

In the Matter of

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
Miami, Florida

and

LOCAL 3690, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 1

ARBITRATOR'S OPINION AND DECISION

The Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Miami, Florida (Employer) and Local 3690, American Federation of Government Employees, AFL-CIO (Union) jointly filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119.

After an investigation of the request for assistance, which arises from bargaining over ground rules for conducting labor-management relations (LMR) meetings, the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on January 4, 2011, a mediation-arbitration proceeding was held via teleconference with representatives of the parties. During the mediation phase, the parties were unable to voluntarily resolve all of the outstanding issues. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and post-hearing statements of position.

BACKGROUND

The Employer operates a low security facility that houses male inmates; its mission is to protect public safety by ensuring that Federal offenders in its custody serve their criminal sentences in a facility that is safe, humane, cost-efficient and appropriately secure. The Union represents a bargaining unit consisting of approximately 200 General Schedule and Wage Grade employees, both professionals and non-

professionals. The parties are covered by a master collective bargaining agreement (MCBA) that was to have expired on March 8, 2001; however, its provisions remain in effect until a successor agreement is implemented.

For several years, the parties have convened LMR meetings on the 3rd Thursday of each month. Since October 2009, the practice was abandoned because of increasing frustration over the conduct of the meetings and the failure to achieve resolutions of issues that have been placed on the meeting agenda. To help remedy the situation, the Union proposed, and the Employer agreed to have ground rules for the meetings, which may result in more productive sessions. The dispute herein arose during bargaining over ground rules.

ISSUES AT IMPASSE

The parties disagree over: (1) official time for Union representatives to attend LMR meetings; (2) the attendance of department heads at LMR meetings; and (3) a reopener provision for the ground rules agreement.

POSITIONS OF THE PARTIES ^{1/}

1. Official Time

The Union proposes the following:

Upon the Union's request, delegated Union representative(s)/member(s) will be allotted a reasonable amount of official time, mutually agreed upon by both parties, to prepare for these negotiations in advance. Management will take into account such factors as security and staffing requirements and will ensure that no overtime cost will be incurred. The Warden and the Union President will be made aware of all agenda item(s) prior to the LMR meeting.

Management's and the Union's LMR Chair persons will have authority to discuss and resolve any agenda item(s) or pressing issue(s) submitted by the Management and/or the Union. Either party requesting additional time should be prepared to resolve the issue(s) at the next LMR meeting. Any issue(s)

^{1/} Only the wording below in bold type is in dispute.

resolved will be documented in the LMR Meeting Minutes and signed by the representatives of both parties, prior to any resolution(s) being implemented.

The Employer proposes the following:

Upon the Union's request for official time, a specified number of hours will be allotted by the mutual agreement of Management and the Union's Chairpersons. The Warden and the Union President will be made aware of all agenda items prior to the LMR meeting.

The Management and the Union will have authority to discuss and resolve any agenda item(s) or pressing issue(s) submitted by the Management and the Union. Either party requesting additional time should be prepared to resolve the issue(s) at the next LMR meeting. Any issue(s) resolved will be documented in the LMR Meeting Minutes and signed by the representatives of both parties, prior to any resolution(s) being implemented.

The Union contends that its proposal, which would allow "Union representative(s)/member(s) to be afforded a reasonable amount of official time, would ensure that the Union's presence at an LMR meeting is not restricted to a single representative on official time. In this regard, official time may be needed for more than one Union representative at the meeting to assist in the discussion and presentation. The Employer argues that during a meeting between the parties on January 13, 2011, to informally resolve the issues, the Union agreed to accept the Employer's proposed wording. The Union, having apparently recanted, should have the provisions imposed upon it.^{2/}

2. Attendance of Representatives at LMR Meetings

The Union proposes the following:

A concerted effort to informally resolve issues will be attempted per Article 31, to avoid the filing of formal grievances. If needed, any additional LMR meetings may be scheduled to avoid the holdover of any issue(s) that may arise. (e.g., 3, 5, 7 or 10 days).

^{2/} The record does not reflect evidence that the parties signed off on the provisions now proposed by the Employer.

In the event the informal procedures do not resolve the issue during the informal process, the Union may place an **item(s)** on the agenda before the LMR Meeting; and Management shall provide the responsible **department head/supervisor** to be present during the meeting(s) to assist in resolving the issues.

The Employer proposes the following:

A concerted effort to informally resolve issues will be attempted per Article 31, to avoid the filing of formal grievances. If needed, **suspense dates may be set to avoid tabling of an issue** (e.g. 3, 5, 7 or 10 days).

In the event the informal procedures do not resolve the issue during the informal process, the Union may place the **item** on the agenda before the LMR meeting. Management shall provide the responsible **management official** to be present during the meeting **upon the Union's request** to assist in resolving the issue(s). **Only two management officials can be requested to provide the clarification per meeting, unless mutually agreed on by Management and the Union's Chairpersons.**

Essentially, the Union argues that the parties' failure to achieve resolution of matters during LMR sessions is due to the absence of management officials who are able to "make things happen." Meetings have disintegrated into filibuster sessions by labor relations professionals who spew "rhetoric" and lack decision-making authority. The Union contends that it cannot "get any answers" because the "right persons" are not in attendance and, in fact, nothing has been resolved during LMR meetings since 2006. The Employer's position is that while it is willing to have ground rules, the Union does not have the right to compel a manager to be at the table. One reason management does not want department heads to attend LMR meetings is that, in the past, Union representatives have been hostile and verbally abusive to them, creating an atmosphere that is not conducive to any sort of resolution. Also, the Union has the habit of placing items on the agenda which were never the subject of informal resolution efforts; therefore, the department heads would learn of these issues for the first time at the LMR meeting and would be "blind-sided." While there are times when it would be appropriate for a department head to

attend an LMR meeting, the Employer should make that determination, not the Union.

3. Reopener Provision

The Union opposes including a reopener provision in the parties' ground rules agreement.

The Employer proposes the following wording:

It is understood that upon the arrival of a new Warden, the LMR Ground Rules may be re-negotiated at the Warden's discretion. However the current one will remain in effect until the new Ground Rules have been implemented.

The Union maintains that there is no need to renegotiate ground rules for LMR meetings every time a new Warden comes on board. Doing so would deny the parties closure on what has become a protracted bargaining process. Furthermore, the Employer's proposal would give a new Warden total discretion to reopen the ground rules agreement, which is not only unfair, but contravenes a provision already agreed upon by the parties that requires mutual consent to modify the ground rules for LMR meetings. Management maintains that a new Warden should be given the opportunity to revisit the parties' ground rules agreement to propose changes based upon the Warden's experiences at other correctional institutions which both parties may find beneficial.

DISCUSSION

It is evident the parties' bargaining relationship is impaired. Here they are unable to agree on how to go about dealing with one another, casting considerable doubt on whether they even understand how to engage in cooperative labor relations. Responsibility for this state of affairs rests with both parties and it is apparent that, until they improve their approach to labor management relations, simply resolving this dispute will not likely make a substantive difference in their dealings with one another.

With regard to the official time dispute, both proposals present potential implementation problems. Leaving the amount of time to the parties to "mutually" decide is the surest possible way to invite on-going disputes. The parties should, at a minimum, establish a pre-authorized amount of time and

allow for increases based on good cause and mutual agreement. Any disputes could be resolved through expedited arbitration. Notwithstanding these reservations, I find the Union's proposal the better of the options. Both proposals imply that the nature of an issue will help define the amount of time to be allowed, but the Union approach has the advantage of a "test" establishing security and staffing as factors in determining the reasonableness of an official time request. The Union's proposal shall be adopted. The parties are encouraged to discuss amendments to the proposal following its adoption.

Concerning the attendance of officials at various meetings, it is apparent these meetings are conducted within the framework of collective bargaining, and each party has the obligation to deal in good faith with the other. This includes the obligation to be represented by persons having the authority to discuss and resolve issues. Both parties believe this obligation requires either a Department Head or "responsible" management official be present at the LMR meetings. The parties shall adopt the Union's proposal, amended to read "or appropriate other representative having the knowledge and authority to substantively discuss and resolve the agenda item." This will ensure the Agency can determine whether the requested official is best suited to serve at the meeting. All other aspects of the Union's proposal are adopted.

With respect to the reopener provision, the parties shall include a reopener clause that allows for reopening the groundrules by mutual consent or upon notice by either party in connection with the expiration of the Master Agreement. There is no good reason to rest the existence of ground rules on the duration of a warden's tenure. Certainly a new warden may suggest changes to ground rules, and the Union may agree. However, the ground rules are not the equivalent of local policies and should not be treated as such.

DECISION

1. Official Time

The parties shall adopt the Union's proposal.

2. Attendance of Representatives at LMR Meetings

The parties shall adopt the following modification to the Union's proposals:

In the event the informal procedures do not resolve the issue during the informal process, the Union may place an item(s) on the agenda before the LMR Meeting; and Management shall provide the responsible department head/supervisor or appropriate other representative having the knowledge and authority to substantively discuss and resolve the agenda item to be present during the meeting(s) to assist in resolving the issues.

3. Reopener

The parties shall adopt the following compromise wording:

The groundrules agreement may be reopened by mutual consent of the parties or upon notice by either party in connection with the expiration of the Master Agreement.



Thomas Angelo
Arbitrator

January 25, 2011
Mill Valley, California