



## Potentially Relevant Contract Language

### **ARTICLE 5 – RIGHTS OF THE EMPLOYER (in part)**

Section a. Subject to Section b. of this article, nothing in this section shall affect the authority of any Management official of the Agency, in accordance with 5 USC, Section 7106:

1. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
2. in accordance with applicable laws:
  - a. to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
  - b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
  - c. with respect to filling positions, to make selections for appointment from:
    - (1) among properly ranked and certified candidates for promotion; or
    - (2) any other appropriate source; and
  - d. to take whatever actions may be necessary to carry out the Agency mission during emergencies.

### **ARTICLE 18 – HOURS OF WORK (in part)**

Section a. The basic workweek will consist of five (5) consecutive workdays. The standard workday will consist of eight (8) hours with an additional thirty (30) minute non-paid, duty-free lunch break. However, there are shifts and posts for which the normal workday is eight (8) consecutive hours without a non-paid, duty-free lunch break.

Employees on shifts which have a non-paid, duty-free lunch break will ordinarily be scheduled to take their break no earlier than three (3) hours and no later than five (5) hours after the start of the shift. It is the responsibility of the Employer to schedule the employee's break, taking into consideration any request of the employee. The Employer will notify the affected employee of the specific anticipated time that the employee will be relieved for his/her lunch break. Any employee entitled to a non-paid, duty-free lunch break who is either required to perform work or is not relieved during this period will be compensated in accordance with applicable laws, rules, and regulations. The Employer will take the affected employee's preference into consideration in determining the manner of compensation (i.e., overtime versus compensatory time or early departure), except in cases where compensation is at the election of

the employee. Management will not, without good reason, fail to relieve employees for a duty-free lunch break.

There will be no restraint exercised against any employee who desires to depart the institution/facility while the employee is on a non-paid, duty-free lunch break. For the purposes of accountability, the employee leaving the institution/facility will leave word with his/her supervisor.

Section b. The parties at the national level agree that requests for flexible and/or compressed work schedules may be negotiated at the local level, in accordance with 5 USC.

## **Article 31 – GRIEVANCE PROCEDURE**

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

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

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

1. After the formal grievance is filed, the Union has the right to be present at any discussions or adjustments of the grievance between the grievant and representatives of the Employer. Although the Union has the right to be present at these discussions, it also has the right to elect not to participate;
2. If an employee files a grievance without the assistance of the Union, the Union will be given a copy of the grievance within two (2) working days after it is filed. After the Employer gives a written response to the employee, the Employer will provide a copy to the Union within two (2) working days. All responses to grievances will be in writing;
3. The Union has the right to be notified and given an opportunity to be present during any settlement or adjustment of any grievance; and
4. The Union has the right to file a grievance on behalf of any employee or group of employees.

Section d. Grievances must be filed within forty (40) calendar days of the date of the alleged grievable occurrence. If needed, both parties will devote up to ten (10) days of the forty (40) to the informal resolution process. If a party becomes aware of an alleged grievable event more than forty (40) calendar days after its occurrence, the grievance must be filed within forty (40) calendar days from the date the party filing the grievance can reasonably be expected to have

become aware of the occurrence. A grievance can be filed for violations within the life of this contract, however, where the statutes provide for a longer filing period, then the statutory period would control.

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

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

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

1. When filing a grievance, the grievance will be filed with the Chief Executive Officer of the institution/facility, if the grievance pertains to the action of an individual for which the Chief Executive Officer of the institution/facility has disciplinary authority over;
2. when filing a grievance against the Chief Executive Officer of an institution/facility, or when filing a grievance against the actions of any manager or supervisor who is not employed at the grievant’s institution/facility, the grievance will be filed with the appropriate Regional Director;
3. when filing a grievance against a Regional Director, the grievance will be filed with the Director of the Bureau of Prisons, or designee;
4. in cases of violations occurring at the national level, only the President of the Council of Prison Locals or designee may file such a grievance. This grievance must be filed with the Chief, Labor Management Relations and Security Branch, Central office; and
5. grievances filed by the Employer must be filed with a corresponding Union official.

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

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

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

1. by going directly to arbitration if the grieving party agrees that the sole issue to be decided by the arbitrator is, "Was the disciplinary/adverse action taken for just and sufficient cause, or if not, what shall be the remedy?"; or
2. through the conventional grievance procedures outlined in Article 31 and 32, where the grieving party wishes to have the arbitrator decide other issues.

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

### **ARTICLE 32 – ARBITRATION (in part)**

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

Section h. The arbitrator's award shall be binding on the parties. However, either party, through its headquarters, may file exceptions to an award as allowed by the Statute. The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of:

1. this Agreement; or
2. published Federal Bureau of Prisons policies and regulations (Jt. 4).

### **Potentially Relevant Agency Policy**

#### **Federal Bureau of Prisons Human Resources Management Manual Section 610.1 – Institutional Shift Starting and Stopping Times**

1. PURPOSE AND SCOPE - To establish basic parameters for shift starting and stopping times for employees working at Bureau institutions and the procedures to establish these practices at all Bureau institutions.
2. COVERAGE. This section applies to all institution employees who are required to pick up keys and other equipment while passing through Control on their way to their assigned duty posts.

3. **CRITERIA.** Each institution shall have approved work schedules with shifts starting and stopping times, for employees who work at the institution, to begin and end at the point employees pick-up and drop-off equipment (keys, radios, body alarms, work detail pouches, etc.) at the control center. Therefore, employees who pick-up equipment at the Control center shall have their shifts scheduled to include reasonable time to travel from the control center to their assigned duty posts and return (at the end of shift). If an employee arrives at the key line in a reasonable time to get equipment by the beginning of the shift, this employee is not to be considered late.
4. **PROCEDURES.** Institution posts that meet the above criteria must have approved rosters which meet required shift starting and stopping times. Wardens shall formulate a plan for all affected posts. Union participation at the local and regional levels in formulating plans is strongly encouraged. The Warden must submit a plan to his/her appropriate Regional Director only if the plan includes an overlap in work schedules. The plan, at a minimum, will include the following:
  - a. List of affected positions/duty posts;
  - b. Complete custodial roster;
  - c. Detailed summary of any costs incurred by the implementation of this plan.
5. **SCHEDULE APPROVAL AND IMPLEMENTATION.** The authority to approve the work schedules rests with the Regional Director. Once approval is received, each Warden shall ensure that requirements for shift starting and stopping times, and details of the approved institution plan, are clearly communicated to all institution employees. If at any time the schedule needs to be revised, follow procedures in this section.
6. **SCHEDULING CONSIDERATIONS.**
  - a. An institution employee whose shift starts at 7:30 a.m. must be at the Control Center and have received his/her equipment no later than 7:30 a.m. to be considered "on time" for the start of his/her shift. To accomplish this, each location should ensure minimum waiting time for the employee in the key line. If that same employee's shift ends at 4:00 p.m., he/she should drop-off his/her keys/equipment in the control center at 4:00 p.m., the scheduled quitting time. Reasonable travel time to and from the duty post to the control center would be compensable as part of the employee's tour of duty. Local supervisors should establish expectations that require employees to arrive and leave their duty posts in a timely and reasonable manner. If an employee arrives at the key line in a reasonable time to get equipment prior to the shift, but does not receive the equipment by the beginning of the shift because of unforeseen circumstances, this employee is not to be considered late.
  - b. Due to these parameters, schedules may have to be adjusted and shifts overlapped for posts which require relief, as employees must be given time to arrive later and leave posts earlier to be at the control center on time. The length of time necessary

to provide the overlap depends on the post location and reasonable travel time to and from the control center to the post.

- c. Although waiting time in key lines prior to the beginning of a shift is not “work time”, such waiting time is to be reduced to a minimum to assist a smooth transition from shift-to-shift and more timely and predictable movement from the control to the post. One way to accomplish this is through staggered starting and stopping times for day watch positions and placing additional personnel in the control center during busy shift changes. Another option is to assign equipment and keys to posts. If appropriate, assign key rings to 24-hour posts instead of requiring staff to wait in key line to exchange their chit upon arriving and departing work.
- d. Physical layout of facilities is to be taken into consideration when establishing a work schedule.
- e. If one equipment issue pass is insufficient, institutions should consider installing a second equipment issue at the pass control center.
- f. Compressed work schedules may be an appropriate option (follow procedures for compressed work approval).
- g. Each institution should consider incorporating practices which include increased costs or resources only after all other options have been exhausted.
- h. Overtime may be considered for certain post/shifts; however, this option is not meant to restrict the employer’s management of overtime.

Overtime regulations, procedures, and requirement are not affected by this policy. (U. 4)

### **Potentially Relevant Regulations**

1. Office of Personal Management (OPM). 5 C.F.R. s 551.401
  - (a) All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is “hours of work.” Such time includes:
    - (1) Time during which an employee is required to be on duty;
    - (2) Time during which an employee is suffered or permitted to work; and
    - (3) Waiting time or idle time which is under the control of an agency and which is for the benefit of an agency.
2. Office of Personal Management (OPM). 5 C.F.R. s 551.402
  - (a) An agency is responsible for exercising appropriate controls to assure that only that work for which it intends to make payment is performed.
  - (b) An agency shall keep complete and accurate records of all hours worked by its employees.

## **Briefs**

The Agency objects to the Union's briefs and asks that they be barred. It argues that they were submitted late and extensions granted were not followed. It maintains that the delay provided the Union with additional time to respond to the Agency's briefs and present arguments in the Union's brief that the Agency could not respond to. It asks that this dilatory behavior not be rewarded.

The Union, in its requests for extensions, offered reasonable explanations for the delays, including serious illness, and other personal matters. While this arbitrator does not want to encourage missed deadlines and delays, he finds the reasons stated by the Union to be reasonable and acceptable and the in the eyes of this arbitrator, did not damage or harm the Agency's case.

The Agency's request is denied

## **Background**

On September 20, 2006 Local 1013 of the American Federation of Government Employees (Union) filed a grievance on behalf of "All FCC Yazoo City bargaining unit employees both past and present". This grievance alleged violations of, " F.L.S.A ( Fair Labor Standards Act), 29 U.S.C., F.E.P.A (Federal Employees Pay Act of 1945), as amended 5 United States Code, as well as any and all other pay acts and/or rules and regulations governing these issues; Program Statement 3002.02 and Operations Memorandum 214-95, as well as the Master Agreement."

The Grievance alleges that the management at FCC Yazoo City required employees to perform work in excess of the established (40) hour work week and to perform that work without being properly compensated, including:

1. Obtaining keys and equipment at the Control Center; travel through security devices; pick up and carry mail prior to assumption of their post; flipping chits; exchanging information and equipment; standing in line for unreasonably long periods of time prior to reporting to assigned post to exchange tools, logs, keys equipment pouches/ weapons cuffs/radios/ and exchange relevant information in a non-pay status.
2. Reporting to the Lieutenant's Office to check in, receive post changes, and pertinent instructions, check mail boxes and other duties as required
3. Traveling to and from assigned posts including waiting to be electronically admitted, after being identified by the Control Center, to pass through two sally port doors and the compound grill gate.
4. Returning keys and equipment to Control Center, or exchange equipment at the work site at the completion of their shift and wait for unreasonably long periods after

normal working hours to exchange or return equipment after their relieving officer was on site.

5. Having the relieving officer wait while the Compound Officer unlocks the unit allowing the relieving officer to enter and the relieved officer to leave.

The grievance also alleges that the management at FCC Yazoo City was in violation of Operations Memorandum 214-95 which required the institution to establish parameters for shift starting and stopping times. It further alleges that the institution was not in compliance with Federal Bureau of Prisons Human Resources Management Manual Section 610.1 – Institutional Shift Starting and Stopping Times. (Jx 1)

On October 19, 2006, Warden Constance Reese responded to the grievance stating:

1. All employees that are required to be in the “key line” at the start of their shift and are compensated for that time and that those employees not required to draw equipment at the Control Center begin their shift at their duty post.
2. FCC Yazoo City does not require employees to report to the Lieutenant’s Office to perform the tasks cited prior to the beginning of their shift.
3. Employee’s time begins once they enter the key line and that all job related functions are compensated once an employee enters the key line. For those employees not required to exchange keys and equipment at Control, their shift begins at their duty post and any time spent waiting for electronic admission is de-minimus.
4. The Agency was not aware that Officer were delayed in being relieved due to waiting for the Compound Officer to allow entry into a unit, and would ask that any officer report this to his supervisor and request overtime.
5. The Agency has complied with the settlement agreement and all Arbitrators’ awards.
6. The Complex was not activated during the period covered by the settlement agreement thus it is not applicable.
7. Time required performing identification checks are considered di-minimus and mail distribution is performed by Compound Officers as part of their regular duties.
8. The complex is in compliance with Program Statement 3000.02 as of October 2, 1998.

Finally, the Warden stated that if employees had worked in excess of the forty-hour work week they should submit their name, date or work and an explanation of the circumstances requiring them to work in excess of forty hours. Each request will be evaluated and if money is owed, the employee will be compensated. (Jx 2)

On November 18, 2006 the Union invoked arbitration. (Jx 3)

On December 1, 2006, the undersigned was assigned as arbitrator by the Federal Mediation and Conciliation Service (FMCS). Hearings were scheduled, or nearly scheduled for August 2007, February 2008, April 2008, June 2008 and February, 2009. In each instance, for a variety of reasons, the hearings were postponed. The hearing was conducted on June 9, 10, 11, and 12, 2009; March 8, 9, 10, 11, and 12, 2010; August 2, 3, 4, and 5, 2010; October 25, 26, 27,

and 28, 2010; and June 13, 14, 15, and 16, 2011. Hearings were scheduled for January, 2011, but cancelled due to the illness of one of the parties.

All together, the record produced 3,585 pages of testimony from thirty eight (38) witnesses, seventeen (17) witnesses called by the Union and twenty-one (21) called by the agency and eighty-seven (87) exhibits.

Briefs were filed.

### Legal Issues

The Fair Labor Standards Act requires that all employers, in both the private and public sectors, pay employees who are not exempt, premium or overtime pay for each hour of work over forty (40) hours per week.

Office of Personal Management (OPM) 5 C.F.R. s 551.401 requires that:

All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is “hours of work.” Such time includes:

Time during which an employee is required to be on duty;

Time during which and employee is suffered or permitted to work; and

Waiting time or idle time which is under the control of an agency and which is for the benefit of an agency.

OPM 5 C.F.R. 551.104 states:

Suffered or permitted work means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee’s supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

The Portal-to-Portal Act of 1947 was passed to reduce the number of suits filed in response to the Supreme Court’s decision in *Anderson v. Mt. Clemens Pottery* which found that certain preliminary and postliminary activities, before and after, performing productive work to be compensable. Section 4 of the Act excluded from compensable time certain activities such as “walking, riding, or traveling to and from the actual place of performance of the principal activity or activities” and “activities which are preliminary to or postliminary to the principal activity to activities.”

The Supreme Court, in *Steiner v. Mitchell*, held that preliminary and postliminary activities that are an integral part of the principal activity are compensable.

OPM 5 C.F.R. s. 551.412 states:

If an agency reasonably determines that a preparatory or concluding activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per workday, the agency shall credit all of the time spent in that activity, including the 10 minutes, as hours of work.

The issue regarding the minimum amount of time required in order to be considered compensable was addressed in *Lindow v. United States*. 738 F.2d 1057, 1062-63 (9<sup>th</sup> Cir. 1984). In its decision the court looked at three factors:

1. The practical administrative difficulty of recording the additional time;
2. The size of the aggregate claim (stating relief may be granted for claims that might have been minimal on a daily basis but, when aggregated, amount a substantial claim) and;
3. Whether the employees performed the work on a regular basis.

### **Position of the Parties**

#### **The Union**

The Union argues that the Agency did suffer or permit bargaining Union employees to perform work before and/or after their scheduled shift in violation of the Fair Labor Standards Act and their Master Agreement.

It maintains that the Agency did suffer and permit its employees to engage in pre-and post-shift activity that is closely related to their principal activities and are indispensable to the performance of their principal activities without compensation as required by the FLSA. These activities include:

- Standing in line while waiting to proceed through the screening process;
- Going through that screening process;
- Picking up keys and equipment at Control;
- Waiting and traveling through controlled sallyports, gates and doors;
- Checking in with the Lieutenant;
- Traveling to their assigned posts;
- Exchanging equipment and information with the person being relieved and;
- Reversing that process at the conclusion of their shift,

All without compensation.

It maintains that, under *I.B.P. Inc v. Alvarez*, an employee's compensable work days begin when they perform the first activity that is integral and indispensable to their principal activities. That first activity, they argue, is standing in line waiting to proceed through the screening process.

## **The Agency**

The Agency maintains that that it did not suffer or permit employees working at FCC Yazoo City in Correctional Service posts or positions in other departments to perform work without compensation. It argues that many of the tasks that the Union maintains are performed everyday are not required and are not done every day by Correctional Services employees.

It maintains that it cannot be expected to be aware of the exact comings and goings of every employee in Correctional Services. It contends that it cannot be everywhere at once and still maintain its primary function of housing inmates and maintaining safety and security of the staff, public and inmates.

The Agency argues that actions of individual employees often depend on their individual work habits and that their work is administratively impossible to track. In addition, it maintains that even if some employees stay beyond their eight-hour shifts, the amount of time varies and often is less than ten minutes which would make their time *de minimis*. The Agency presented the testimony of former Warden Constance Reese, former Associate Warden Russell Perdue, Warden Pearson, Associate Warden Marvin Blow and former Human Resources Manager Kitty Suddeth who all testified that they were not aware of portal-to-portal issues and that anyone who reported working beyond their eight-hour shift, if substantiated, were paid the appropriate overtime.

## **Issues**

### **Screening Process**

#### **The Union**

The screening process was implemented at FCC Yazoo City and other institutions in response to a fatal incident that occurred at another facility. The exact date it was instituted at Yazoo City is not clear, but testimony presented indicates it was approximately January 2008. Employees who would have otherwise entered the building and gone directly to Control were now required, upon entering the building lobby, to remove all metal from their pockets, remove their utility belts if they were wearing them, remove their shoes and proceed through a metal detector. Once being cleared, the officers retrieved their possessions and proceeded to the key line.

Officers Claybon, Stubblefield and White all testified as to the time required to pass through screening. Officer White and Stubblefield stated that if they arrived at 7:15a.m., there were usually five to ten people in line ahead of them and it would take three to five minutes to get through the metal detector.

The Union argues that there is no way an officer can reach his or her assigned post in the institution without going through this process and therefore it should be considered an integral

and indispensable activity crucial to an officer assuming their principal activities and thus compensable.

### **The Agency**

The Agency argues that passing through the screening site is not a compensable activity. It maintains that it is not an integral and indispensable activity to the performance of an employee's principle activity. It contends that all entering the facility, staff and visitors alike, must go through the screening. It maintains that passing through a screening site has been found to be not compensable by the Federal Labor Relations Authority. U.S. Department of Justice, Federal Bureau of Prisons, FCI Allenwood and AFGE Local 4047, 65 FLRA No. 207, p.1000 (June 30, 2011).

The Agency argues that it operated for years without the screening procedure and that the expectations of where staff should be to start and end their shift was not affected by the screening. It notes that Officer Robinson, Officer Hearn and Ms Rubiola all testified that they were able to perform the duties of their jobs before the screening procedure was implemented, indicating that the process was not an integral and indispensable activity to the performance of their principle activities.

### **Key Line / Batteries / Control**

#### **The Union**

Having completed the screening process, many employees are required to pick up equipment at the Control Center. Equipment could include keys, radio, body alarm, batteries, duty pouches and flashlights. For each piece of equipment drawn, an officer would have to request it from the Control Officer and in exchange, leave a chit with Control so the institution would know who had it. They would then proceed to the accountability board and turn their chit so the institution would know who was in the facility at any given time. The amount of time required waiting in line at Control and picking up equipment varied with the number of people in line at the time, but one witness, Officer White, indicated that it would take him at least five minutes to obtain his equipment.

The amount of equipment required depended on the post an Officer was assigned to and whether the post was a twenty-four hour post, a sixteen-hour post or an eight-hour post. It also depended on what period of time during the recovery period the employees were working. Changes in Post Orders had an effect on what equipment was required for various posts and where that equipment was kept.

One piece of equipment commonly picked up, was a freshly charged battery for the radio and body alarm. It is an essential piece of equipment for all employees in the institution. Officer White described it as "...that's your most important defense in a prison because that's your lifeline, that body alarm...that's the only way you can get in touch with people to help you, by pushing the body alarm and getting it set off ... And if the battery is dead, you might as well have a brick. It's no good."

If an Officer is beginning a shift where he/she is not relieving another officer, he/she would pick up a radio with a fresh battery from Control. If they are relieving another officer, they would pick up a fresh battery and install it on the radio of the relieved officer when they arrived at the post. Either way, a fresh battery is considered essential for the safety of the officers. The Union argues that picking up a fresh battery is an integral and indispensable part of an officer's principal activity. While at the time of the hearing, it was acknowledged that battery chargers had been installed in the housing units, the Union contends that they were not in place until mid 2009.

The testimony of several officers indicated that picking up keys and equipment, including fresh batteries at Control could take five minutes or longer depending on how busy Control was at that time and how many officers were working at Control on that shift. Depending on how many people were in the key line when an officer arrived, the wait to pick up equipment could be between five and ten minutes.

### **The Agency**

The Agency maintains that fresh batteries obtained before an officer assumes his/her post is not essential to their job. It argues that they are not integral and indispensable pieces of equipment since there is a working radio waiting for them at their post and fresh batteries are available for delivery by the Compound Officer. It contends that staff at FCC Yazoo City was not required to pick up or drop off batteries at the beginning and end of their shift.

The Agency argues that the testimony of witnesses regarding stopping at Control to pick up batteries was inconsistent at best. It maintains that Mr. Stubblefield testified that he did not always pick up and return batteries at the beginning and end of his shift. It notes that Officer White testified that although he usually picked up a battery at Control, he never saw in writing that he had to pick up a battery. Further, that Officer Robinson testified that Compound and Housing Unit officers picked up batteries prior to chargers being installed in the housing units. Even after the chargers had been installed, she testified that she picked up batteries at Control because she did not want to wait for a Compound Officer to deliver a fresh one if necessary. Still she testified that there was nothing in the post orders requiring her to stop at Control and pick up a battery.

The Agency further notes that specific post orders for unit officers prohibited stopping at Control. Agency Exhibit 10 states:

*“You will not stop by the Control Center or the Lieutenant's Office to pick up or drop off any equipment or check your mail box prior to assuming duty or upon departing your post, all work must be accomplished while on duty.”*

The Agency maintains that it actively discouraged Officers from stopping to pick up batteries. It cites the testimony of Officer Rubiola, who, while serving as a Control #1 Officer said she often would place fresh batteries in a box for staff, but under Capt. Cheatham, Officers

were instructed not to pick them up. She further testified that Associate Warden Kruswicki would close the trap where she put them.

The Agency points to the testimony of Warden Pearson, former Captain Williams, Deputy Captain Dawson and former Captain Cheatham, who all testified that even before battery chargers were installed in the units, batteries were delivered by Compound Officers and if necessary, by Lieutenants and even Captains.

The Agency maintains that batteries are not integral and indispensable pieces of equipment since the radio should be working when an Officer arrives on post. Further, it contends that officers working 24 hour posts were not required to stop at control, but discourage from doing so.

### **Sally Ports and Gate**

#### **The Union**

Once employees have gone through security, picked up equipment at Control and turned their accountability chit, they then have to pass through the sallyport and the fence gate before they can proceed to their post.

A sallyport is two-door chamber, located at and operated by Control. Control would open the outer door to allow employees to enter the chamber (small room), then close that door and open the inner door to allow them to exit. This operation is performed by the Control Officer, while he is also handing out equipment and collecting chits from other employees waiting in line and performing other duties as required. The Union contends that at the busiest times, it may take the Control Officer several minutes to open the sally port.

Once an employee exits the sally port, they proceed through an open breezeway to the inner fence. Once there, they must then be buzzed in through a gate which is again operated by the Control Officer, who is also performing the other duties of his position. Again, the Union argues, this may take several minutes for Control to open the gate.

The Union maintains that this process of gaining access to the compound area of the facility can add an additional several minutes, or more, depending on how busy Control is, for an employee to arrive at his post.

#### **The Agency**

The Agency maintains that those staff members who are in the key line to pick up keys or equipment at Control are considered to be on time for their post.. For those employees who do not pick up or return keys and equipment, their shifts start and end at their post. It contends time spent traveling on property prior to performing principal activities is not compensable. Only time spent traveling to a post after picking up equipment at Control is compensable.

Former Associate Warden Russell Perdue's testimony confirmed that staff members who stopped to pick up equipment at Control were on time and were off duty when they returned their equipment. He also testified that he was concerned that staff was not putting in a full eight hours every day. He contended that he saw staff leaving their shift early and still in the parking lot at the beginning of their shift.

Warden Pearson testified that he expected those who drew equipment to be in line at the beginning and end of their shifts. Associate Warden Marvin Blow expressed the same in his testimony as did Captain Cheatham.

## **Lieutenant's Office**

### **The Union**

The Union maintains that early in the recovery period, Officers were required to report to the Lieutenant's Office to check their mail boxes. Several Officers testified that they needed to check their mailboxes to see if there had been a temporary change in assignment.

### **The Agency**

The Agency argues that Officers are not required to check in with the Lieutenant's Office and have not during the entire recovery period, and if they did, it was not a compensable activity. It cited the testimony of Officers Claybon, Rubiola, and White that although they may have checked in, it was not required; that most Officers would check in by phone when they reached their post.

## **Specific Posts**

### **General Housing Units**

#### **The Union**

The shift hour for the general housing units are;

Morning watch: 12:00 a.m. - 8:00 a.m.

Day watch: 8:00 a.m. - 4:30 p.m. (30 min. lunch relief)

Evening watch: 4:00 p.m. - 12:00 a.m.

There are three units at the low facility, 1, 2, and 3. There are three units at the medium facility, Delta, Echo and Foxtrot. There are two sides to each unit, A and B at both facilities.

The Union maintains that once an Officer has passed through security, waited in the key line; picked up necessary equipment at Control, flipped his/her accountability chit and passed

though the sally port and fence gate, checked in at the Lieutenants' office, they would then proceed to their post. For the general housing unit, testimony indicated that it took from three to five minutes to walk from the fence gate or Lieutenant's Office to the housing units.

Once at the unit, they would be admitted by the outgoing Officer. The oncoming Officer would then exchange equipment with the outgoing Officer; radio, body alarm, battery. They would exchange keys, counting each one for accountability purposes. They would inventory equipment that was hung on a shadow board in the locked office to make sure all equipment was accounted for and finally exchange information regarding what happened on the previous shift and what to watch for in the upcoming shift. The outgoing Officer would then leave, return any equipment to Control, if necessary and end the shift. Several witnesses (White, Claybon, Domino, Rubiola) indicated the exchange between outgoing and incoming officers could take as little as three to four minutes or as much as eight to ten minutes and sometimes longer depending on the situation.

The Union witnesses working these units all testified that they had to arrive between 15 and 30 minutes early in order to pass through security, stand in the key line, stop at Control, enter the compound through the sallyport and gate, walk to the unit and exchange equipment and information with the outgoing officer, in order for the outgoing officer to leave on time. If they did not do that, the outgoing Officer would have to remain on post until their relief arrived and be late ending their shift.

### **The Agency**

The agency argues that for 24-hours posts, the shift would begin and end at the post. Officers working these posts would not pick up equipment at Control and would go directly to their post. Upon arriving at the post, they would exchange keys and equipment with the outgoing Officers and exchange information about how the previous shift went, any problems, and what if anything could be expected on the upcoming shift. The Agency contends that this exchange was brief because any issues of concern would be recorded in the log book.

Former Associate Warden Perdue testified that he had witnessed the exchange between Housing Unit Officers and estimated that they took anywhere from a few minutes to five minutes. He indicated on some exchanges, the Officers simply exchanged equipment and were finished.

Former Captain Williams testified that for 24 hour positions, no equipment needed to be picked up at Control, except when morning or evening Watch Officers did not bring their own flashlights and picked them up at Control. Deputy Captain Dawson testified that he had observed the exchange between day and evening shifts and indicated that Officers simply exchanged keys, radio, cuffs and accounted for equipment on the shadow board with no verbal exchange since everything was written in the log book. She estimated the exchanges took only a couple of minutes.

Former Captain Cheatham confirmed former Captain Williams testimony that Officers working 24-hour posts were not required to pick up equipment at Control, although some

Officers working morning and evening shifts did pick up flashlights if they did not bring their own. He testified that he had observed the shift exchanges between morning and day watch and that he never saw an exchange last more than three to four minutes.

The Agency noted the testimony of Officer Robinson who worked on one of the 16 hour housing posts. She indicated that she was expected to be in the key line at Control at the beginning of her shift to draw her equipment. She estimated that it took her five minutes to draw her equipment and another five minutes to reach her assigned post. The Agency noted that on Cross Examination she indicated that at the end of her shift, she would leave her post at approximately 11:45 p.m. in order to turn in her equipment by 11:50 – 11:55 p.m.

Lieutenant Edwards testified that Officers working eight-hour posts in the Housing Units would begin and end their shifts at Control.

The Agency offered the results of videos taken showing the times Officers entered the front door of the institution (the medium facility) on four days in February 2010 and March 2010 (Agency 37). The videos covered morning, day and evening watch. These videos showed, on an average, Officers entering the institution 9 minutes early, 8 minutes early and 10 minutes early. On the day watch, it showed Officers entering 5 minutes early, 7 minutes early and 6 minutes early. On the evening watch it showed them entering 3 minutes early, 8 minutes early, 8 minutes early and 3 minutes early.

The video covered the shift change at Delta Unit, from morning to day shifts, taking 4 minutes and 1 minute respectively. From day to evening, the Officers left 16 and 14 minutes early respectively. The morning to day watch at Echo Unit took 1 minute and on that same day, the day watch Officers left 10 minutes and 20 minutes early.

Given the limited period the videos were taken, four days, this arbitrator found them of limited value.

### **Special Housing Units (SHU)**

#### **The Union**

The Special Housing Units or SHU are highly secure units for inmates who violate Bureau of Prisons rules or who, by their actions, are being isolated from the general population. Inmates are also placed in SHU for their own security. Security is tighter in SHU due to the nature of the inmates housed there. Inmates are confined to single occupancy cells and their recreation time is limited to one hour in small secured area. During the first week of hearing it was described as a prison within a prison. (HT at 386)

#### **SHU 1**

SHU 1 is the Officer in Charge of the unit. It is a 24-hour position with shifts of, 8 a.m. to 4 p.m., 4 p.m. to 12 a.m. and 12 a.m. to 8 a.m..

## **SHU 2, 3**

SHU 2, 3, and 4 are 16-hour positions with shifts of 6 a.m. to 2 p.m. and 2 p.m. to 10 p.m.

## **SHU Tower**

SHU Tower is an 8-hour position with one shift of 8 a.m. to 4:30 p.m. There are post orders for SHU Tower, Evening Watch, but at the time of the hearing, that watch was not being used.

## **SHU 1**

Officers assigned to SHU enter the institution and are screened at the metal detector. SHU 1 does not usually have to stop at control unless the Officer stops to pick up a battery or flashlight if they have not brought their own. All other equipment is kept on post. SHU 2, 3, and 4 may pick up equipment at Control if coming on at 6 a.m. They report at 2:00 p.m., they exchange chits at Control. They may also drop equipment at Control if they are leaving at 10 p.m. They then proceed through the sally port, through the inner gate and walk to SHU. Once outside the unit, the Officer must wait to be admitted. The SHU unit is secured by two doors similar to the sallyport outside of Control. On arrival at the unit, the incoming officer must contact the outgoing Officer who confirms his arrival on a monitor. The outgoing Officer must then contact Control and inform them that the Officer has arrived and that the inner door is secure. Control then opens the outer door. This process, witnesses testified, may take several minutes if Control is busy. The incoming Officer then enters the first door and once it is confirmed closed, the outgoing officer opens the second door to allow the incoming Officer entrance.

Once inside, the Officers exchange equipment, keys, radio, body alarm, sometimes batteries as in other posts, but also review additional equipment such as leg irons and other security items that were necessary due to the inmate population assigned to SHU. This required additional time. The officers then exchanged pertinent information regarding the previous shift and the outgoing Officer departs in the same manner as the incoming Officer had entered.

Officers assigned to SHU (Claybon, Hearn, Dommino and White) indicated that, in addition to the time spent going through security and waiting in line at Control for equipment and keys, and then the opening the sally port and gate and proceeding to the unit, the time it would take to enter SHU ranged from 3 to 7 minutes and the exchange with the outgoing could take up to 7 to 15 minutes.

## **SHU 2, 3, 4 and 5**

Although SHU 2, 3, 4 and 5 are 16 hour posts, the testimony of those who worked these shifts (Claybon, Hearn, and White) all indicated similar problems as SHU 1 in entering the SHU unit and exchanging information with the outgoing officer. The testimony of Officers White and

Hearns indicated that the exchange of equipment and information could take from 5 to 10 minutes.

SHU 2, 3, 4 and 5 are required to pick up or drop off equipment or exchange chits at Control. Officer Domino testified that he arrived at 5:40 a.m. or 5:45 a.m. to start the 6 a.m. to 2 p.m. shift. He picked up keys and a radio and sometimes a battery and proceeded to his post where he went through the same process as SHU 1, 2, and 3 to enter the unit. At the conclusion of the shift, he would pass the equipment and exchange information with the oncoming officer. He testified that he would leave SHU about 2:07 p.m. and exit the facility at about 2:10 p.m.

#### SHU Tower

Officer Hearns was the only one to testify regarding SHU Tower. She testified that she was required to be at Control at the start of her shift and at control at the end of her shift. Since she worked an 8 hour shift, there was no one to relieve at the start of her shift, and she was not relieved at the end of her shift.

### The Agency

#### SHU 1

The Agency argues that SHU 1 is a 24 hour position and as such there is no need to stop at Control to pick up equipment, therefore the shift begins and ends at the post.

Lieutenant Edwards testified that he worked as SHU Lieutenant for three quarters during 2006-2007. He testified that he observed the exchange of SHU 1 Officers on many occasions and they simply handed over keys and while doing so they would talk about what had happened during the previous shift. He estimated that the exchange to be approximately 3 three minutes. He further testified that while the restraint room was SHU 1's responsibility, the Officers did not check it together.

Deputy Captain Dawson testified that she had recently observed the exchange between SHU 1 Officers. She stated that the exchange could occur in one of two places. It could occur between the two secured doors, with the inner one remaining open and the Officers exchanging equipment there so that the outgoing Officer could leave immediately. Or it could occur with the inner door closed, with the outgoing gathering possessions and then departing. She, too, indicated that both Officers were not present when the equipment was accounted for. She further testified that exchange of information would occur only if something out of the ordinary had happened.

Captain Cheatham testified that he had witnessed the SHU 1 exchange on more than one occasion. He stated that the Officers exchanged equipment and the outgoing Officer informed the

incoming of what had happened during the previous shift and that all other information was in the log. He estimated that the exchange to about 5 minutes.

The Agency argues that there should be no recovery for the SHU 1 position because the Union testimony was not representative and varied widely.

SHU 2, 3, 4 and 5

The Agency argues that there should be no recovery for the SHU 2, 3 and 4 positions.

Lieutenant Edwards testified that he had observed the exchanges for the 16-hour posts such as SHU 2, 3, and 4. He testified that the Morning Watch Officer reported to Control at the beginning of the shift to pick up keys and a radio in exchange for chits. When the exchange occurred at the end of the morning watch, the oncoming Officer exchanged his/her chits at Control for the outgoing Officer's chits and returns them to that Officer during the exchange. He stated that the outgoing officer would then leaves. He testified that there was usually no exchange of information since SHU 1 or the SHU Lieutenant can convey any necessary information. He estimated that the exchange would take three to five minutes. He testified that the PM Officer would usually depart around 9:50 p.m. and return the equipment to Control and recover his/her chits.

Deputy Captain Dawson testified that the AM shift begins at Control and the PM shift also starts at Control to exchange chits. She testified that the exchange consisted of the PM Officer giving the AM Officer his/her chits. The exchange would only take a couple of minutes. Any information that needed to be conveyed would be done by the SHU 1 Officer. She also testified that the PM Officer would leave five to ten minutes early to end her/his shift at Control.

Former Captain Cheatham testified that the exchange for SHU 3 and 4 took less time than the exchange for SHU 1. He described it as an exchange of equipment and a brief exchange of information. He estimated it at about 2 minutes.

The Agency argues that the Union testimony did not constitute an representative sample and that the testimony of the Union witnesses was not supported by the Agency's video evidence.

SHU Tower

SHU Tower is an 8-hour post. Officer Hearn was the only Officer to testify regarding this post and stated that the hours were 8 a.m. to 4:30 p.m. She testified that she was required to be at Control at the start of her shift and that she would depart ten minutes before her shift was to end unless something was happening. Her shift ended at Control where she turned in her equipment.

Former Captain Williams testified that he expected the SHU Tower Officer to be at Control at the start and end of their shift. Deputy Captain Dawson testified that she expected the same. Former Captain Cheatham's testimony confirmed that of the others.

The Agency maintains that Officer Hearn was the only Officer to testify regarding this post; therefore her testimony is uncorroborated and not representative of the staff working this post.

## **Perimeter – Mobile Patrols**

### **The Union**

The Perimeter post or Mobile Patrols are responsible for the perimeter security of the institution. They are 24-hour posts. The Shift times are 8 a.m.-4 p.m., 4 p.m.-12 a.m. and 12 a.m.-8 a.m. There are two mobile vehicles operating per shift, per facility (low and medium), Mobile 1 and Mobile 2. Their duties are to patrol the outer perimeter of each facility 24 hours a day. Operating out of large SUVs, they are a roving post. One vehicle is required to be in service at all times. It is an armed post (post orders).

Officers reporting for Mobile Patrol are not required to report to Control prior to the start of the shift. The shift begins at the post. On arrival at the institution, the Officer asks Control to contact the outgoing Officer and notify them that their relief has arrived. The Officer is then picked up, often at the administration building to begin the relief process. The two Officers (outgoing and incoming) then proceed to the nearest clearing barrel to begin checking the weapons ammunition and equipment.

Each vehicle is equipped with three weapons. They are a 9-millimeter pistol, a M16 rifle, and a 12-gauge shotgun. For ammunition there are 45 rounds for the 9-millimeter pistol, in three separate magazines, one in the weapon and two in a holster worn by the Officer. There are 60 rounds for the M16 in two 30-round magazines. There are 9 rounds for the 12 gauge shotgun, 4 in the weapon and 5 in a clamp attached to the weapon.

At the clearing barrel, all rounds of ammunition are counted in the presence of both Officers. This is to ensure accountability if any rounds are found to be missing. Each weapon is unloaded, the rounds counted and then reloaded. Then each magazine is emptied, the rounds counted and then returned to the magazine. Officer White testified that, in his experience, the counting of the ammunition never took less than 15 minutes and sometimes longer.

Following the counting of the ammunition, the two Officers then proceeded to inventory the equipment in the vehicle. This included 23 separate items ranging from binoculars to helmets, vests, and constraints. (U. 12) The Officers then conducted an inspection of the vehicle itself, covering 12 different items, not counting the weapons, and recording the results of the inspection on a Mobile Patrol Daily Vehicle Check Sheet, (U. 13).

Officer White testified that the total process at the clearing barrel took at least 20 minutes, not including the time required to pick up the Officer and drive to the nearest clearing barrel. Officer Claybon testified that the inventory of equipment took an average of 15 to 20 minutes. Officer Robinson estimated that it took 15 minutes to inventory the equipment.

Officer White also testified that Mobile Patrols staggered their relief procedures so that one patrol would remain mobile during shift changes. He testified that the first to arrive conducted the relief first while the other vehicle continued to patrol. He testified that the second patrol could wait up to 30 to 45 minutes to begin its inventory procedure.

### **The Agency**

The Agency argues that the Union should not recover for the Perimeter post. It maintains that both the outgoing Officers are not present while the incoming Officer is conducting an inventorying the weapons, ammunition and keys and inspecting the vehicle. It also contends that both vehicles could be stationary at the same time when the exchange was taking place.

Deputy Captain Dawson testified that she had observed an exchange between Perimeter Patrol Officers in May 2011. She noted that the Officer on duty was anticipating the incoming Officer and when that occurred, both Officers proceed to the nearest clearing barrel where the outgoing Officer exchanged one key and the 9-millimeter weapon to the incoming Officer and departed. She estimated the exchange took only a couple of minutes.

Associate Warden Perdue testified that the incoming Officer had a 15 minute grace period to account for equipment and the outgoing officer was not required to stay.

Former Captain Cheatham testified that he had observed the exchange and stated that it consisted of the outgoing Officer exchanging the duty belt to the incoming Officer, a process that would take a minute. He further testified that the incoming Officer had 15 minutes to account for their equipment after the outgoing Officer left. He testified that the outgoing Officer had no authority to remain to make sure that all equipment was accounted for. He also testified that both vehicles could be stationary during the exchanges, but not for long periods of time.

Lieutenant Edwards testified that he had seen the Perimeter exchange take place both before and after the 15-minute grace period went into effect. He stated that the oncoming Officer would enter the vehicle and proceed to the clearing barrel where the outgoing office would leave. He stated that he thought the entire process took about three minutes. He testified that if both incoming officers arrived at the same time, the two trucks simply went to different clearing barrels and proceeded with the exchange. He testified that regarding Union Exhibit 14, post orders from September 20, 2004 requiring, "...a joint inventory/inspection of the vehicle, equipment, weapons ammunition and other equipment." He testified that he and the other lieutenants told them not to do that.

The Agency questions the representative nature of the Union's witnesses noting the wide variances in the time required to conduct the exchange, and requests that there be no recovery for the Perimeter posts.

## **Compound**

### **The Union**

The Compound Officer position is a 24-hour post. Their shifts are 12 a.m. to 8 a.m., 8 a.m. to 4 p.m. and 4 p.m. to 12 a.m. In the first quarter of 2007, the Day Shift was changed to 8 a.m. to 4:30 p.m. to allow for a lunch. All equipment is kept on post.

Compound Officers are responsible for the operation and security of the compound. They control all movement on the compound. Inmate movements are controlled movements. Compound Officers are responsible for assisting with inmate counts and delivery of the count slips to Control.

Officer White testified that he worked the Compound post approximately 14 times, on various shifts. He testified that he usually arrived 15 minutes early. He would go through the screening and then to control where he would be admitted through the sally ports and fence gate and then meet the outgoing Officer either in the Lieutenant's office or the Compound. Then they would exchange equipment, keys, radio, handcuffs, leg irons and restraints. They would exchange information and the other officer would leave. He estimated that the exchange would take about five minutes.

Officer Rubiola testified that she worked the Compound post during both the Day watch and Evening watch. She testified that the exchange could take 10 to 15 minutes. She testified that she stopped at Control to exchange chits prior to relieving the outgoing Officer.

### **The Agency**

The Agency argues that there should be not recovery for this position.

Former Captain Williams testified that he had witnessed the exchange between Compound Officers, typically in the Lieutenant's Office, and that it took no more than two minutes. He also testified that he expected the Compound Officers to be at their post at the beginning of their shift. He stated that there was no need for them to stop at Control.

Deputy Captain Dawson also testified that she had observed the exchange, again usually at the Lieutenant's Office. She described the exchange as lasting no more than a minute or two.

Former Captain Cheatham testified that he observed Officers exchange equipment and brief conversation again lasting only a minute or two.

Lieutenant Edwards testified that he had observed the exchange between Compound Officers over 50 times. He testified that they usually took place either at the Lieutenant's Office or on the Compound itself. He stated that the exchange would take no more than three minutes. He also testified that Compound Officers did not pick up equipment at Control prior to assuming their shift.

The Agency again argues that the witnesses presented by the Union were not representative of this post and requests that there be no recovery for this post.

## **Control**

### **The Union**

The Union argues that the Control Center oversees almost all aspects of the institution. It is responsible for who enters and who leaves the facility. It controls the sally ports at the entrance to the facility, the compound gate and the outer door to the Special Housing Unit. It distributes keys and equipment to officers coming on duty in return for chits and receives those same keys and equipment when they are returned. Equipment includes radios/body alarms, batteries, flashlights, restraints and additional security equipment. Through the chit system, they are responsible for knowing who has each key and piece of equipment available in Control and must keep a constant inventory of that equipment. In addition, they receive the periodic inmate counts throughout the day, record them in the log, and confirm their accuracy. They must also answer telephone calls from the outside and transfer them to the appropriate people or places.

Officer Claybon testified that he had worked as Control #1 on all three shifts. He testified that he usually arrived 15 to 30 minutes early and spent 15 to 25 minutes with the outgoing officer, inventorying the equipment, checking to see that everything was accounted for or that there was a chit in its place and exchanging information.

Officer Stubblefield testified that he arrived 20 to 25 minutes prior to the start of his shift and checked to see that the keys and radios were in their place or that there was a chit in its place.

Officer Robinson testified that she had worked both Day and Morning shifts as Control#1. When on Day watch, she would arrive at 7:45 a.m. to 7:50 a.m. and when on Morning watch, at 11:45 p.m. She testified that the exchange between outgoing and incoming Officers lasted about 10 minutes.

Officer Rubiola testified that she had worked the day watch at the Medium and would arrive 15 minutes early. She stated that it took her 20 to 30 minutes to inventory the equipment. She also testified that she worked as Control #1 on Evening watch at the Low. She estimated that the exchange with outgoing and incoming Officers to 15 to 20 minutes.

Officer Hearn testified that she worked both Morning and Day watch as Control #1 and that the exchange took between 5 and 10 minutes.

Officer Domino testified that he worked as Control #1 on the Morning watch at the Low and generally arrived 10 to 20 minutes early. He testified that it took about 10 minutes to exchange information with the outgoing officer, check the equipment and confirm the count.

The Union points out that all this is being done while Officers and other employees are entering and leaving the facility, waiting to be let through the sally ports, the compound gate and

the SHU outer door, picking up and dropping off keys, equipment and chits. It is, particularly during shift change and counts, a hectic and sometime chaotic place, and as a result, Control Officers are unable to leave the post on time.

### **The Agency**

The Agency argues that there should be no recovery for the Control positions. It maintains that the exchange only takes a minimal amount of time.

Former Captain Williams testified, based on his observation, that the Control Officer carries only one key and when that exchange occurs it involves a conversation and a quick review of the equipment to see if the equipment was there or if a chit had been put in its place. He estimated the time as 1 to 2 minutes.

Lieutenant Edwards testified that the exchange involved the exchange of one key and the outgoing Officer leaving. He stated that the incoming Officer did not have to account for all equipment and chits before the outgoing Officer left the post. That could occur during the shift. He estimated the exchange took about three minutes.

Deputy Captain Dawson estimated the exchange to take two to three minutes. She testified that the oncoming Officer did not have to inventory the equipment while the outgoing Officer was there.

Former Captain Cheatham testified that there were times when two and sometimes three Officers working in Control. He maintained that the exchange consisted of exchanging one key to the front door of Control and quickly observing the board to make sure there were either keys or a chit in place. He stated that they would then verify the count when starting the Day watch, so the other person could leave. He testified that there was nothing in the post orders requiring Officers to come in prior to the start of a shift or stay beyond the end of a shift.

The Agency argues that the Union's witnesses were inconsistent in describing the time they arrived prior to a shift and were equally inconsistent in their estimates of the time required to make the exchange. Base the testimony the Agency asks there be no recovery for this post.

### **Food Services**

#### **The Union**

The Food Service operates on two shifts, a morning shift running from 4:30 a.m. to 12:30 p.m. and an evening shift from 11:00 a.m. to 7:00 p.m. The Food Service is responsible for feeding all of the inmates at the facility. The inmates perform the actual cooking under the supervision of the Cook Supervisor.

J. Sannizzaro is a Cook Supervisor and has been since 2004. Sannizzaro testified that he arrived at 4:05 a.m. to 4:10 a.m. and usually had to wait for someone to let him in the front door

because the institution was locked. Once inside, he passed through the screening process and proceeded to Control where he would pick up his keys for the food service, and pick up his radio/body alarm, handcuffs and his duty pouch. He estimated that this took about 5 minutes. He then walked approximately 5 minutes to the Food Service.

He testified that although he is supposed to arrive at 4:30 a.m., inmates are also due to be released to the food service at 4:30 a.m. He testified that prior to them arriving, he must have the service open, lit and secure any contraband left in the trash. He estimated that this took approximately 15 minutes.

He further testified that there was an inmate count at 5:00 a.m. and that if he arrived at 4:30 a.m. he would not be ready for that count at 5:00. He testified that he had been called into to the Administrator's oOffice on days when he arrived at 4:30 a.m. and was held responsible for the count starting late.

He testified that on the evening shift he would arrive early to be ready for the lunch period and subsequently clean up and begin preparing the evening meal. After cleaning up following the evening meal, he would have to insure that all equipment and supplies were secure, close the service and return equipment and keys to Control before leaving the facility.

### **The Agency**

Food Service Administrator William Woods testified that he had held that position since 2007. He stated that he spent three days a week at the Medium, and two days at the Low. He testified that his hours were 7:30 a.m. to 4:30 p.m. His two assistant administrators worked from 9:30 a.m. to 5:30 p.m. at the Low, and 6:00 a.m. to 2:00 p.m. at the Medium.

Mr. Woods testified that he had observed his morning shift staff coming in to the facility. He stated that they were expected to arrive at 4:30 a.m., go through screening and pick up necessary keys and equipment at Control. They would then proceed to the Food Service and inform the Lieutenant that they were ready to receive the inmate detail. He testified that the Cook Supervisor's morning tasks prior to the morning meal could be conducted after receiving the inmate detail. He also testified that the accounting of Class A tools did not need to be done prior to the inmates' arrival since the inmates did not have access to where they were stored.

He testified that the Evening Shift Cook Supervisor would arrive at 11 a.m., go through Control to pick up equipment, and would assist the Morning Supervisor in overseeing the lunch meal. He stated that following lunch, which ended at 12 p.m., the Morning Supervisor would turn over the keys, exchange information, account for the tools and leave the Food Service between 12:15 p.m. and 12:20 p.m. and return equipment to Control.

He stated that he observed the Evening Supervisor complete his clean up, release the inmates, conduct security checks and leave around 6:45 p.m. and return equipment to Control.

Mr. Woods testified that he never told his staff to arrive early or stay late since there was no need for it.

## **Health Service**

### **The Union**

Registered Nurse Tommie Clarkson worked at FCC Yazoo City from 2003 to 2008 and testified on behalf of the nurses.

She testified that although her shift started at 6:00 a.m., she would regularly come in between 30 and 45 minutes early to be ready to perform her required duties at the beginning of her shift. In particular, she testified that there were certain duties required before she could begin administering insulin to insulin dependent patients prior to breakfast.

She testified that upon arriving she would pick up her keys and proceed to Health Services. After making sure the doors were secure, she would enter the treatment room and conduct a Pyxis count report to inventory medications and needles and other medical supplies and ensure there were no discrepancies. She would then run the same report in the Dental area and then record the results and prepare for the insulin line. She would then pull the needles and medications necessary and call for the line.

She testified that no supervisor instructed her to report early, but she felt it was necessary in order to perform her job and service the inmate population in need of insulin prior to breakfast. She testified that she had talked to her supervisors about this and was, on occasion, paid overtime. She indicated that other nurses who worked that shift also reported early in order to be ready to perform their duties.

On June 25, 2008, Ms. Clarkson received a memo from Assistant Health Services Administrator Commander Vickie Owens giving her a direct order not to perform work outside of her regularly scheduled tour of duty without advance authorization. (A-15) From that point on, Ms. Clarkson did not report early for her shift.

### **The Agency**

The Agency contends that it was not aware that Ms. Clarkson was coming in prior to her starting time and neither suffered or permitted her to work beyond her shift.

Commander Owens testified that morning shift nurses were expected to be at Control to pick up keys and equipment at 6:00 a.m. She testified that she had, on occasion, come in early to follow the nurse's routine to ensure that it was workable. She estimated the wait at Control to be about five minutes followed by a three to four minute travel to Health Services. There she performed several checks taking anywhere from 5 to 15 minutes. That left only the daily equipment checks prior to sick call commencing at 6:30. She testified that inmates do not report to Health Service until the staff is ready for them and calls for them.

She testified that when Ms. Clarkson informed her that she was coming in early, she was compensated for it but told her that the issue had been addressed in staff meetings and counseled her not to do that anymore. The counseling later turned into a direct order to not report early. (A-15)

## **Recreation**

### **The Union**

Recreation Specialist Vertilla Spann testified for the Union. She stated that early in the recovery period, the morning shift hours were 6:00 a.m. to 2:00 p.m. She testified that she had to arrive 15 to 20 minutes early to be on post for 6:00 a.m. to be prepared for the 6:00 a.m. recreation move. She testified that she spoke to her superiors about it but was not compensated for her extra time. She testified that sometime in 2004, the hours were changed to 5:45 to 2:15 p.m. and that seemed to solve the morning problem.

She testified that the PM shift was originally 12:30 p.m. to 9:00 p.m. with a 30 minute lunch. On the schedule, she testified that, if the inmates were recalled at 8:30 p.m., she could finish with checking the yard and lock up the doors and return her keys and equipment at Control by 9:00 p.m. If the recall occurred at 8:45 p.m. or later, then it was not possible to leave Control on time. Later, the hours were changed to 12:15 p.m. to 8:45 p.m. Again, she testified that if the recall was at 8:30 p.m., she could end her shift at Control. If the recall was delayed until 8:45 p.m. or later, it was not possible.

She testified that prior to the shift changes, she had spoken to her supervisor regarding the extra time worked but she was never compensated.

### **The Agency**

Supervisor of Recreation Leroy Staley testified for the Agency. He testified that he had been at FCC Yazoo City for five years and supervised a staff comprised of an assistant and 12 recreation specialists. He indicated that the current hours for the Recreation Specialists were 5:45 a.m. to 2:15 p.m. and 12:15 p.m. to 8:45 p.m.

He stated that he expected his staff to draw keys and equipment at the start of their shift and to turn in their equipment at the end. He stated that the Recreation move started between 6:00 a.m. and 6:20 a.m. and that custody staff always checked to make sure that Recreation was ready. He testified that he expected his staff to shakedown the Recreation area when they arrived at the beginning of the day and at the end of the day. He stated that they did not have to come in early to do this in the morning nor leave late in the evening.

The Agency argues that Ms. Spann was not representative of the other Recreation Specialists and there was no evidence that her supervisor was aware of her arriving early. They ask that there be no recovery for this position.

## **Unit Team**

### **The Union**

Officer Stubblefield began his work at FCC Yazoo as a Correctional Officer in 1998 and transferred to the position of Correctional Counselor in 2005. As a Correctional Counselor, he oversees many aspects of an inmate's life, seeing that inmates pay fines or assessments that are due, arranging phone calls, visitation, group classes and sessions on topics like anger management, etc. He also deals with unit sanitation issues and inmates personal appearance.

As a counselor, he currently works a compressed shift, but formerly worked a five day shift with the hours of 7:30 a.m. to 4:00 p.m. with a half-hour lunch. While working that shift he would arrive at the institution at 7:15 a.m. and proceed through screening. He then would proceed to Control to pick up keys and a radio. He estimated that it took three to five minutes to go through screening and additional time, five to eight minutes to get through Control since there were usually people ahead of him and normally only one person in control.

He would then have to be allowed through the sally port by Control and then through the Compound Gate, before reporting to the Lieutenant's Office to pick up incident reports, an estimated three minutes and then proceed to the housing unit where he was assigned, another three to five minutes.

At the end of his shift, he testified, he would leave his post at about 3:50 p.m. and be leaving the building about 4:05 p.m.

Officer Rubiola testified that she worked as a Correctional Counselor since 2007, but did not mention any portal issue while serving in that position.

Charles Fanning testified that he worked as a Correction Counselor. He stated that he was told he had to be at his post at 7:30 a.m., but after the grievance was file, he was told he only had to be in the key line. Prior to being told he only had to be in the key line, Mr. Fanning stated that he arrived at the institution at 7:10 a.m., but because the lines at Control were so long, that he was not at his post until after 7:30 a.m.

### **The Agency**

Former Camp Administrator Charles Smith testified that he told his Case Managers and Counselors that they should be picking up their equipment at Control at the start of their shift.

Unit Manager Mike Morris testified that he had been in that position since September 2003. He supervised a staff of three Case Managers, four Counselors and two Secretaries. He stated that he worked from 7:30 a.m. to 4:00 p.m., as did some of his staff. Other staff members worked a ten hour compressed schedule. He also testified that case managers and counselors each worked one late night per week, staying till 9:00 p.m. He testified that his expectation for

his staff was that they be in the key line at the start of their shift and at the end. He stated that had not changed during his time at the facility.

Unit Manager Arthur Truex testified that he has held that position since September 2000. He stated that his staff worked either a 7:30 a.m. to 4:00 p.m. shift or a compressed schedule. He testified that they also worked one late night per week until 9:00 p.m. He expected his staff to be at Control to pick up keys and equipment at the start of their shift and returned those keys and equipment at the end of their shift.

The Agency maintains that there should be no recovery for the Unit teams.

## **Facilities**

### **The Union**

Officer Gene White testified he worked in Facilities as a pipe fitter working 7:30 a.m. to 4:00 p.m. He testified that for the past year he had been told that his shift started in the key line. Prior to this past year, it was his understanding he was to be at his post at the start of his shift. He testified that he normally arrived at the facility at 7:15 a.m. to ensure that he would be at his post at 7:30 a.m. He stated that around the time the metal detectors were installed, the Warden stopped allowing facilities workers to park their vehicles at the warehouse, and insisted that after they picked up their keys and equipment at Control, they wait for a shuttle to take them to their post while still insisting they be on post at 7:30 a.m.

Officer White further testified that once he was on post he had to have a tool inventory and count completed prior to inmates arriving at 7:40 – 7:45 a.m. to begin the day. There was simply no way he could be at Control at 7:30 a.m., pick up his keys and equipment, take the shuttle to the warehouse, and be ready for the inmates to arrive at 7:40 – 7:45 a.m.

### **The Agency**

General Forman Gene Woods testified that he worked in that position from February 2000 through November 2009 and was the supervisor of the bargaining unit members in Facilities. He testified that he had worked a compressed schedule from 2000 to 2003 and then switched to the standard 7:30 a.m. to 4:00 p.m. schedule. He stated that his staff worked both schedules.

Mr. Woods testified that he expected his employees to be at Control drawing their equipment at the beginning of their shift and leaving the institution at the end of their shift. He stated that these expectations were conveyed during staff meetings. He testified that the staff meeting discussions about reporting times was initiated because of concerns that staff were coming in late and leaving early. He felt that there was a misunderstanding among the staff as to the beginning and end of their shifts.

The Agency argues that the Union did not present representative testimony for the Facilities Department and maintains there should be no recovery for the Facilities staff.

## **Inmate Systems Management**

### **The Union**

Inmate Systems Management (ISM, later changed to CSO) processes inmates in and out of the institution. They also handle functions such as the email room. Robert Brauer testified that he worked in ISM from 1997 to 2004. He later worked as a counselor from 2004 to 2007. He stated that he was expected to be at his post at 7:30 a.m. and leave at 4:00 p.m. In order to be at his post at 7:30 a.m. he would arrive at about 7:15 and wait in line at Control for keys, cuffs, and a radio and detail pouch. He estimated that it took 10 to 15 minutes to get through Control and into the compound. He then proceeded with his work and left his post at 4:00 p.m. He then had to return his equipment at Control, leaving the institution at 4:10 - 4:15 p.m.

### **The Agency**

Case Management Coordinator, Angela Scott testified that she had held that position for the past seven years. In that position she supervised 14 Correctional Systems Officers who worked either in the mail room or receiving and discharging inmates. She testified that her employees picked up equipment and keys at Control, and she expected them to be at Control at 7:30 a.m. At the end of their shift, she expected them to be at Control turning in their equipment. She stated that her staff left their work area 5 to 10 minutes before the end of their shift to allow enough time for them to be at Control. She testified that she had discussed this issue at staff meetings and reiterated it after the screening process was installed. She testified that she had no knowledge of her staff working before or after their shift without compensation.

## **Discussion and Opinion**

The issue in this case is:

Did the Bureau of Prisons, FCC Yazoo City, suffer or permit bargaining Union employees to perform work before and/or after their scheduled shift in violation of the Fair Labor Standards Act? If so, what is the remedy?

To prevail in this case, the Union must show, by a preponderance of the evidence, that the Agency, “suffered or permitted” work to be performed for the benefit of the Agency, requested or not, provided the employee’s supervisor knows or has reason to believe that the

work is being performed and has a opportunity to prevent the work from being performed. (OMP 5 C.F.R. 551.104) Further, that this work is not being compensated.

Under the Portal-to-Portal Act, and *Steiner v. Mitchell*, it must also show that any preliminary or postliminary activities performed are an integral part of the employee's principal activity in order to be considered compensable.

Further, OPM 5 C.F.R. s. 551.412 states:

If an agency reasonably determines that a preparatory or concluding activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than ten minutes per workday, the agency shall credit all of the time spent in that activity, including the ten minutes, as hours of work.

As to the first point, the Agency is responsible for a facility that operates 24 hours a day, seven days a week. In doing so, it established a 24-hour work schedule that provides continuous coverage on most posts, yet provided no overlapping shifts to allow employees to perform certain preliminary and postliminary work, such as picking up equipment at Control, traveling to their posts, exchanging equipment and information with the outgoing Officer and allowing that Officer to leave his post, returning equipment or chits and leaving the facility. It is difficult to believe that the Agency that created this shift coverage system, with no overlapping coverage, is unaware of the fact that it requires, in most positions, Officers to work beyond their shift without compensation.

The question of whether the specific work involved is an integral part of an individual's principal activity, or whether such work de minimis in nature, will be addressed in an examination of the individual posts and related issues.

During the course of the hearing, I found the Union's witnesses appeared to be representative of the employees performing the duties of the positions at issue in this case.

Given the above, I hold that the Agency did knowingly suffer or permitted work to be performed, for the benefit of the Agency, even if not specifically requested, without proper compensation, to the extent listed below.

### **Screening Process**

The Agency maintains that the time required to pass through the screening process is not compensable. It argues that it is not an integral and indispensable activity to the performance of an individual's principle activity. It maintains that staff and visitors alike are required to pass through screening and that the staff was able to perform their principle activities before and after the screening process was instituted. Further, it noted that reporting time for employees had not changed as a result of the process being implemented.

An argument could be made that employees' ability to assume their post was being restricted by the implementation of a screening process that was required by the agency, in fact had an effect on that employee's ability to perform their principle activities. The Federal Labor Relations Authority (FLRA) has seen differently. It found, in *Federal Bureau of Prisons, FCI Allenwood and AFGE Local 3047*, 65 FLRA No. 207, (June 30, 2011), that requiring employees to pass through a screening site was not integral and indispensable to the performance of an employee's principle activity, hence, not compensable.

Therefore, I hold that passing through the screening process is not a compensable activity.

### **Key Line / Batteries / Control**

Once an employee has passed through security, those who are picking up keys and/or equipment enter a line to acquire the equipment from Control. Since shift changes occur for many positions at the same time, many people are entering and leaving during this period and frequently the line at Control is quite long.

When employees approach Control, they must request the proper keys and equipment needed for their post. In return, they will give the Control Officer a chit to replace the keys and equipment to indicate who now possesses that equipment. Equipment obtained can include radio/body alarms, duty pouches, flashlights, handcuffs and various other types of restraints.

The Agency and I agree that the work day begins when an employee stops at control to pick up equipment, which is integral and indispensable to that employee's principle work activity and ends when the equipment is returned to Control. In this instance, I deem the act of picking up such equipment to be integral and indispensable; hence, the work day begins when the employee arrives at Control. Testimony regarding the actual amount of time it took to actually acquire equipment at Control varied from three to five minutes or longer depending on how busy Control was at the time.

One of the pieces of equipment commonly picked up is a battery for the radio/body alarm. The Union contends that acquiring a fresh battery is integral and indispensable to a correction employee's principle activity. It argues that in a dangerous work environment, a functioning radio/body alarm is an employee's lifeline. Should anything endanger an employee while inside the facility, it is the only means of summoning help. If the battery is dead, as Officer White testified, "...you might as well have a brick..."

Officers Claybon, Robinson and Domino all testified that they stopped at Control virtually every day to pick a fresh battery prior to installation of battery chargers on post.

The Union argues that virtually every employee stopped at Control to pick up a battery at least until recharges were installed, on post, in June 2009. (T. of Dawson) It maintains that even if an Officer is relieving another Officer and swapping out a radio, the Officer would acquire a fresh battery so as to have one when the other would die without having to wait for one to be delivered. Officers testified that it could take as long as 20 minutes for a battery to be delivered.

The Agency maintains that picking a fresh battery is not integral and indispensable to an employee's principle activity, and there is nothing in the post orders requiring it. It maintains that a working radio is already on post and fresh batteries will be delivered by the Compound Office if needed. It argues that it actively discouraged Officers from picking up fresh batteries, citing instances where Former Captain Cheatham would instruct Officers not to pick them up even when they were put out in a box by Control.

Further, it notes that specific instruction not to stop at Control to pick up or drop off equipment was included in the post orders for Housing Unit Officers. Finally, the Agency installed battery rechargers on post in June 2009 to ensure that fresh batteries would always be available.

I find that having a freshly charged battery is integral and indispensable to the principle activities of corrections employees working inside the compound. Nobody can dispute that working inside a Federal Correctional Institution is a dangerous job. If or when a crisis occurs, minutes count. Even though the Agency assures personnel that fresh batteries can always be delivered by the Compound Officer, an Officer may find themselves in a potentially life threatening situations with a discharged battery. Given that possibility, such assurances mean little.

Despite the fact that the Agency placed language in the post orders for certain Housing Unit Posts to not stop at Control to pick up equipment, it is clear from the testimony submitted that most Officer, concerned for their safety, and concerned that Compound Officers could take as much 20 to 30 minutes to bring a replacement, continued to pick up fresh batteries when passing Control. It is also clear from testimony that Control Officers continued to make batteries available, by putting them out in a box for Officer to pick up as they passed Control or by keeping them close by the trap to make sure they were readily available.

Testimony of incidents where Captain Cheatham or Assistant Warden Kruswicki stopped Officers from picking up batteries at control were, at best, antidotal. The fact remains that the Officers found that picking up a fresh battery was integral and indispensable to their principle activity and to their safety. The Agency, by not taking action until June of 2009 to install battery chargers at the Housing units, suffered or permitted this work to continue.

Flashlights were also integral and indispensable for the Evening Watch (4:00 p.m. to 12:00 a.m.) and Morning Watch (12:00:a.m. to 8:00 a.m.). Former Captain Williams testified that although some Officers brought their own flashlights, if they did not, or forgot theirs, they would pick one up at Control.

After picking up keys and/or equipment, including a fresh battery, and a flashlight, employees proceeded to a second activity that was integral and indispensable to their principle activity, that is, turning their chit on the Accountability Board. Turning their chit at the Accountability Board is essential to an Officer in that it indicates to Agency who is in the institution at any given point in time. If a shutdown or lockdown occurs, it is essential to an employee inside the compound that the Agency know that she/he is there.

Witnesses testified that the process of picking up keys and equipment and flipping their accountability chips ranged from five to ten minutes, depending on how busy Control was. I hold that time allotted should be five minutes. For the posts where battery chargers were installed in June 2009, and it was unnecessary to pick up any additional equipment, Officers working those posts will be considered on time at their post and not be eligible to recovery for preliminary activities after June 2009.

### **Sally Ports and Gate.**

Once employees passed Control and turned their accountability chit, they must pass through the sally port and compound gate to gain access to the compound. The sally port, as noted above, is a two-door chamber whose outer door opens to let employees in, and, when they are settled, that door is closed and the inner door opens to allow them to leave. The sally port is operated by the Control Officer.

Once they have left the sally port employees must then walk through a breezeway to the compound gate. This gate, like the sally port, is operated by the Control Officer, and is opened by that Officer when he sees people waiting or is called on his radio to do so.

Again, shift changes are the busiest time for Control and the Control Officer. During this time the Control Officer is handing out keys and equipment and may not be able to activate the sally port and compound gate quickly, resulting in delays entering and leaving the compound.

Given the evidence presented and my own experience in touring the facilities, I hold the time it takes to enter the compound once passing Control is four minutes.

### **Lieutenant's Office**

The Union contends that early in the recovery period, Officers working in the General Housing Units, Special Housing Units, Compound, Rear Gate and others were required to report to the Lieutenant's Office prior to reporting to their posts. They argue that the purpose of this was to let the Lieutenant know who was present, and to check mailboxes to see if there was any change in assignment.

The Agency argues that at no time during recovery period were Officers required to report to the Lieutenant's Office. They did that by phone once on post.

A review of the post orders for General Housing Units, Special Housing, Compound Rear Gate, Recreation and others show that from the beginning of the recovery period in September 2003 to September 24, 2005, Officers were clearly required to

*“CHECK IN WITH THE OPERATIONS LIEUTENANT” and then, “REPORT TO POST”*

At no point in the post orders were they required to check in by telephone.

In post orders issued on issued on September 25, 2005, and since that date, the Officers were ordered to:

*“Report to the housing unit and relieve the evening watch officer. Check in with the Operations Lieutenant via telephone to report that you’re on duty and to receive any pertinent information and special instructions.”*

This indicates that Officers, from the beginning of the recovery period to September 25, 2005, were required to check in with the Lieutenant’s Office after leaving Control and prior to reporting to their posts. Testimony indicated that reporting to the Lieutenant’s Office would require five to ten minutes before reporting to post.

I hold that from the start of the recovery to September 25, 2005, the time required of officers working in General Housing, Special Housing, to report to the Lieutenant’s Office and then proceed to their posts to be nine minutes. Five minutes at the Lieutenant’s Office (until September 25, 2005) and four minutes to walk from the Lieutenant’s Office or compound gate to their posts.

### **General Housing Units**

Once a Housing Officer had stopped at Control to pick up his equipment (prior to June 2009) and stopped at the Lieutenant’s Office (prior to September 25, 2005), he/she assumed their post at the outside door of the unit. They would ring or knock at the door until the outgoing Officer admitted them to the unit. Once inside the unit, the Officers would exchange keys, counting them out one by one for accountability. They would inventory equipment kept in a locked office to make sure all was accounted for, and then they would exchange information regarding the previous shift, after which the outgoing Officer would leave the unit, return any equipment to Control and leave the institution.

The Agency argues that the exchange was brief. Former Associate Warden Perdue, former Captain Williams and former Captain Cheatham all testified that they observed exchanges in the housing units and estimated that it took only two to five minutes. They simply exchanged keys, radio, and cuffs and accounted for the equipment on the shadow board. Deputy Captain Dawson testified that there was no verbal exchange since pertinent information was written in the log book.

Clearly, the exchange of keys, equipment and information is an important task and one that is taken seriously by the Officers. The testimony of the Officers who engaged in this process is credible and convincing. The time it takes for the outgoing Officer to admit the incoming Officer, count and exchange keys, exchange equipment and inventory equipment locked in the Officer’s office is considerable. The verbal exchange of information is important. While the outgoing Officer recorded information in the log book, the verbal exchange gives the incoming Officer an opportunity to hear what has happened over the last eight hours through the eyes of the outgoing Officer and get a true sense of what the next eight hours would be like in a way a simple log entry cannot convey.

Based on the testimony of the Officers, I hold that the time required for the shift change and exchange of keys, equipment and information to be 12 minutes

The key problem with posts such as the General Housing Units is that they must be covered 24 hours a day, with three shift changes every day. There are no overlapping shifts. Therefore, if an Officer is coming on duty at Control at 12:00 a.m. and has to pick up keys, a battery and equipment, turn their accountability chit, pass through the sally port and compound gate, check in at the Lieutenant's Office, walk to their post, be admitted and then exchange keys, equipment and information, before the outgoing Officer can depart and return equipment at Control and leave the institution, 26 minutes have passed. The outgoing Officer has had to work an additional twenty-six minutes without compensation.

If, on the other hand, the incoming Officers are conscientious about relieving their fellow Officers on time so that they may leave at the end of their shift, the incoming Officers must begin their shift at Control 26 minutes early without compensation. Based on the testimony of the Offices, the reality is somewhere in the middle, with incoming arriving 10 to 15 minutes early and the outgoing leaving 10 to 15 minutes late.

Therefore I find the following:

Officers working in the General Housing Units between the beginnings of the recovery period through September 24, 2005 when checking in with the Lieutenant's Office was listed in the post orders will be compensated for an additional 26 minutes per shift.

Officers working in the General Housing Units between September 25, 2005 and June 1, 2009 when battery chargers were installed on post, will be compensated for an additional 21 minutes per shift.

Officers working in the General Housing Units between September 25 and the present and who were required to pick up or drop off keys and equipment at Control due to the nature of their post (some sixteen hour and eight hour posts) will be compensated for additional 21 minutes per shift.

Officers working in the General Housing Units between June 2, 2009 and the present who are not required or permitted to pick up equipment at Control and whose shift starts at the Unit, will be compensated for an additional 12 minutes per shift.

### **Special Housing Units (SHU)**

#### **SHU 1:**

SHU 1, like the General Housing Officers, would enter the facility and pass through screening and proceed to Control. Once there they would frequently pick up a fresh battery (prior

to June 1, 2009) and a flashlight if it were an evening or morning watch and they did not bring their own. Again, like General Housing Officers, from the beginning of the recovery period to September 24, 2005, they were required to check in with the Operations Lieutenant prior to reporting to their posts. They would then proceed to the SHU Unit, announce their arrival and wait for Control to open the outer door. Once the door was opened, they would enter, wait for the outer door to be closed and then be admitted through the second door. Once inside, they would proceed to exchange keys and equipment and inventory additional restraint equipment locked in a separate office. They would then exchange information and the outgoing officer would exit the Unit.

Testimony of the Officers indicated that it would often take several minutes to be admitted to SHU by Control and that the exchange and inventory of equipment could take anywhere from seven to fifteen minutes.

SHU is a 24-hour operation covered by three eight-hour shifts per day. (Day Watch is 8:00 a.m. to 4:30 p.m., but there is a 30 minute lunch). There are no overlapping shifts. Like the General Housing Units, a SHU Officer would pick up a battery and or flashlight at control, (five minutes), passes through the sally port and gate (4 minutes), checks in with the Lieutenant, (five minutes) and proceeds to the Unit. This is a total of 14 minutes. Based on the testimony, I hold that the average wait for admission to SHU by Control to be three minutes and the time of exchange and inventory of equipment and information to be 15 minutes.

Therefore, for SHU 1, the maximum total time it takes from beginning a shift at Control to relieving the outgoing Officer is 32 minutes.

### **SHU 2 and 3:**

SHU 2 and 3 are 16-hour positions with a Day Watch (6:00 a.m. to 2:00 p.m.) and Evening Watch (2:00 p.m. to 10:00 p.m.).

The Morning Watch begins at Control to pick up keys and equipment in return for chits. Officers would then proceed to the Lieutenant's Office and then to the Unit where they entered in the same manner as SHU 1. Since there is no Morning Watch, there is no one to relieve. They are considered on time if they are at Control at the beginning of their shift.

The Evening Watch Officer would stop at Control to pick up the Morning Watch Officer's chits and possibly a fresh battery or flashlight, report to the Lieutenant's Office (through September 24, 2005) then proceed to the Unit and be admitted. There they would exchange keys and equipment and the Morning Officer would receive his chits and leave the unit. At the end of the Evening Watch, the Officer would depart the Unit and return keys and equipment to Control.

The relief between Morning and Evening Watches poses the same problem as the reliefs for SHU 1. The Evening Watch Officer would begin a shift at Control picking up chits and equipment. Officers would then have to pass through the sally port and gate, check in with the

Lieutenant, proceed to the Unit and wait to be admitted. They would then exchange equipment and information before the Day Watch Officer could leave.

The time required for this relief is approximately the same as for SHU 1. The Agency argues that the exchange of information is not as extensive since SHU 1 can update the incoming Officer on any problems.

The time required to stop at Control, and proceed to the post remains the same as for SHU 1. The only difference is that the time needed for exchange of chits and information is reduced to 10 minutes.

Therefore, for SHU 2 and 3, the maximum total time it takes from beginning their shift at control to relieving the outgoing Officer is 27 minutes.

#### **SHU 4 and 5:**

SHU 4 and 5 are also 16-hour positions and work Day Watch (6:00 a.m. to 2:00 p.m.) and Evening Watch, (2:00 p.m. to 10:00 p.m.) Their shifts begin and end at Control.

These positions do not appear in the list of post orders until the first quarter of 2007, therefore any recovery for these positions is limited by that fact.

Since the post order mandate for SHU Officers to report to the Lieutenant's Office ended on September 24, 2005, that time does not apply to these positions.

Therefore, for SHU 4 and 5, the maximum total time it takes from the beginning of a shift at Control to relieving the outgoing Office is 20 minutes.

#### **SHU Tower:**

SHU Tower is an 8-hour post, operating on the Day Watch (8:00 a.m. to 4:30 p.m.). The position did not appear in the list of post orders until the first quarter of 2007, and therefore, any recovery for this position is limited by that fact.

Also, although post orders do exist for an Evening Watch (4:00 p.m. to 12:00 a.m.) there was no testimony regarding that watch. It was referred to by both the Union and the Agency as an 8-hour post. No relief was mentioned.

Officer Hearn was the only employee to testify about this position and stated that she started and ended her shift at Control. There was no testimony that the SHU Tower position required anyone to work beyond an 8-hour shift, therefore, there is not recovery for this position.

Therefore, for the SHU positions 1, 2, 3, 4, and 5, I find the following:

SHU 1:

Officers working in the SHU 1 position between the beginning of the recovery period through September 24, 2005 when checking in with the Lieutenant's Office was listed in the post orders will be compensated for an additional 32 minutes per shift.

Officers working in the SHU 1 position between September 25, 2005 and June 1, 2009 when battery chargers were installed on post will be compensated for an additional 27 minutes per shift.

Officers working in the SHU 1 position between June 2, 2009 and the present who are not required or permitted to pick up equipment at Control and who's shift starts at the Unit, will be compensated for an additional 17 minutes per shift.

#### SHU 2 and 3:

Officers working in the SHU 2 and 3 positions between the beginning of the recovery period through September 24, 2005 during which checking in with the Lieutenant's Office was required in the post orders will be compensated for an additional 27 minutes per shift.

Officers working in the SHU 2 and 3 positions between September 25, 2005 and June 1, 2009 when battery chargers were installed on post will be compensated for an additional 22 minutes per shift.

Officers working in the SHU 2 and 3 positions between June 2, 2009 and the present who are not required or permitted to pick up equipment at Control and whose shift starts at the Unit, will be compensated for an additional thirteen minutes per shift.

#### SHU 4 and 5:

Officers working in the SHU 4 and 5 positions between December 24, 2006 and June 1, 2009 when batter chargers were installed on post will be compensated for an additional twenty-two minutes per shift.

Officers working in the SHU 4 and 5 positions between June 2, 2009 and the present who are not required or permitted to pick up equipment at Control and who's shift starts at the Unit, will be compensated for an additional 13 minutes per shift.

#### SHU Tower:

No recovery.

## Perimeter – Mobile Patrols

As noted earlier, the two Mobile Patrols are responsible for the perimeter security of the institution. They are 24-hour posts. There are two Mobile Patrols at both the low and medium facilities during each shift, and at least one is moving at all times. The shifts are 12:00 a.m. to 8:00 a.m., 8:00 a.m. to 4:00 p.m. and 4:00 p.m. to 12:00 a.m. There are no overlapping shifts.

When the Officers arrive to begin their shift, they ask Control to inform the patrols that their relief has arrived. The Mobiles pick up their relief and drive to the nearest clearing barrel to begin the relief process. The driving time is estimated to be two to three minutes at the most.

The union witnesses and the post orders, at least from the beginning of the recovery period to the end of the third quarter of 2006, September 23, 2006, required that:

*“At no time will both mobile patrols be relieved at the same time.”* and,

*“Prior to relieving the on-duty officer, both officers will perform an inspection of the vehicle and an inventory of the equipment assigned to that vehicle.”* (Post Orders)

Effective September 24, 2006, the post orders for the Mobile Patrols changed. The requirement that both Officers perform the inspection and inventory was deleted. The following was added:

*“The oncoming officer will have approximately 15 minutes to inventory all **WEAPONS, AMMUNITION, AND KEYS** and verify that everything is correct.”*

The section prohibiting both patrols from being relieved at the same time was reworded to state:

*“Reliefs are to be made separately, so one patrol is in service at all times.”*

As stated above, once at the clearing barrel, an extensive inventory of ammunition and equipment takes place. All rounds of ammunition are removed from the weapons and all clips and counted individually and then returned to the weapons or ammunition clips. Following that a complete inventory of equipment in the vehicle is conducted. Twenty-three separate pieces of equipment are covered (U.12). Following that, an inspection of the vehicle takes place covering 12 different items. Once that is completed, the results of the inspection are recorded on a Mobile Daily Vehicle Check Sheet. (U.13) Once this process is completed, the second vehicle, which had been patrolling while the inventory of the first vehicle was taking place, stops and goes through the same process.

Officer’s White, Claybon and Robinson all testified that the total process took between 15 to 20 minutes. Officer White testified that the second patrol could wait as long as 30 to 45 minutes before it could begin its inventory process.

The Agency argues that since both Officers are not required to be present for the inventory of ammunition and equipment, and since a 15 minute “grace period” was given to the Officers, no recovery should be allowed for this post. It maintains that the exchange took only

minutes. When asked about the post order language from September 2004 (U. 14) regarding both Officers performing the inventory, Lt Edwards testified that he and other Lieutenants told the Officers to not do that.

Given the credible testimony of the Union witness regarding this position, the clear and unambiguous language of the post orders, I find the following:

Officers working the Mobile Patrol posts from the beginning of the recovery period to September 23, 2006 will be compensated for an additional 20 minutes for the time required to perform the joint inventory of equipment and an addition 20 minutes to cover the time the second vehicle must wait before it can begin its inventory for a total of 40 minutes per shift.

Officers working the Mobil Patrol posts from September 24, 2006 to the present shall be compensated for an additional 20 minutes per shift to cover the time one patrol must wait while the other is conducting the inventory.

### **Compound:**

The Compound Officer is a 24-hour position. Officers are required to be on post at the start of their shift. Officers are not required to exchange chits at Control for equipment already on post.

While the post orders, at least prior to September 24, 2006, required Compound Officers to check in with the Lieutenant prior to assuming the post, the testimony of both Union and Agency witnesses indicated that the exchange of equipment and information often occurred at the Lieutenant's Office or close by. The testimony also indicated that the actual exchange only took five to ten minutes. Given the testimony and evidence presented, I find that the time required relieving the outgoing Officer to be less than ten minutes and thus de minimus.

No recovery.

### **Control**

As noted above, the Control Center oversees the day-to-day operation of the institution. No one enters or leaves the facility without the knowledge of the Control Officer. That Officer is responsible for handing out keys and equipment in return for chits to employees coming on shift and exchanging keys and equipment for those coming off shift. They are responsible for opening and closing the sally ports at the entrance to the facility, the compound gate and the SHU entrance. In addition, they are responsible for taking and verifying the various official counts and standing counts that are conducted throughout the day.

Many of these activities occur during shift changes when heavy traffic is coming and going from the facility; keys and equipment are being picked up or returned and official counts

are being taken, body alarms are being checked. The sally ports, gate and SHU entrance are constantly being opened and closed. This chaotic period is also the time when the exchange takes place in Control.

Officers Claybon, Stubblefield, Robinson, Rubiola, Hearn and Domino all gave credible testimony regarding arriving early and taking between 10 and 20 minutes to review the keys and equipment stored at Control and ensuring that all were accounted for or chits were hanging in their place.

The Agency claims that the exchange took only a few minutes with the exchange of only one key to the Control Center itself and a quick glance at the keys and equipment and little conversation between the incoming and outgoing Officers.

Given the importance and the nature of this position and chaotic time in which the exchange takes place, the testimony of the Officers seems very credible. While some Officers testified that the longest an exchange could take could be 25 to 30 minutes, all seemed to agree that 10 to 15 minutes was an accurate average. Therefore I find the following:

Officers working at Control from the beginning of the recovery period to the present will be compensated for an addition t12 minutes per shift.

### **Food Services**

The Food Service operates two shifts a day, Morning, (4:30 a.m. to 12:30 p.m.) and Evening, (11:00 a.m. to 7:00 p.m.) Inmates are responsible for most of the cooking under the supervision of a Cook Supervisor.

Cook Supervisor Sannizzaro testified that his shift begins and ends at Control. He stated that he arrives early to pass through screening and picks up his keys, equipment and duty pouch at Control, taking approximately five minutes and then proceeds to Food Services taking another five minutes. He testified that inmates working in the kitchen are due to be released to the Food Service at 4:30 a.m., and if he is to be ready for them he must have time to open the Service, turn on lights, and secure any contraband that may have been left in the trash before the inmates arrive.

The Cook Supervisor post orders state that his opening duties include, "...determining the Institutional Count and unit break down and the number of common fare and diet trays ..." necessary for the day. "...checking the coolers and freezers for proper temperatures...checking knife and tool cabinet to ensure that all are present...checking the communications log for information from the day before... heating ovens, kettles and grills...checking supplies and leftovers and advance preparations from the night before..." and "...verifying cleaning materials for the proper sanitation levels required are available." (A. 27) This is to be done before the 5:00 a.m. count.

He testified that although the inmates are not released until he called for them, it is important that they arrive on time to be ready for a 5:00 a.m. count. He stated that if he arrived at Control at 4:30 a.m., he would not be ready for the 5:00 a.m. count on time. He testified that on occasions when he did arrive at 4:30 a.m., he was held responsible for the count starting late by his superiors.

He testified that when working the Evening Shift, he would arrive early to assist in the serving of lunch and begin preparation for the evening meal. Following the evening meal, he supervised the cleanup, inspected the Food Service for sanitation and repairs, released the inmate detail, and ensured that the lights were out and the doors were locked and secured. He would then return his keys, radio and detail pouch to Control.

Food Service Administrator William Woods, hours were 7:30 a.m. to 4:30 p.m. He testified that he had told his staff that they were to begin their day at 4:00 a.m. at Control. He stated that he had observed his staff coming in for the Morning Shift at 4:30 a.m. They would proceed to Food Service and instruct the Lieutenant to release the inmate detail. He testified that many of the morning tasks could be performed after receiving the inmates.

He testified that the Evening Shift Cook Supervisor arrived at Control at 11:00 a.m. and proceeded to the Food Service to assist with lunch. He testified that the exchange of keys and information would occur about 12:20 p.m. and the outgoing Supervisor would return to Control. He further testified that the Evening Shift Supervisor would have the cleanup finished and the Food Service secure by about 6:45 and return to Control.

Mr. Sannizzaro testified credibly, in particular, regarding the Morning Shift. His testimony is consistent with the post order list of items that must be completed prior to the 5:00 a.m. count, and the Compound Officer's post orders which stated that the inmate details would be released at 4:30 a.m. and must be at Food Service no later than 4:45 a.m. Given this, recovery for the Morning shift is appropriate.

There was very little focus on the Evening Shift however, and the testimony and evidence presented does not show a strong case for recovery. Therefore, I find:

Cook Supervisors working the Morning Shift from the beginning of the recovery period to the present will be compensated for an addition 12 minutes per shift.

### **Health Service**

Registered Nurse Tommie Clarkson worked at FCC Yazoo City from 2003 to 2008. She testified that, although her shift began at 6:00 a.m. at Control, she regularly reported 30 to 45 minutes early to ensure that she could perform her early morning duties and be ready for the insulin line at 6:30 a.m. so that those inmates requiring insulin could receive it prior to eating breakfast.

Her duties included reviewing the Health Services Daily Log, performing equipment checks, performing a Pyxis inventory of needles and syringes and addressing any SHU urgent care needs (A. 18). Once those tasks were accomplished, she would inform the Lieutenant that she was ready for the insulin line.

She testified that she was not told to report early, and on occasion, when she told her supervisors that she had come in early, she was compensated.

Commander Owens, Assistant Health Administrator, testified that she had informed her staff that they were to report to Control at the beginning of their shifts and no earlier. She testified that the checks Ms. Clarkson made at the beginning of her shift took no more than 5 to 15 minutes and that the insulin line would not be called until the nurse informed the Lieutenant that she was ready.

Commander Owens's testimony was credible and compelling. It is clear that she would neither suffer nor permit her staff to work additional hours without compensation. When informed that Ms. Clarkson had come in early, Owens saw that she was compensated for that time and informed Ms. Clarkson that she was not to report early. That was confirmed by a memo issued by Commander Owens to Ms. Clarkson on June 25, 2008, informing her that she was not to report before the start of her shift.

Given the testimony and evidence presented it is clear that the Union has not, by a preponderance of the evidence, proven that the Institution suffered or permitted Ms. Clarkson or any other nurse to perform work outside their normal shift without compensation.

No recovery.

## **Recreation**

Recreation Specialists Vertilla Spann testified for the Union. Her testimony indicated that early in the recovery period, when the hours for the Morning Shift were 6:00 a.m. to 2:00 p.m., she had to arrive 15 to 20 minutes early to be ready for the 6:00 a.m. recreation call. She testified that once the hours were changed to 5:45 a.m. to 2:15 p.m. sometime in 2004, the problem seemed solved.

She also testified that the evening shift hours were originally 12:30 p.m. to 9:00 p.m. If the inmates were recalled at 8:30 p.m. as scheduled, she could be at Control by 9:00 p.m. If the recall was later than 8:45 p.m. she would not be able to leave on time. When the hours changed to 12:45 p.m. to 8:45 p.m. she testified that she could still be at Control at the end of her shift, provided that the recall was at 8:30 p.m.

Supervisor of Recreation Leroy Staley testified that he had worked at FCC Yazoo City for 5 years. He supervised a staff of one Assistant and 12 Recreation Specialists. He testified that his staff was instructed to begin their shift at Control drawing equipment and end at Control turning in their equipment.

A review of the post orders for Compound Officers shows that the recreation move has been consistently called at 6:00 a.m. from the beginning of the recovery period to at least the second quarter of 2009. A review also shows that the starting time for a Recreation Specialist was 6:00 a.m. from the beginning of the recovery period till at least first quarter of 2005. Clearly, for the period of time the hours for the morning shift began at 6:00 a.m., it would not be possible for Recreation Specialists to be on post for the 6:00 a.m. move without arriving early. Recovery is appropriate.

According to Ms. Spann, the evening shift seemed to be no problem as long as the evening recall occurred at 8:30 p.m. Again, a review of the post orders shows the evening recall has consistently been called at 8:30 p.m., therefore no recovery is necessary.

Therefore I find that:

Recreation Specialist working the Morning Shift of 6:00 a.m. to 2:00 p.m. from the beginning of the recovery period until the hours were changed to 5:45 a.m. to 2:15 p.m., will be compensated for an additional 15 minutes per shift.

### **Unit Team**

The unit teams are comprised of a Unit Manager, Case Managers, Counselors and Secretaries. They work either a five-day week from 7:30 a.m. to 4:00 p.m. or a compressed schedule of four ten-hour days. One day a week, Case managers and Counselors are required to report later and stay until 9:00 p.m.

Unit members start their shift picking up keys and a radio/body alarm at Control and end their shift returning the same to Control. Former Camp Administrator Charles Smith, Unit Manager Mike Morris and Unit Manager Arthur Truex all testified that that they expected their unit members to begin and end their shifts at Control. They testified that their unit members usually left the units sometime between 3:40 and 3:50 p.m., so that they could be at Control at the end of their shift.

Officer Stubblefield, Officer Rubiola and former Counselor Fanning all testified for the Union, but none of them directly contradicted the testimony of the three managers. They had no one to relieve and they were not relieved themselves. They all testified that they began and ended their shifts at Control.

Based on the evidence and testimony presented, I find that there be no recovery for these positions.

No recovery.

## **Facilities**

Officer Gene White testified that he worked a 7:30 a.m. to 4:00 p.m. schedule in facilities as a Pipefitter. He stated that prior to a year before his testimony, he had been told that he should be on his post in the Garage Area at the start of his shift. Since then, he has been told that he is to be at Control picking up his keys and equipment at the start of his shift. He testified that once he arrived at his post he was required to conduct a tool inventory and count prior to arrival of the inmate work detail at approximately 7:40 to 7:45 a.m. He maintained that there was no way he could be at Control at 7:30 a.m. and be at the Garage Area ten minutes later ready to receive the inmate detail.

General Forman Gene Woods testified that he held that position from February 2000 to November 2009. As such, he supervised a staff of 12 to 14 who performed maintenance and repairs throughout the facility. He stated that his staff followed schedules both compressed and standard.

He testified that he expected his staff to be at Control at the beginning of their shift and get to their work site in time to receive the inmate detail that was released between 7:40 and 7:45 a.m. He stated the inmates were recalled at 3:30 p.m., but that the process of cleaning up and inventorying the tools began about 3:00 p.m.

Officer White testified that he was to start his shift at Control at 7:30 a.m. and be prepared to accept the inmate detail at 7:40 - 7:45 a.m. Forman Woods agreed. Given the distance between Control and the Garage Area where Facilities is located, and given the need to use the Institution shuttle to cover that distance, it is difficult to believe that that could be done on a daily basis without the Officer reporting at least ten minutes early. Therefore I find that:

Officers working in Facilities who began their shift at Control at 7:30 a.m. from the beginning of the recovery period to the present will be compensated for an additional ten minutes per shift.

## **Inmate Systems Management**

Mr. Brauer testified that he was expected to be at his post at 7:30 a.m. At the end of his shift, he testified that he left his post at 4:00 p.m. and returned his keys and equipment at Control at 4:10- to 4:15 p.m.

Case Management Coordinator Scott, who had held that position for seven years prior to her testimony, testified that she expected her employees to be picking up keys and equipment at Control at 7:30 a.m. and return the keys and equipment at Control at 4:00 p.m.

Having previously determined that for those who pick up keys and equipment at Control, the work day begins and ends at control. Given no further evidence or testimony, regarding his post, I determine that the Union has not shown by a preponderance of the evidence that the

Agency suffered or permitted employees working this post to work additional hours without compensation.

No recovery.

**Award**

1. I find that the Bureau of Prisons, FCC Yazoo City, did suffer or permit bargaining Union employees to perform work before and/or after their scheduled shift in violation of the Fair Labor Standards Act.
2. The Corrections Employees and other bargaining unit employees shall be paid overtime for the additional minutes worked in accordance with the text of this Award from the beginning of the recovery period in September 2003 until the agency has taken action to remedy the problems.
3. The Agency shall pay all interest and / or liquid damages as allowed by the law.
4. The Union is entitled to reasonable attorney's fees incurred in the prosecution of this arbitration
5. This Arbitrator will retain jurisdiction of this matter in order to assist the parties with any disputed back pay, liquid damages, attorney's fees or other issues which the parties are unable to resolve. Either party may request assistance from the arbitrator by written notice to the arbitrator with copies to the other party.

/s/ John W. Hanson  
Arbitrator  
April, 30, 2014