

**FEDERAL MEDIATION AND CONCILIATION SERVICE
VOLUNTARY LABOR ARBITRATION TRIBUNAL**

IN THE MATTER OF THE ARBITRATION

Between

**COUNCIL OF PRISONS
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL # 4052
METROPOLITAN DETENTION CENTER
GUAYNABO, P.R.**

-and-

**UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
METROPOLITAN DETENTION CENTER GUAYNABO, P.R.**

**ARBITRATOR'S OPINION AND AWARD
MERITS – OVERTIME/COMP TIME GRIEVANCE
FMCS # 2005-05708**

This arbitration came before me, **Lawrence I. Hammer**, in accordance with the current Collective Bargaining Agreement entered into by and between the American Federation of Government Employees, Local # 4052, and the U.S. Department of Justice, Federal Bureau of Prisons (Metropolitan Detention Center, Guaynabo, P.R.).

Utilizing the services of the Federal Mediation and Conciliation Service, the undersigned was, on October 4, 2005, advised by the Service of his joint selection by the parties to serve as the arbitrator in this matter.

On June 6, 2006, the parties agreed upon the hearings herein being held on November 15th and 16th, 2006 at the Community Club located within Ft. Buchanan, Guaynabo, P.R.

The American Federation of Government Employees (hereinafter referred to as either AFGE or the Union or the Grievant) was represented by:

Jorge Rivera	President
Charlie Moreno	Union Steward
Javier Villanueva	Union Steward

The U.S. Department of Justice, Federal Bureau of Prisons (hereinafter referred to as the Government, the FBOP or the Agency) was represented by:

Maria R. Bellino, Esq.	Agency Representative
Graciano Arroyo	Assist. Health Service Adm.
Angel Morales	Employee Service Manager

The Agency requested that this arbitration be bifurcated as it was "procedurally deficient and erroneously before the arbitrator". The Agency requested a ruling on the "threshold" issues before addressing the merits of the matter, and proposed a ruling as to whether [1] the grievance is untimely and not arbitrable, and [2] is the grievance lacking of specificity and thus, not arbitrable?

The undersigned was loath to agree to bifurcate the matter, which, if found to be arbitrable, would entail and add a considerable expense to the proceedings and commented "...with the distance you've traveled and the distance I've traveled,

and the expenses that are involved for both parties, it would seem somewhat absurd to completely bifurcate the matter, hear only the arbitrability, go back to our respective 'bailiwicks', and then render an award on the arbitrability, and if same were found to be arbitrable, to go through the same procedure, the same expenses and time etc. getting together again to determine the merits ..."

The parties accepted a suggestion made by the undersigned, where under the questions of arbitrability and the merits of the matter would both be heard and argued at the same hearing, but with the understanding that no award based on or referring to the merits of the matter would be issued unless the Agency failed to prevail on the question of arbitrability. The parties both so agreed.

Under date of February 22, 2007 my award was issued holding [1] that the grievance was filed in a timely manner and that the threshold issue of timeliness was determined to be arbitrable and [2] that sufficient specificity was furnished to the Agency so as to allow the matter to go forward.

Under arrangements agreed upon, a briefing schedule calling for briefs on the merits, if the matter was found to be arbitrable, was to be submitted to the undersigned for his transmittal and exchange between the parties, postmarked on or before April 10, 2007. Said documentations were timely received and the hearing was declared to be closed on April 16, 2007.

THE ISSUES¹

AGENCY PROPOSED ISSUE [TR 64, lines 18-21]

Whether the Agency violated the Collective Bargaining Agreement, the "Master Agreement", specifically Article 27, Section a [1] through the elimination of the payment of overtime? If so, what is the proper remedy?

UNION ISSUE PROPOSAL [TR 64, lines 4-9]

Did the Agency's answer to the grievance pertaining to vacating mission critical posts, assigning non-qualified employees to the Powerhouse Area, and forcing compensatory time in lieu of overtime pay, dictate the Agency's future actions?

If so, what shall be the appropriate remedy?

CONTRACT PROVISIONS

PREAMBLE

... the parties recognize that the administration of an agreement depends on a good relationship. This relationship must be built on the ideals of mutual respect, trust, and commitment to the mission and the employees who carry it out. Therefore, the Federal Bureau of Prisons and Federal Prison Industries, Inc. hereinafter referred to as "the Employer" or "the Agency", and the Council of Prison Locals and the American Federation of Government Employees, hereinafter referred to as "the Union" or "exclusive representative" do hereby agree to:

- [A] Focus on problems and ways to deal with them,
- [B] Recognize the needs of the other party,
- [C] Consider collective bargaining as an opportunity to improve the relationship between the Agency and the Union, and,

¹ The parties could not agree on the framing of the issue pertaining to the merits. Each party submitted its own proposal.

- [D] Recognize that the employees are the most valuable resource of the Agency and are encouraged and shall be reasonably assisted to develop their potential as Bureau of Prisons employees to the fullest extent practicable.

This agreement and such supplementary agreements and memorandums of understanding by both parties as may be agreed upon hereunder from time to time, together constitute a collective agreement between the Agency and the Union.

ARTICLE 3 – GOVERNING REGULATIONS

Section a. Both parties mutually agree that this agreement takes precedence over any Bureau policy, procedure and/or regulation which is not derived from higher government-wide laws, rules and regulations.

1. local supplement agreements will take precedence over any Agency issuance derived or generated at the local level.

Section b. In the administration of all matters covered by this Agreement, Agency officials, Union officials and employees are governed by existing and/or future laws, rules and government-wide regulations in existence at the time this agreement goes into effect.

Section c. The Union and Agency representatives when notified by the other party, will meet and negotiate on any and all policies, practices, and procedures which impact conditions of employment, where required by 5 USC 7106, 7114 and 7117, and other applicable government-wide laws and regulations prior to implementation of any policies, practices and/or procedures.

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

Section a. In prescribing regulations relating to personal policies and practices and to conditions of employment, the Employer and the Union shall have due regard for the obligation imposed by 5 USC 7106, 7114 and 7117. The Employer further recognizes its responsibility for informing the Union of changes in working conditions at the local level.

Section b. On matters which are not covered in supplemental agreements at the local level, all written benefits or practices and understandings between the

parties implementing this Agreement which are negotiable, shall not be changed unless agreed to in writing by the parties.

Section c. The Employer will provide expeditious notification of the changes to be implemented in working conditions at the local level. Such changes will be negotiated in accordance with the provisions of this agreement.

ARTICLE 6 – RIGHTS OF THE EMPLOYEE

Section b. The parties agree that there will be no restraint, harassment, intimidation, reprisal, or any coercion against any employee in the exercise of any employee rights provided for in this Agreement and any other applicable laws, rules and regulations including the right:

2. To be treated fairly and equitably in all aspects of personnel management:
6. To have all provisions of the Collective Bargaining Agreement adhered to.

ARTICLE 7 – RIGHTS OF THE UNION

[b] In all matters relating to personnel policies, practices, and other conditions of employment, the Employer will adhere to the obligations imposed on it by the statute and this Agreement. This includes, in accordance with applicable laws and this Agreement, the obligation to notify the Union of any changes in conditions of employment and provide the Union the opportunity to negotiate concerning the procedures which Management will observe in exercising its authority in accordance with the Federal Labor Management Statute.

ARTICLE 18 – HOURS OF WORK

Section r. Normally, nonprobationary employees, other than those assigned to sick and annual relief, will remain on the shift/assignment designated by the quarterly roster for the entire roster period. When circumstances require a temporary (less than five 5 working days) change of shift or assignment, the Employee will make reasonable efforts to assure that the affected employee's days off remain as designated by the roster.

ARTICLE 27 – HEALTH AND SAFETY

Section a. There are essentially two [2] distinct areas of concern regarding the safety and health of employees in the Federal Bureau of Prisons:

1. the first which affects the safety and well being of employees, involved the inherent hazards of a correctional environment: and
2. the second which affects the safety and health of employees, involves the inherent hazards associated with the normal industrial operations found throughout the Federal Bureau of Prisons.

With respect to the first, the Employer agrees to lower those inherent hazards to the lowest possible level without relinquishing its rights under 5 USC 7106. The Union recognizes that by the very nature of the duties associated with supervising and controlling inmates these hazard can never be completely eliminated.

With respect to the second, the Employer agrees to furnish to employees places and conditions of employment that are free from recognized hazards that are causing or likely to cause death or serious physical harm in accordance with all applicable federal laws, standards, codes, regulations and executive orders.

BACKGROUND²

On May 2, 2005 the Agency received a note from the then Union Vice-President (Jorge Rivera) portending to be *"an attempt at an informal resolution to avoid filing a formal grievance ... for violations of the Collective Bargaining Agreement, all other government-wide rules and regulations ..."*

"On March 28, 2005 and continuing, the Agency, by the action of several management officials at MDC, Guaynabo, have implemented various cost saving initiatives by making adjustments in the workforce. These managers have dramatically increased the inherent hazards associated with supervising and controlling inmates within a correctional environment, by vacating positions on the newly applied Mission Critical Custodial Roster. In addition, management has also

² The "Background" to this entire matter, can more or less best be set forth by quoting directly from the Agency's brief (page 3).

raised the ratio of inmates per Case Manager and Counselors from 140 case loads per staff to over 300 case loads per Case Manager and Counselor. Management has also changed inmate sick call procedures in the Health Services Unit from four times a week to scheduled appointments that have been increasingly cancelled to reassignment of Mid-Level Practitioners. The extreme measures the Agency has taken in order to eliminate overtime, have drastically increased the inherent hazard throughout the institution and have not reduced the dependence of the Department to cover custody posts.

The Union contends that Management at MDC Guaynabo has gone beyond the Director's key objective to continue to operate a safe and secure prison. The Director's message was to first establish posts that would be vacated only under rare circumstances; reduce the reliance of other departments to cover costly posts and to substantially reduce overtime costs. Management officials at MDC Guaynabo have distorted the Director's message of reducing overtime to alienating it and risking the lives of the Agency's most valuable resource, its employees.

In order to avoid filing a formal grievance with the Regional Director, the Union requests and urges you to cease and desist of vacating posts on the newly applied Mission Critical Roster ..."

On May 17, 2005, the Agency responded to the Union. Associated Warden Ledezma, making specific reference to the Union's May 2, 2005 memorandum, reiterated the Union concerns advising: "*... we have taken affirmative steps to ensure that Lieutenants are not vacating custody posts. They have been provided written guidance consistent with our objective of not vacating Mission Critical Posts; with respect to case loads, we have no evidence that the care load for Case Managers and Counselors have been raised to 300. In a memorandum dated May 12, 2004, Warden Chavez sent you the proposed Case Manager Placement Program which addresses the distribution of case loads. Finally, with respect to the sick call procedures, Warden Chavez has scheduled a meeting with the Union and Management to examine the sick call process.*

Your request for Management to cease and desist vacating posts on the newly applied Mission Critical Roster has been evaluated and we continue to monitor this area very carefully to avoid vacating posts.

I trust this addresses your concerns....."

On July 7, 2005, the Union filed the instant grievance with the Southeast Regional Director.

The formal grievance followed in most part the May 2, 2005 Memorandum submitted by the Union, expanding the details somewhat. Specifically, stating that

Harley Lappin, the Federal Bureau of Prisons Director, advised on January 5, 2005 that "... he will notify staff across the Bureau about his projected cost saving initiatives ..." initiatives that would reduce the reliance of other Departments to cover custody posts and substantially reduce overtime costs associated with filling vacancies.

POSITIONS AND ARGUMENTS

The informal grievance, filed on March 28, 2005, contended that "*Michael Smith, under the Director's initiative created and implemented the quarterly Mission Critical Services Roster, and that by increasing the sick and annual relief posts on the Corrections Service Roster, Correctional Supervisors are able to fill all Mission Critical Posts and substantially reduce overtime costs and the dependence of reassigning non-correctional staff ...*"

The Agency's August 31, 2005 response rejected the grievance on procedural grounds, contending that it lacked specificity and that it was not timely processed.³

The grievance continued on, alleging that "*as a result under the directive of Ricardo Chavez, Warden, the Agency has increased the inherent hazards associated with supervising and controlling inmates within a correctional environment. Shift Supervisors continue to vacate, reassign officers, and/or simply not fill all missing critical posts in an effort to avoid paying overtime ...*"

³ Both of these contentions were disposed of in the "Arbitrability" phase of these proceedings. The undersigned arbitrator held that the grievance was timely filed and contained sufficient specificity for the Agency to process the grievance and proceed. The response did not delve into the merits.

It was further argued by the AFGE, that pursuant to Article 4, Section [C] and Article 7 [b] any changes in working conditions must before implementation be the subject of negotiations.

Smith's actions, taken as a result of the Director's mandate, violated, it was contended, both such portions of the Master Agreement, and that, same in addition violated Article 27, Section a [2] as it increased the inherent hazards involved rather than reducing same to the contractually required "lowest possible level".

The Union on point acknowledged that hazards can never, in a correctional institution be entirely eliminated, that same must to an extent exist. The Union did not look to eliminate all inherent hazards, seeking instead, not to increase same.

The vacating of Mission Critical posts appears, the Union argued, to have an effect directly opposite the Master Agreement's expressed intent.

The Agency argued that under the Collective Bargaining Agreement, the reassignment of employees from one post to another is a Management right based upon Article 5 and USC 7106[a] which states that Management has the right to assign personnel.

The Agency further took the position that under 5 USC 7106[a] and Article 5 of the Master Agreement it is given the exclusive right to "determine internal security practices" and that Management must make daily decisions to insure that they provide the best possible security and safety to the public, to the staff, and to the inmates.

It was the contention of the Agency that the issue goes beyond the Union's belief that the Agency can or cannot vacate posts, but whether the Agency is vacating posts to avoid the payment of overtime. In this vein the Agency argued it paid out some \$525,000.00 in overtime costs in 2005 and \$287,000.00 in 2006.

The Agency took the position that the grievance lacked specificity in [1] that the grievance failed to indicate what if any, article of the master agreement was violated by the Agency; [2] what portions of 5 USC Chapter 71 was violated by the Agency; and [3] that the union failed to indicate what other applicable government-wide rule, regulation or policy it allegedly violated.

The Union contended that the question of vacating posts was decided when Arbitrator Craig E. Overton rendered an award directing the Agency to cease and desist from vacating posts; that leaving posts vacant without using overtime violated the parties' agreement.⁴

⁴ AFGE Local 4052 vs. Dept. of Justice, Federal Bureau of Prisons, MDC, Guaynabo, PR (FMCS # 99-11423). The Agency accepted the award and on July 18, 2001 complied with the arbitrator's award, reiterating their objective of not vacating posts [Exhibit # 1, Tab 16]. Said exhibit indicated

The Union contended that the Agency, on May 28, 2005, began to vacate posts on Mission Critical Correctional Service Roster in order to solely avoid paying overtime.

That the parties recognized their contractual obligations to endeavor to settle and resolve pending problems, even before a formal grievance is filed, is best evidenced by Associate Warden Ledezma who advised: *"We have taken affirmative steps to insure that lieutenants are not vacating custody posts. They have been provided with written guidance consistent with our objective of not vacating mission controlled posts".*⁵ This, the Union argued constituted a comprehensive response to its concerns, and it considered the matter settled.

Warden Ledezma [TR 22-23] indicated that he considered the matter "settled" as did Fernando Blanco, former Union President, who testified that the Agency provided a positive response and took corrective measures pertaining to mission critical posts.

In spite of the Agency endeavors, problems were not, it was alleged, totally under control, resulting in Associate Warden Eddy Mejia, on June 8, 2005, [EX U-1, Tab 9] issuing a memorandum to the Union, apparently resolving the dispute. Said memorandum stated:

that if the vacating practice continued, those responsible for the vacating might be subjected to disciplinary action "for failure to follow instructions of a supervisor".

⁵ Union Exhibit 1, Tab # 8 which made reference to other AFGE problems including "Case Load for Case Managers and Counselors ... Distribution of Case Loads ... Sick Call Procedures"

"With respect to your first assertion, Management has taken assertive steps to insure that lieutenants are not vacating mission critical posts in the correctional services roster. Corrections services supervisors have been provided written guidance consistent with our objective of not vacating mission critical posts. With regard to case loads, your claim that case loads for case managers and counselors has been raised to 300 cannot be substantiated. In a memorandum dated May 12, 2004, the Warden forwarded a proposed Case Manager Placement Proposal to the Union, which addresses the distribution of case loads. Finally, with respect to the sick call procedures, the Warden held a meeting with the Union and Management to examine the sick call process."

When the alleged violations continued, the Union contended that the Southeast Regional Director (Ray Holt) responded, while still rejecting the grievance, not on the merits but solely on timeliness and procedural grounds wrote that he wanted to provide information that would further labor management relations. [Ex U-1, Tab 14] and indicated:

"That Management has taken steps to insure lieutenants are not vacating custody posts. That corrective steps have been put in place to assure qualified staff will supervise inmates during the operation of power house equipment. That Warden Chavez had advised Management officials to follow appropriate procedure in assigning and compensating employees for overtime worked."

The Union further took the position that the contract contains no language that prohibits the filing of a grievance to enforce a resolution and settlement of a previous grievance, once the Agency engages in repudiation, and that it is thus well within its rights to pursue enforcement of the 2001 Craig Overton award [FMCS 99-11423] which pertained to the subject of Agency Vacating Posts.

The Union argued that the Agency's unjustified, unwarranted actions denied making the Grievant's whole so far as remedy goes, (as is the case under

amicable settlement of both informal and formal grievances). If not repudiated, the Union argued, its members would have been properly compensated for their overtime work.

DISCUSSION AND OPINION

There is no question but that the Agency, through its Warden and other officials must make daily decisions, decisions which they hope will provide the best possible security and safety to all concerned, the staff, the public and the inmates. These decisions should not have the result of increasing an already inherently hazardous environment. A result that vacating Mission Critical posts could very conceivably achieve.

There can be no argument as to whether or not the Agency can vacate and/or eliminate posts. It can! Whether or not it can do so solely for the purpose of avoiding, reducing or curtailing the payment of overtime is an entirely different matter, especially where the safety of all becomes a concern.

Warden Ledezma's repeated assurances: *"We have taken affirmative steps to insure that Lieutenants are not vacating posts. They have been provided with written guidance consistent with our objective of not vacating mission critical posts"* were enough to satisfy the Union. It accepted such assurances as the "resolution" or "settlement" of the problem. Contractually, the Agency had to honor its proffered peace offering.

It is most interesting that the Agency, in its communications with the Union, in its efforts to amicably resolve the matter actually appears to have been successful, but that underlings paid little or no heed thereto.

Warden Ledezma and former Union President Blanco apparently considered their joint efforts as having been fruitful, and both considered the matter as having been amicably resolved. Notwithstanding, apparent alleged violations continued to surface. Talks resumed. Assurances of compliance and restraints were issued by Agency representatives, but alleged violations apparently continued.

There is little doubt but that the Warden, the Regional Director and the Union considered the matter to be resolved. Steps had been taken to insure that custody posts were not to be vacated ... steps were in place to assure that qualified staff would supervise inmates during the preparation of Powerhouse equipment.

The Agency, even while disputing the instant grievance, based upon both timeliness and procedural grounds, repeatedly reiterated the steps that it had taken, steps which it, and the union, agreed would settle the matter if adhered to. Aside from questioning whether the grievance was specific enough, or whether the Union had furnished sufficient specific details to enable it to understand and pursue a means towards an amicable resolution, the Agency repeatedly affirmed its positive actions to address the Union's concerns. It is most interesting to note

that never did the Agency specifically deny the allegations enumerated by the Union. Its actions acknowledged the legitimacy of the Union's contentions.

There is little question but that the Agency violated sundry Collective Bargaining Agreement provisions when it repudiated or refused to follow previous arbitrator awards or refused to implement what could be deemed to be binding settlement agreements.

Likewise, there can be little, if any, doubt that leaving posts vacant, especially mission control posts, ultimately raises the inherent hazards associated with supervising and controlling prison inmates which would be a direct violation of the parties' master agreement.

Can the Agency be accused of endeavoring to curtail the expenditure of overtime, when it did in fact spend over \$800,000.00 in overtime over the past two years? The Union offered no estimate or data on the amounts of overtime expended in prior years.

There is no question but that the Union's contractual benefits, including entitlement to overtime compensation, were stepped on by the Agency. If this was not the case, the Agency would not have made repeated assurances to the Union regarding directions pertaining to Management's vacating posts. There would have been no need to admonish and warn upper echelon officers against

“vacating posts” unless there was no question but that such happenings had occurred. If there has been no such endeavor, no such result, it would have been far simpler to merely deny the grievance solely on its merits rather than to attack the filing on timeliness and procedural grounds.

In order to receive an award that requires back pay under the Back Pay Act [5 USC 5596], the Union must first prove that an employee (or group of employees) were subjected to an unjustified personal action, and as a direct result suffered a loss of wages, allowances or differentials. It has at times been deemed that a contractual violation of the Collective Bargaining Agreement may be considered as an unjustified, unwarranted and personal action. In this vein, the Union argued that but for the Agency's inability to deliver on its proffered settlement, its members would not have lost the opportunity to avail themselves of overtime contractual benefits.

In 2005 [FMCS # 04-0588] in a case involving the same parties as involved in this grievance, Arbitrator William Holley ordered back pay.

The undersigned is well aware of the fact that no specific funds for payment of overtime were requested or budgeted for. Even though no funds were allocated for this item, there is no question but that the Agency was fully aware of its contractual responsibilities to provide necessary coverages. Budget Analyst Angel Jaime confirmed that the Agency has the available resources to provide the

necessary coverages on an overtime basis, if and when vacancies occur, and that it is not necessary to include a particular budget item in order to comply with its admitted obligations to fill posts left vacant.

A careful examination of the Collective Bargaining Agreement fails to divulge any contractual provision that allows the Agency the right not to fill a position or post unless the necessary funds have been allocated in the budget.

To allow lower level management personnel to ignore and/or disregard agreements made by superiors, agreements that are binding upon the parties would severely hinder if not totally destroy the basic principles of what is intended not only by fair labor management relations, but by the very terms of the Master Agreement.

The undersigned arbitrator is somewhat hesitant to direct that specific back pay be awarded to all employees, because of the Agency's admitted desire to curtail (though not to eliminate) the payment of overtime. Why the hesitation? Because no testimony was offered precisely as to how many incidents involved specific individual officers.

There can be no question but that the Agency would be well within its rights to challenge and contest any remedy that directs back pay to a group of employees

compensatory time in lieu of overtime pay, not only violated the Collective Bargaining Agreement but indicated possible and potential future Agency actions.

3. That the Agency cease and desist in its efforts [1] towards vacating Mission Critical Posts, and [2] using unqualified personnel to man Powerhouse Area positions, and [3] compelling the use of compensatory time off in lieu of properly computed overtime compensation.

4. That the parties within sixty days of this date negotiate and amicably arrive at a "back pay" compensatory package.

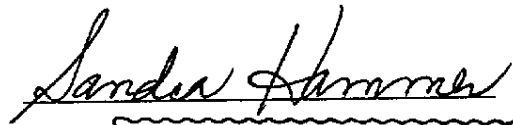
5. That the failure to amicably resolve the "back pay" issue under #4 above, the matter be referred back to me for the purpose of a full formal hearing on the remedy question only.

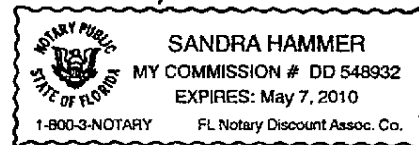
Dated: Boynton Beach, Florida
May 3, 2007


LAWRENCE I. HAMMER

State of Florida)
 SS:
Palm Beach County)

On the 3rd day of May, 2007 before me came Lawrence I. Hammer, to me known and known to me to be the person who executed the foregoing arbitration award and he duly acknowledged to me that he did execute the same.





FEDERAL MEDIATION AND CONCILIATION SERVICE

In the matter of:

AMERICAN FEDERATION OF :
GOVERNMENT EMPLOYEES, :
LOCAL 4052 :

Union, :

FMCS Case Nos.: 2005-05708

and :

UNITED STATES :
DEPARTMENT OF JUSTICE, :
FEDERAL BUREAU OF PRISONS :
METROPOLITAN DETENTION CENTER :
GUAYNABO, PUERTO RICO :

Agency. :
_____ :

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between the U.S. Department of Justice, Bureau of Prisons, Metropolitan Detention Center, Guaynabo ("MDC Guaynabo" and/or "Agency") and the American Federation of Government Employees Local 4052 ("Union") in resolution of the above-referenced grievance, filed July 7, 2005, concerning the Agency's failure to pay overtime compensation pursuant to the Fair Labor Standards Act ("FLSA") and/or Title 5 of the U.S. Code. In full and complete settlement of the above-referenced grievance, the parties by and through their undersigned representatives, freely and voluntarily agree to the terms outlined in this agreement.

1. Coverage

Grievants are present and former bargaining unit members of the Bureau of Prisons with a duty station of MDC Guaynabo. The grievants covered by this settlement warrant and represent that no other action or suit with respect to the claims that are set forth in this grievance

covered by this settlement agreement will be filed in or submitted to any court or any administrative forum including but not limited to, the General Accounting Office or the Office of Personnel Management for the time period that this grievance covers. By agreeing to accept payment under this settlement, the grievants agree to waive any right or entitlement to pursue or collect payment for any FLSA claims covered by this grievance and/or the award in this matter for the time period of March 28, 2005 through September 25, 2008.

2. Lump Sum Payment

The Agency shall provide the a lump sum settlement amount of \$198,500.00 to distribute to bargaining unit employees participating in the grievance. This lump sum is in full settlement of any and all costs and damages associated with this grievance. The Union shall determine how to distribute the lump sum amount among the grievants participating in the grievance.

3. Payment Timetable and Method for Payment of Lump Sum

All efforts will be made to make a lump sum payment by an electronic funds transfer or a single check made payable to the Union, within thirty (30) days of the date that this settlement agreement is fully executed. The failure to do so will not constitute a breach of this Agreement. The Union will be responsible for distributing to each grievant his/her respective share, as due, of the lump sum amount in accordance with the Consent/Retainer Agreement previously executed by each of the grievants. The parties agree that this settlement agreement does not determine the amount of any income tax or any other taxes for which the grievants or beneficiaries may be liable now or in the future as a result of this Agreement. The Union agrees that its individual members will be responsible for any federal, state, or local tax liability arising from the payment of the amounts set forth in the settlement, and that they will hold the Agency harmless from any liability for such taxes which may be owed on account of payment from this

settlement. After making any distribution to the grievants or their beneficiaries, all required forms will be submitted by the Union to the Internal Revenue Service (IRS) for each Grievant or beneficiary. The Union will be responsible for distributing all required federal tax forms to the grievants. These tax forms must be sent in accordance with Federal tax regulations.

4. Interest

In the event that the Agency fails to pay the amount of \$198,500.00 on or before the expiration of the sixtieth (60th) day after the date this settlement agreement is fully executed, interest shall begin to accrue on the amount owed beginning on the sixty-first (61st) day after the date this settlement agreement is fully executed. Interest will accrue in accordance with the formula prescribed under the Back Pay Act, 5 U.S.C. §5596(b)(2)(A), and by the Office of Personnel Management in FPM Letter 550-78. The interest shall be computed at the rate or rates in effect under Section 6621(a)(1) of the Internal Revenue Code of 1986 and shall continue to accrue until the Agency transmits the lump sum amount to the Union in accordance with paragraph 3 above.

5. Release From Claims Related to Settlement.

The Union and the Agency understand and agree that in consideration for the payments made by the Agency and the Agency's compliance with the terms of this Agreement, the Union remises, releases and forever irrevocably discharges the United States government, the Bureau of Prisons, the Agency and their officers, agents and employees, and each of them, separately and collectively, from claims for FLSA and/or Title 5 overtime compensation arising from the award granted in this matter.

6. Waiver

In consideration for the payments made and the promises provided herein the Union will not sponsor any arbitration or individual grievances seeking overtime compensation or any other relief related to this grievance and/or the award in this grievance for the time period of March 28, 2005 through September 25, 2008.

7. Extensions

Any of the deadlines set forth in this agreement may be extended by mutual agreement of the Union and the Agency.

8. Authority of the Parties

This Agreement is made solely for the purpose of settling this grievance and permitting entry of final resolution of this grievance, specifically FMCS No. 2005-05708. The parties agree that this Agreement shall not be cited as precedent, and may not be cited, published, or referenced by either party as justification for their respective positions or referred to in any other proceeding, whether judicial or administrative, for any purpose other than to enforce the terms of this Agreement. The parties recognize that it is in their respective interests to resolve these disputes through this settlement.

9. Completeness of Agreement

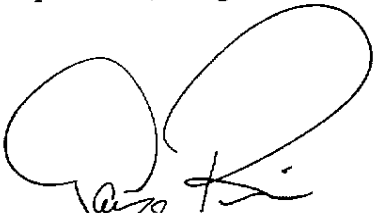
This document constitutes the complete terms of the settlement and supercedes any and all prior oral or written representations, understanding, or agreements between the parties to this agreement.

The Union's representative of record represents that he is authorized to enter into this Agreement on behalf of AFGE Local 4052, which has full authority to enter into this agreement

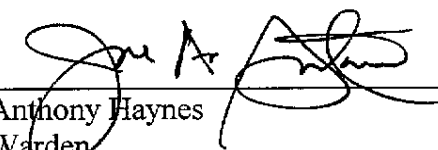
and to make the promises, obligations and considerations contained herein. The Agency's signatory represents that he is authorized to enter into this Agreement on behalf of the U.S. Department of Justice, Bureau of Prisons, MDC Guaynabo, which has full authority to enter into this agreement and to make the promises, obligations and considerations contained herein.

10. Authority of the Parties

The parties agree that they have full authority to enter this agreement and to make the promises, obligations and considerations contained herein.

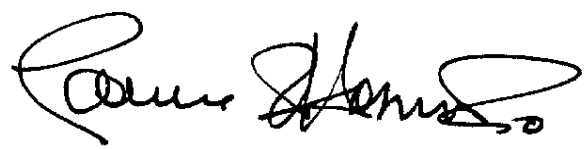


Jorge Rivera
President AFGE Local 4052
Date: 9-5-08



Anthony Haynes
Warden
Date: 9/25/08





Fmcs