White calculated that Officer Phillips lost 72 hours of overtime per week. (Tr.210). Officer Phillips was paid \$24.10 per hour, capped at \$36.

For purposes of remedial calculation, this Arbitrator acknowledges that the Grievant would not have worked every available overtime hour (purportedly, 72 hours) each week. At the same time, based on his prior personnel and pay records, it is not unreasonable to conclude that Officer Phillips would have worked forty (40) hours of overtime each week during the period between February 11<sup>th</sup> and June 18<sup>th</sup>, 2008. And, given that the Grievant did not work, this Arbitrator is of the view that calculating his damages at his regular, straight-time hourly rate of \$24.10 (as opposed to his overtime rate of \$36 per hour) is both conservative and more reasonable .

As such, this Arbitrator calculates and determines that Officer Phillips lost \$964 of overtime opportunity each week and, during the seventeen (17) week period of reassignment without overtime opportunity, he or \$16,388.00. This Arbitrator directs the Bureau of Prisons to make Officer Johnny Phillips whole for the unjustified and unwarranted personnel action in the form of compensatory damages in the amount of \$16,388.00. Payment shall be made within a reasonable period of time, not to exceed thirty (30) days from the date of this Award.

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36. When asked, Ms. White acknowledged that a total of 7,776 hours of overtime occurred when Officer Phillips was denied overtime opportunity during the period of February 11<sup>th</sup> through June 19<sup>th</sup> 2008.

In summation, based on the record, this Arbitrator finds that the Agency violated the Master Agreement by reassigning Officer Johnny Phillips to work outside the Institution during the period he was being investigated for his conduct of February 10, 2008 and by denying Officer Phillips the opportunity to work overtime between February 11, 2008 and June 18, 2008. While the Agency's decision to remove Officer Phillips from his regular assignment was within its management rights under the Master Agreement and operational procedures, this Arbitrator finds that the Agency's actions in reassigning Officer Phillips to the position outside the institution and by denying Officer Phillips the opportunity to work overtime was both unjustified and unwarranted. These findings and determinations were reached by clear and convincing evidence produced at hearing.

Where the Agency may argue that it is reasonable to remove, reassign and deny overtime to an officer during the period of an internal investigation, there must be recognition that management's decision does not solely rest with operational concerns of the Agency but analyzed and balanced with the potential affects on the individual employee and the consideration of the Master Agreement. Herein, the Agency leapt to enforce its security concerns, but took actions which did not consider the effects on the individual employee nor his entitlements under the Master Agreement. Thus, by its decision to remove Officer Phillips, reassign him another building without the opportunity for overtime, ultimately determined to be unjustified and unwarranted, the Agency actions lead to a contract violation and damages to the individual employee. The Award of this Arbitrator attempts to make Officer Johnny Phillips whole, to the extent possible, for his losses.

In consonance with the proofs and upon the record, this Arbitrator hereby renders the following:

**AWARD**  
**FMCS Case No. 08-56532**

1. The Agency, as Employer, violated the Master Agreement by reassigning Correction Officer Johnny Phillips, the Grievant, to work outside the institution during the period he was being investigated for his conduct of February 10, 2008 and by denying him the opportunity to work overtime between February 11, 2008 and June 18, 2008.
2. The violation of the Master Agreement is based on this Arbitrator's finding that the Agency's actions were unjustified and unwarranted.
3. The grievance submitted by the Union on behalf of Correction Officer Johnny Phillips, the Grievant, shall be sustained.
4. As the remedy in this matter, the Agency shall compensate Officer Johnny Phillips for the unjustified and unwarranted reassignment and denial of overtime opportunities by compensating his loss of overtime income in the amount of \$17,388.00, as calculated in the above Opinion..
4. This Arbitrator shall retained jurisdiction of this matter as to questions relating to application of the remedy

Dated: July 24, 2009  
Short Hills, New Jersey

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J. J. PIERSON, Esq., Arbitrator

STATE OF NEW JERSEY )  
:SS  
COUNTY OF ESSEX )

I, J. J. PIERSON, Esq., on my oath, do attest to being the person who has executed the foregoing instrument and issued the above Award on July 25, 2009 for delivery to the parties.

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J. J. Pierson, Attorney-at-Law, State of New Jersey