

Standards Act (FLSA). This case was decided on April 4, 2007, with the following award.

DECISION AND ORDER

- 1. The issue is properly before the Arbitrator for decision.**
- 2. The Bureau of Prisons violated the Master Agreement and Fair Labor Standards Act by its failure to compensate Correction Officers for preparatory work prior to their scheduled shifts and concluding work after the end of their scheduled shifts.**
- 3. Upon receipt of this decision, the parties are directed to promptly appoint a joint Union/Management Committee. The Committee will research and review all relevant records, logs, video tapes and any appropriate documents available. The purpose of this review is to determine which Officers will be compensated and how much compensation is due the Officers.**

This research and review will require considerable time and effort and is to be performed during duty hours by the Union members of the Committee. The research and review will be of payroll records, logs, video tapes and any relevant data for the period of two (2) years preceding the November 28, 2005 filing of the grievance.

- 4. It is expected that the Union and Employer will determine on the basis of the above review the amount due the affected Officers and how they are to be compensated. It is directed that such compensation be paid as soon as practical upon completion of the Committee's work.**

If there is any dispute as to the remedy in this Decision and Order, the Arbitrator will retain jurisdiction until it is implemented and the matter is resolved.

Union Argument

The Union contends that the Agency is deliberately attempting to circumvent the arbitrator's decision by refusing to grant sufficient official time to Union representatives required to complete the review of the required documents. The Agency has allowed the Union only one representative to research and review the documents approximately 8 hours per month on average. At present the Union has completed the review of approximately 10,000 entries out of approximately 100,000 total entries.

The Union further contends that the Agency has failed to comply with the arbitrator's order that they share in the labor of researching and reviewing the required documents. The Agency has attempted to use the "joint committee" to dictate to the Union how and when the review may be performed. The Agency has no interest in resolving this issue in a timely manner for obvious financial reasons. Expecting Agency representatives to act honorably in this matter is unreasonable because they may not be held personally responsible for their actions or lack of actions. In fact, they are generally rewarded by the Agency for delaying payment in cases such as this.

An additional problem is that not all Officers have log books for their assigned posts. This results in many of the affected staff not being compensated for their overtime worked, since the work is not documented by the Agency as per the law.

For the above reasons the Union requests that the arbitrator revise his decision in this case to provide closure and allow the Correctional Officers to receive

the overtime they are owed. The Union requests that the arbitrator revise his decision in one of the following ways:

1. Order the Agency to pay the Correctional Officers a total of \$500,000.00 for the period in question or ten minutes per shift plus damages and interest to each Officer for each shift worked. The money should be paid out by the Agency within 90 days of the arbitrator's order. The Agency should be made responsible for paying the Correctional Officers, as the Agency has the means to locate and distribute the funds. The Union's review of the log books indicates that the amount is justified.

Or

2. Order the Agency to place a minimum of three Union representatives on 100% official time, along with an equal number of Agency representatives, until the research and review of the required documents are completed. The Union requests that the research and review be completed within 90 days of the arbitrator's order. If either party has failed to complete the research and review within the ordered time period both parties will submit their work to the arbitrator for a decision on an overall amount to be awarded.

The Union realizes that the arbitrator may need to make adjustments to the requested remedies in order to make them more effective and binding. The suggested remedies above are simply to provide ideas for a revised award that is more enforceable.

Conclusion

The Union contends that the current award is too ambiguous to force the Agency to abide by the conditions imposed. As it stands now, the Agency will never pay the Correctional Officers the back pay owed. The Agency will continue to refuse to allow the Union sufficient official time to complete the research and review of the log books and other documents. The only way to resolve this issue is to order the Agency to pay a specified amount of money or order the Agency to grant 100% official time to at least three Union representatives and a matching number of Agency representatives until the work is completed, or with a designated completion date.

Respectfully submitted,



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Date: 06-11-09

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2009, a true and exact copy of the foregoing UNION'S Request for a Revised Award was placed in the First Class Mail of the U.S. Postal Service, postage prepaid, addressed to the following:

**John R. Swanson, Arbitrator
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