UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 24-10

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS FEDERAL CORRECTIONAL INSTITUTION MENDOTA, CALIFORNIA RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1237, AFL-CIO CHARGING PARTY	Case No. SF-CA-22-0270

Kelli Black
Yolanda C. Shepherd
For the General Counsel

Michael F. O'Connell
For the Respondent

Aaron McGlothin
For the Charging Party

Before: LEISHA A. SELF
Administrative Law Judge

DECISION

For many years and through several iterations of national collective bargaining agreements between the American Federation of Government Employees and the Federal Bureau of Prisons, the local unions and local correctional facility management operating under them have negotiated local, midterm agreements regarding overtime procedures. In November 2021, AFGE, Local 1237 sought to do so with FCI Mendota. That institution however decided to challenge the status quo, and it declined the Union's request to bargain. FCI Mendota claimed that it could – but was not

required to – bargain over local overtime procedures, invoking the language of Article 18(p) of the collective bargaining agreement, which states that "[s]pecific procedures regarding overtime assignments may be negotiated locally." In other words, the Agency claimed that that contract language made bargaining over local overtime procedures optional and it opted not to bargain. After the Union submitted proposals, the Agency did not respond in any substantive way.

The Statute obligates agencies to bargain during the term of a collective bargaining agreement on negotiable union proposals not covered by the existing agreement, unless the union has waived its right to bargain about the subject matter involved. That obligation exists at the level of exclusive recognition but may be delegated to lower levels. Once appropriate delegation is established, the agency must respond to the lower-level bargaining request just as it would respond to a request from the exclusive representative. However, an agency may defend its refusal to bargain based upon a specific contract provision that allows such action.

In this case, in addition to its original claim that the contract allows it to refrain from bargaining, the Respondent also makes negotiability claims. It claims that the Statute does not require it to bargain over local overtime procedures because they are elective subjects of bargaining under § 7106(b)(1). It also possibly argues that the local overtime proposals are contrary to § 7106(a) of the Statute, involving management rights. Further, the Respondent possibly raises a "covered-by" defense, that is, a defense that the existing agreement covers the subject matter and therefore the Agency is not required to bargain over local overtime procedures.

I will first consider the Respondent's negotiability claims. Because the Respondent makes bare assertions only regarding negotiability under § 7106(a) and § 7106(b)(1), those defenses fail. Further, the Union's proposals resemble proposals which the Authority has found negotiable as procedures under § 7106(b)(2), an exception to management rights under § 7106(a). As such, they are appropriately found to be negotiable procedures under § 7106(b)(2). As well, the proposals are not subjects negotiable only at the Agency's election under § 7106(b)(1), as they do not regard "the numbers, types and grades of employees or positions" for work or "the technology, methods and means of performing work."

I will next consider whether contract language, most notably, Article 18(p), allows the Agency to refrain from bargaining over local overtime procedures. For a number of reasons based on contract interpretation, I find that Article 18(p) does not turn local overtime procedures bargaining into a matter requiring mutual consent, such that the Agency could decline. Instead, it simply provides a delegation from the national level to the local levels of the right to bargain over local overtime procedures. As such, Article 18(p) does not allow the Agency to refrain from bargaining over local overtime procedures. Nor does other contract language.

Finally, I will consider whether the existing contract covers the subject matter and thereby forecloses further bargaining. Under Authority precedent, where the contract "specifically contemplates bargaining," the "covered-by" defense will not lie. Such is the case here, as the contract specifically contemplate bargaining over local overtime procedures. As such, the Agency's refusal to bargain with AFGE, Local 1237 over local overtime procedures constitutes a failure to negotiate in good faith in violation of § 7116(a)(1) and (5) of the Statute.

I. Statement of the Case

This is an unfair labor practice (ULP) proceeding under the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7101-7135, and the Rules and Regulations of the Federal Labor Relations Authority (the Authority), 5 C.F.R. part 2423.

On March 16, 2022, the American Federation of Government Employees, Local 1237 (the Union or AFGE, Local 1237) filed a ULP charge (SF-CA-22-0270) against the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Mendota, California (the Agency, the Respondent or FCI Mendota). GC Ex. 1(a). After investigating the charge, the Regional Director of the San Francisco Region issued the Complaint and Notice of Hearing on June 28, 2023, on behalf of the Acting General Counsel (GC). GC Ex. 1(b). On July 18, 2023, the Regional Director issued the Amended Complaint and Notice of Hearing (amended complaint). GC Ex. 1(c). The amended complaint alleged that the Agency violated § 7116(a)(1) and (5) of the Statute when it refused to negotiate with the Union over specific procedures regarding overtime assignments, which the amended complaint alleges is a mandatory subject of bargaining under the Statute. GC Ex. 1(c).

The Respondent filed the Agency Answer to Complaint and Notice of Hearing (answer) on July 24, 2023. GC Ex. 1(d). In its answer, the Respondent admitted that the Union requested to negotiate over specific procedures regarding overtime assignments, but denied that the subject was a mandatory subject of bargaining, that the Agency had refused to negotiate with the Union, and that it had violated the Statute. *Id.* On November 15, 2023, the Respondent filed a Motion for Summary Judgment, which the GC opposed, and which I denied on December 8, 2023. GC Exs. 1(f), 1(g), 1(h).

A hearing was held on this matter on January 25, 2024, via the Microsoft Teams video platform. All parties were afforded an opportunity to be represented, to be heard, to introduce evidence, and to examine witnesses. The GC and the Respondent afforded themselves of these opportunities. However, the Union chose not to be represented at the hearing. The Union did so because, due to witness sequestration matters, the Union president, Aaron McGlothin, would otherwise not have been allowed to provide rebuttal testimony, if necessary. Another representative for the Union was not present to provide representation. The GC and the Respondent filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observations of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

II. Findings of Fact

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a nationwide consolidated unit of Federal Bureau of Prison (the BOP) employees, which includes employees of the Respondent. AFGE, Local 1237 is an agent of AFGE for the purpose of representing certain unit employees employed at the Agency.

The BOP and AFGE are parties to a nationwide collective bargaining agreement (CBA), which covers employees at FCI Mendota and other federal prison facilities. Jt. Ex. 1 at 2. The term of the CBA runs from July 21, 2014 – July 20, 2017, but the parties have extended it through May 2026 by amendment. *Id.* (cover page).

Aaron McGlothin is the president of AFGE, Local 1237. Tr. 16. In November 2021, McGlothin sought to engage in bargaining with FCI Mendota over local overtime procedures. Tr. 18; Jt. Ex. 2 at 1. He testified that his basis for doing so was Article 18(p) of the CBA, Tr. 19, which states that "[s]pecific procedures regarding overtime assignments may be negotiated locally." Jt. Ex. 1 at 47.

McGlothin wished to bargain overtime procedures at the local level because of changes in and problems with the way overtime was being distributed and handled at the local facility.[1] Tr. 18. The problems included such things as management arbitrarily contacting people for overtime and people getting bypassed for overtime. Tr. 24. To address these and other overtime problems, on November 9, 2021, McGlothin emailed Jesus Gomez, the labor-management relations chairperson (LMR chair) at FCI Mendota requesting to bargain. Tr. 62-63. McGlothin explained to Gomez that the Union wished to negotiate "overtime procedures at FCI Mendota" due to "[c]ontinuing issues with the fair and equitable distribution of overtime coupled with management's failure to remedy" these issues. He invited Gomez to "circle back with any questions or concerns." Jt. Ex. 2.

After receiving the email, Gomez "took input from everybody who would be part of the negotiation process," including FCI Mendota's warden, "to get their input in regard[] to the procedures." Tr. 67. The biggest question from them regarded the content of the procedures or changes that were being requested. *Id.*

Approximately a month after receiving McGlothin's email, Gomez responded with two emails. In the first, he notified McGlothin that "management does not wish to negotiate our local overtime procedures and will continue to follow the Master Agreement." He indicated that there was no duty to bargain because the CBA specified that the parties "may" negotiate locally, rather than using the word "will." Jt. Ex. 3. He was apparently referring to Article 18(p) of the CBA. Jt. Ex. 1 at 47. In the second, Gomez asked McGlothin "what changes regarding [o]vertime [p]rocedures the Union [is] requesting . . . not currently covered in the [CBA]?" Jt. Ex. 4.

McGlothin followed up in several ways. He had several conversations with Gomez, who maintained that the Agency was advised not to bargain. Tr. 21. Then, in an "attempt to get management to engage with the Union," McGlothin provided then-associate warden Jose Monarez with educational materials explaining when there is a statutory obligation to bargain. Jt. Ex. 5; Tr. 21-22. Monarez thanked him for sharing. Jt. Ex. 5. McGlothin also submitted bargaining proposals to associate warden Michel LeJeune. Tr. 22; Jt. Ex. 6. [2] The proposals he submitted

[1] The GC did not pursue this case under the theory that changes in conditions of employment triggered the obligation to bargain, but rather that the Agency had an obligation to engage in midterm bargaining over Union-initiated proposals. As such, the particular changes about which McGlothin testified were not a primary focus of his testimony.

[2] The proposals should have been dated January 18, 2022, but were dated 2021 due to a typographical error. Tr. 22.

were based on local agreements from other institutions, Tr. 23, and included, among other things, mandatory creation of an overtime sign-up roster for qualified employees, with rotation based on previous overtime worked or declined, with a declination being treated the same as overtime worked. Jt. Ex. 6 at 1-2. The Agency did not respond to the proposals. Tr. 25. Since then, the Union has continued to indicate interest in negotiating overtime procedures at the local level. Tr. 25.

Philip Glover testified for the GC about Article 18(p) of the CBA, to which Gomez was apparently referring in his email when he indicated that the Agency had no obligation to bargain. Glover was part of the AFGE negotiating team and a signatory to the current CBA, and was on the negotiating team for the 1998 collective bargaining agreement (1998 CBA) and the subsequent agreement. Tr. 40; Jt. Ex. 1 (signature page). Starting in 1992, he served in a number of union capacities while employed at the BOP. Those positions included AFGE local president at FCI Loretto, Pennsylvania, regional vice president of the Northeast Region for the Council of Prison Locals, and council president for the Council of Prison Locals, the nationwide unit. After that, Glover began work at AFGE as the national vice president, covering Pennsylvania and Delaware. Tr. 39-40.

Glover explained that the parties included Article 18(p)'s language that "[s]pecific procedures regarding overtime assignments may be negotiated locally" to delegate from the national level to the local levels the right to bargain over overtime procedures. He explained that that language needed to be in the CBA because the "certification is at the national level, the Bureau of Prisons Council, and the management of the headquarters is the level of recognition" and that is where the obligation to bargain lies. Therefore, in order to provide for bargaining at the local level, they had to authorize bargaining at that level. Tr. 48-49, 55.

Glover testified that the "may" language in Article 18(p) was not intended to allow either party at the local level to decline to bargain or to require mutual consent at the local level to bargain over overtime procedures. Tr. 50. He explained that, when the parties intended to require mutual consent, they used that term specifically. Tr. 48-50. As an example, he pointed to Article 42(b), which states that "[t]his [a]greement . . . may be extended in one (1) year increments thereafter by mutual consent of the parties." Tr. 49 (citing Jt. Ex. 1 at 90). The "mutual consent" language is not found in Article 18(p). *Id.*

Glover also explained the framework that AFGE and the BOP created in the CBA for overtime procedures and bargaining related to those procedures, in order to explain the meaning of Article 18(p). He explained that AFGE and the BOP did not bargain national overtime procedures in the CBA, other than to provide a general "overview of overtime." Tr. 43. He noted that an employee could not read Article 18(p) and understand how to sign up for overtime at their facility. Tr. 46. By contrast, in other parts of the CBA the parties laid out procedures to be applied locally, such as Article 18(d), which has a detailed, laid-out plan for how to create a correctional services quarterly roster. Tr. 47 (referring to Jt. Ex. 1 at 43-45).

Instead, for overtime, they chose to delegate bargaining to the local level, because the AFGE bargaining team felt that it was better handled at that level. Tr. 48. Glover explained that this was because the "facilities are very different. You have high security down to low security.

The physical plants are different. The staffing levels are different. And we felt that these things should be handled at the local level, and we made sure that that was the intent of the contract." Tr. 47.

Glover also provided examples of local agreements that reflected the differences that caused the national-level negotiators to choose to have overtime procedures bargained at the local levels. For example, in one local agreement negotiated under the 1998 CBA (with the same language as the current CBA's Article 18(p)), the parties created overtime procedures for correctional services, facilities, UNICOR, and the food service department. Tr. 44-45, 54-55 (referring to GC Ex. 3(d) at 9-12). He explained that some facilities, for example, do not have UNICOR factories, and so there would be no need for UNICOR overtime procedures. Tr. 55.

Glover also provided bargaining history relevant to this issue. Specifically, he explained that the language at issue has been in the parties' collective bargaining agreements since at least 1985. Tr. 44. During contract negotiations with which he was involved, there was no discussion that the "may" language created the right or option for either party to decline to bargain local overtime procedures. Tr. 51. Instead, under contract after contract, based on the enduring language regarding overtime procedures, local facilities and local unions have negotiated local overtime procedures. Tr. 51. Glover was not aware of any other instance in which a facility refused to bargain local overtime procedures when requested by the local union. Tr. 56. Moreover, he was unaware of any facility in the Northeast Region, the region over which he has responsibility, that does not have a local overtime procedures agreement. Tr. 56. Glover testified that all of that comports with the national-level negotiators' intent, which was for the local levels to have the right to negotiate local overtime procedures. Tr. 53.

Gomez, the LMR chair at FCI Mendota from January 2021 until August 2023, also testified about Article 18(p). Other than serving as LMR chair, Gomez has served as a correctional officer, correctional systems officer, counselor, supervisory correctional systems specialist, unit manager, and executive assistant. Tr. 61-62. He has not served as a negotiator for any of the national agreements between the parties and has been a management official only since 2016. Tr. 72-73. Gomez testified that he understands the language of Article 18(p) to indicate that negotiating overtime procedures locally is "suggestive, it's not definitive." Tr. 68. He did not otherwise address the language about local-level bargaining.

Gomez did testify however about the other, substantive overtime provisions in Article 18(p) of the CBA, including the requirement for equitable distribution and rotation of overtime to qualified employees and the requirement for monitoring overtime records. Tr. 68-71. Those provisions state in their entirety:

1. [W]hen [m]anagement determines that it is necessary to pay overtime for positions/assignments normally filled by bargaining unit employees, qualified employees in the bargaining unit will receive first consideration for these overtime assignments, which will be distributed and rotated equitably among bargaining unit employees; and

2. [O]vertime records, including sign-up lists, offers made by the [e]mployer for overtime, and overtime assignments, will be monitored by the [e]mployer and the [u]nion to determine the effectiveness of the overtime assignment system and ensure equitable distribution of overtime assignments to members of the unit. Records will be retained by the [e]mployer for two (2) years from the date of said record.

Jt. Ex. 1 at 47. According to Gomez, these provisions cover how overtime is assigned and distributed. Tr. 69-71. Beyond Article 18(p), there is another overtime provision in the CBA, Article 18(q), which explains that management may assign overtime after making a reasonable effort to find a volunteer, Jt. Ex. 1 at 47, although that provision was not discussed at the hearing or addressed in post-hearing briefs.

III. Positions of the Parties

A. General Counsel

The GC argues that the Respondent violated § 7116(a)(1) and (5) of the Statute by refusing to engage in midterm bargaining with the Union over local overtime procedures. GC Br. at 1. The GC asserts that the local overtime procedures are a mandatory subject of bargaining under § 7106(b)(2) of the Statute. *Id.* at 4-5 (citing *U.S. Dep't of VA Med. Ctr., Coatesville, Pa.*, 55 FLRA 138, 140-41 (1999) (*VA Coatesville*)). As such, when the Union sought to bargain local overtime procedures the Agency was obligated to do so. *Id.*

The GC also responds to the Respondent's argument that Article 18(p) of the CBA, which states that "[s]pecific procedures regarding overtime assignments may be negotiated locally," allows the Agency to decline to bargain over such procedures. According to the GC, that language does not establish that bargaining over local overtime procedures is elective. Instead, the parties included that language in order to delegate bargaining over overtime procedures to the local level, according to the GC's witness, Philip Glover, who negotiated the CBA. *Id.* at 3. They did so because they recognized that different facilities would have different needs regarding overtime procedures based on size and type. Therefore, they wished to provide an overview of overtime in the national CBA and then leave it to the local levels to flesh out the procedures. In order to do that, it was necessary to include language in the CBA that delegated the bargaining authority to the local level. According to the GC, that is what the language in Article 18(p) does. The GC argues that this framework has resulted in many local agreements on overtime procedures, which is exactly what the parties contemplated. *Id.* at 3-4.

The GC further argues that it is also clear that the parties did not intend this language to make bargaining elective because the parties knew how to draft language requiring mutual consent to bargain, as they had in other contract provisions, but they did not include that language here. Further, according to the GC, had they wished to have a "fleshed-out, universal national overtime procedure," they could have done so, as they did with other provisions, such as Article 18(d). Instead, they included only an "overview of overtime" in the national agreement, which was to be adapted to each facility's needs through local-level bargaining over overtime procedures. *Id.* at 3.

Anticipating that the Respondent would raise a "covered-by" defense, the GC argues that local overtime procedures are not "covered by" Article 18(p). *Id.* at 5. According to the GC, this is so based on the language of the CBA, as well as the intent of the parties. As to the language, Article 18(p) provides a general overview of overtime procedures, but then expressly permits local bargaining. *Id.* at 6. The GC asserts that, where the agreement specifically contemplates additional bargaining over a particular matter, as in this case, the Authority declines to find the matter "covered by." *Id.* at 7 (citing *U.S. Dep't of the Treasury, IRS,* 68 FLRA 1027, 1032 (2015); *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Williamsburg, Salters, S.C.*, 68 FLRA 580, 582 (2015) (*FCI Williamsburg*)). As to the parties' intent, a negotiator and signatory to the CBA, Glover, testified that the parties understood that a national overtime procedure would not accommodate the needs of the various correctional facilities subject to the CBA. Therefore, they included the overview overtime provisions in Article 18(p) and then gave permission for local-level bargaining to flesh out the appropriate procedures for each facility. *Id*. at 6-7. The GC argues that the Respondent cannot claim otherwise, as its only witness did not participate in the bargaining and therefore does not know the intent of the parties. *Id.* at 7.

Therefore, according to the GC, because the Respondent refused to bargain over local overtime procedures, which are negotiable under § 7116(b)(2) and failed to establish that the contract allowed it to do so or that the procedures are "covered by" the existing agreement, it failed to bargain in good faith with the Union, and violated § 7116(a)(1) and (5) of the Statute. *Id*. at 9. The GC requests as a remedy that the Respondent be ordered to cease and desist from its unlawful conduct, post a notice by hard copy and electronically, and bargain local overtime procedures with the Union. *Id.* at 9-10.

B. Respondent

The Respondent argues that it did not violate § 7116(a)(1) and (5) by refusing to engage in midterm bargaining with the Union over local overtime procedures. According to the Respondent, this is so because neither the Statute nor the CBA requires it to negotiate local overtime procedures. Resp. Br. at 2.

Starting with the Statute, the Respondent paraphrases § 7106(a)(2)(A) and (B), stating that "[n]othing in the relevant chapter of the Statute shall affect the authority of any management official or agency to assign employees, assign work, and to determine the personnel by which agency operations shall be conducted." *Id.* (citing 5 U.S.C. § 7106(a)(2)(A) and (B)). Next, the Respondent cites to § 7106(b)(1) to support that the Agency may, but is not required to, negotiate "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work." *Id.* (citing 5 U.S.C. § 7106(b)(1)). According to the Respondent, therefore it "has the option under the Statute to negotiate local overtime procedures, [but] it is not required to do so." *Id.* at 2-3.

As well, according to the Respondent, the CBA allows the Agency to refrain from bargaining over local overtime procedures, as Article 18(p) establishes that such bargaining is "voluntary and not a requirement." *Id.* at 3. The Respondent also argues that the CBA's restatements of both § 7106(a) and § 7106(b)(1) further authorize its actions. *Id.*

Responding to the GC's witness testimony and various local overtime agreements entered into evidence, the Respondent argues that simply because other institutions have chosen to negotiate overtime procedures locally does not make such negotiations mandatory. *Id.* Therefore, according to the Respondent, because it was not required to bargain over local overtime procedures, it did not violate the Statute when it refrained from doing so. *Id.* at 4.

IV. Analysis and Conclusions

A. The Agency violated § 7116(a)(1) and (5) when it failed and refused to bargain with AFGE, Local 1237 over local overtime procedures.

Under the Statute, agencies are obligated to bargain during the term of a collective bargaining agreement on negotiable union proposals not covered by the existing agreement unless the union has waived its right to bargain about the subject matter involved. *U.S. Dep't of the Interior*, *Wash., D.C.*, 56 FLRA 45, 50, 54 (2000); *see also AFGE v. FLRA*, 24 F.4th 666, 674-75 (D.C. Cir. 2022) (reestablishing that obligation). However, when exclusive recognition is at the national level, the Statute does not require negotiations at any other level absent agreement between the parties or appropriate delegation of authority. *Dep't of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah*, 39 FLRA 1409, 1417-18 (1991) (*Hill AFB*). Once that is established, the agency must respond to the lower-level bargaining request just as it would respond to a request from the exclusive representative. *See SSA, Office of Hearings & Appeals, Region II, Buffalo Office of Hearings & Appeals, Buffalo, N.Y.*, 58 FLRA 722, 726 (2003) (*SSA*). An agency that refuses to fulfill its midterm bargaining obligations violates § 7116(a)(1) and (5) of the Statute. *U.S. DOL, Office of the Assistant Sec'y for Admin. & Mgmt., Dall., Tex.*, 65 FLRA 677, 685-86 (2011).

Regarding these matters there are several things that are not in dispute. Firstly, there is no dispute that the Union requested to bargain over local overtime proposals and that the Agency refused based on its claim that the contract did not require it. Secondly, the Respondent does not dispute that there was a delegation to the local levels to bargain over specific procedures regarding overtime assignments (although it claims that the delegation language also made bargaining voluntary). Thirdly, the Respondent does not claim that the Union waived its right to bargain over local procedures regarding overtime assignments.

Instead, the Respondent argues that local procedures regarding overtime assignments are negotiable only at the election of the Agency, invoking § 7106(b)(1), and also cites to § 7106(a). Resp. Br. at 2-3. This reference is assumed to be a claim that the Union's proposals are contrary to management rights under § 7106(a). On the other hand, the GC argues that the proposals resemble proposals the Authority has found to be negotiable procedures under § 7106(b)(2), an exception to management rights, and therefore are negotiable procedures. The Respondent also argues and the GC disputes that the contract allows it to refrain from bargaining over these matters. Finally, the Respondent's witness raised the "covered-by" defense in testimony. While the Respondent did not assert "covered by" as an affirmative defense in its answer or argue the "covered-by" defense in its post-hearing brief, the GC argued in its post-hearing brief that the "covered-by" defense does not apply. In the interest of the fullest record possible, I will address that defense.

1. The Respondent's defenses that the Union's local overtime proposals are contrary to § 7106(a) or are only negotiable at the Agency's election under § 7106(b)(1) fail.[3]

An agency's obligation to bargain is predicated on the union's submission of negotiable proposals. As such, an agency may refuse to bargain when it contends the proposals submitted are nonnegotiable. However, in an unfair labor practice proceeding alleging failure to bargain, "the respondent has the burden of demonstrating that all proposals on the table are nonnegotiable; the GC does not have the burden to establish their negotiability." *Pension Benefit Guar. Corp.*, 59 FLRA 48, 50 (2003).

The Respondent has not satisfied this burden. In its post-hearing brief, the Respondent simply states, without any support, that § 7106(b)(1) gives it "the option . . . to negotiate local overtime procedures, [but] it is not required to do so." Resp. Br. at 2-3. As noted, the Respondent also cites to § 7106(a), which describes management rights, but does not explain the reason for the citation. Resp. Br. at 2-3. When the respondent fails to support its claims with evidence or argument, the Authority rejects those claims. *U.S. Dep't of the Air Force, Aerospace Maint. & Regeneration Ctr., Davis-Monthan Air Force Base, Tucson, Ariz.*, 64 FLRA 355, 360 (2009). As a result, on this basis alone, the Respondent's arguments fail.

Moreover, even though the GC does not have the burden to so establish, it is also the case that some (if not all) of the Union's proposals are negotiable procedures under § 7106(b)(2), as argued by the GC. GC Br. at 4-5. The Union's proposals include, among others, the establishment of a sign-up roster for overtime assignments, with sign-up available only for qualified staff and objective criteria for selection based on, among other things, previous overtime worked or declined and a requirement that if overtime is declined it is treated the same as if worked. Jt. Ex. 6 at 1-2.

In assessing the proposals for negotiability, the interplay of the various subsections of § 7106 of the Statute must be considered. On the one hand, § 7106(a) reserves to management the right to assign employees and work, as well as to determine the personnel by which agency operations shall be conducted. 5 U.S.C. § 7106(a)(2)(A) and (B). On the other hand, § 7106(b)(2) provides that nevertheless labor organizations have the right to bargain over "procedures which management officials of the agency will observe in exercising" management rights. 5 U.S.C. § 7106(b)(2). In other words, § 7106(a) establishes certain management rights which labor organizations do not have the right to substantively infringe upon, but § 7106(b)(2) establishes that nevertheless labor organizations have the right to bargain over the impact and implementation of those rights.[4] *GSA*, 70 FLRA 14, 15 (2016).

---

[3] From the facts of this case, it appears to me that I do not even need to address whether the proposals themselves are negotiable, as Authority precedent requires an agency to respond to a request to bargain and bargaining proposals, regardless of negotiability. *Army & Air Force Exch. Serv., McClellan Base Exch., McClellan Air Force Base, Cal.*, 35 FLRA 764, 769 (1990). On this record, it does not appear that the Agency satisfied this obligation. Nevertheless, given that the GC did not argue this point, I will address negotiability.

[4] Section 7106(b)(3) establishes another exception to management rights under § 7106(a) and provides that labor organizations have the right to bargain over "appropriate arrangements for employees affected by the exercise of any authority under this section by such management officials." 5 U.S.C.§ 7106(b)(3). As § 7106(b)(3) is not involved in this case, I am not addressing it herein.

When determining whether a proposal is a negotiable procedure under § 7106(b)(2) or instead is nonnegotiable as contrary to management rights under § 7106(a), the Authority compares the wording "to previous cases where [it has] analyzed § 7106(b)(2)." *See Consumer Fin. Prot. Bureau*, 73 FLRA 670, 680 n.113 (2023) (*CFPB*) (citing *NTEU*, 70 FLRA 100, 104 & nn.80-82 (2016)). If the proposal "does not resemble proposals . . . that the Authority has held to be procedures under § 7106(b)(2)," it will be found contrary to § 7106(a). *NTEU*, 70 FLRA at 104.

In *VA Coatesville*, 55 FLRA at 141, the Authority examined a contract provision that required the agency to follow an overtime callback roster of qualified employees, similar to a Union proposal in this case. In finding that provision to be a negotiable procedure under § 7106(b)(2), the Authority reasoned that "there [was] no contention that the [a]gency does not determine which employees are eligible and qualified to be on each of the rosters" and "there [was] also no question that the [a]gency was able to determine the qualifications needed to perform the work." *Id.* Similarly, in *NFFE, Local 1853*, 29 FLRA 94, 99-100 (1987), the Authority examined a provision that required the agency to make a reasonable effort to have overtime work performed by qualified volunteers, and to equitably rotate overtime assignments among qualified employees. Because the provision retained to management the right to determine who was qualified for the overtime work, the Authority found it to be a negotiable procedure under § 7106(b)(2) of the Statute. *Id.*

The Union's proposals described above are similar. Jt. Ex. 6 at 1-2. Of note, the proposals, as with the provisions in *VA Coatesville*, 55 FLRA at 141, and *NFFE*, 29 FLRA at 99-100, preserve management's discretion to determine the qualifications necessary for the overtime assignments and whether the employees possess those qualifications. Therefore, because they resemble proposals that the Authority has previously found to be negotiable procedures under § 7106(b)(2), they also are negotiable procedures under § 7106(b)(2) of the Statute.

As noted, the Respondent also claims (without support) that the Union's proposals regard § 7106(b)(1) matters, and as such the Agency has the "option to negotiate [over them, but] is not required to do so." Resp. Br. at 2-3. Not only has the Respondent failed to satisfy its burden to so argue, but in fact the Union's proposals are not § 7106(b)(1) subjects.

Section 7106(b)(1) subjects, over which agencies may bargain at their discretion, regard the "numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, [and] the technology, methods, and means of performing work." 5 U.S.C. § 7106(b)(1). The Authority has held that the "numbers, types, and grades of employees or positions" phrase applies to "the establishment of agency staffing patterns, or the allocation of staff, for the purpose of an agency's organization and the accomplishment of its work." *AFGE, Local 1748, Nat'l Council of Field Labor Locals*, 73 FLRA 233, 235 (2022).

Considering the Union's proposals described above, which provide criteria for selection for positions the Agency has determined need staffed from among employees the Agency has determined are qualified, it cannot be said that the Union's proposals regard staffing patterns or allocation of staff. As such, they are not "numbers, types, and grades of employees or positions" subjects of bargaining under § 7106(b)(1) over which the Agency has discretion to bargain. *See*

AFGE Nat'l Border Patrol Council, 39 FLRA 675, 691 (1991) (finding that similar proposals as herein do not regard "numbers, types and grades of employees or positions" under § 7106(b)(1)).

Regarding the other § 7106(b)(1) subjects, "the technology, methods and means of performing work," the Authority has construed "method" to refer to "the way in which an agency performs its work," and "means" to refer to "any instrumentality, including an agent, tool, device, measure, plan or policy used by the agency for the accomplishment or furtherance of the performance of its work." *NFFE, Int'l Assoc. of Mach. & Aerospace Workers, Fed. Dist.1, Local 1998*, 69 FLRA 626, 630 (2016). As the Union's proposals do not regard the technology for performing work, the way in which the Agency performs its work or the instrumentalities for the accomplishment of it, they do not regard "the technology, methods and means of performing work." As such, they are not § 7106(b)(1) subjects which are negotiable only at the election of the agency for this reason either.

Therefore, the Respondent's claim that the proposals are contrary to § 7106(a) or are negotiable only at the Agency's election under § 7106(b)(1) fail. Instead, the Union submitted proposals which are negotiable procedures under § 7106(b)(2) of the Statute.

2. The contract does not allow the Agency to refrain from bargaining over local overtime procedures and instead simply delegates to the local levels the right to do so.

An agency may raise as a defense to an unfair labor practice complaint that a contract provision allows the interference with statutory rights. *IRS, Wash., D.C.*, 47 FLRA 1091, 1103 (1993). This includes a possible agreement that defines or limits the parties' obligation to engage in midterm bargaining, such that an agency will not be found to have failed to bargain in good faith if consistent with the definition or limitation. *NTEU*, 63 FLRA 299, 300 (2009). An agency asserting such a contract-based defense has the burden of establishing that defense. *IRS, Wash., D.C.*, 47 FLRA at 1110.

The Respondent makes such an argument. It claims that Article 18(p)'s language that "[s]pecific procedures regarding overtime assignments may be negotiated locally" makes bargaining over such procedures "voluntary and not a requirement." Resp. Br. at 3. As such, according to the Respondent, the Agency could appropriately (and did) decide not to bargain over local overtime procedures.

When the Authority is called upon to determine the meaning of specific contract language, such as here, it must use "the same standards and principles in interpreting collective bargaining agreements as applied by arbitrators in both the [f]ederal and private sectors and the [f]ederal courts." *IRS, Wash., D.C.,* 47 FLRA at 1110. In *IRS, Wash., D.C.*, the Authority explained that "[t]he focus will be on the interpretation of the express terms of the collective bargaining agreement. Nevertheless, the meaning of the agreement must '[u]ltimately . . . depend[] on the intent of the contracting parties.' The parties' intent must be given controlling weight, 'whether that intent is established by the language of the clause itself, by inferences drawn from the contract as a whole, or by extrinsic evidence.'" *Id.* (citations omitted).

In this case, for the GC, Glover explained Article 18(p)'s meaning. He explained that the parties to the CBA wanted bargaining over specific overtime procedures to occur at the local level. However, "certification is at the national level, the Bureau of Prisons Council, and the management of the headquarters is the level of recognition." Therefore, in order "to allow bargaining at the lower level," they had to provide a delegation to the local level. That language provides that delegation. Tr. 48-49, 55.

The Respondent's witness, Gomez, did not dispute that the language is for delegation purposes. However, he indicated that the word "may" in that sentence means that local overtime procedures bargaining is "suggestive," and "not definitive." Tr. 68. In other words, according to Gomez, that language allows the Agency to decline to bargain over local overtime procedures if it wishes. Glover disagreed with Gomez's interpretation. He testified that the "may" language was not intended to allow either party at the local level to decline to bargain or to require mutual consent to bargain over overtime procedures. Tr. 49-50.

For a number of reasons, based on the standards described in *IRS*, *Wash., D.C.*, 47 FLRA at 1110, Glover's explanation of that provision – that it delegates to the local levels the right to engage in bargaining over local overtime procedures and does not give the parties permission to decline a request to bargain over those procedures – is accepted. That is so, firstly, because that explanation is consistent with the language used. In this context, the word "may" is used to authorize the local levels to bargain over matters that would otherwise be reserved to the level of exclusive recognition. This explanation is consistent with the state of the law, as, without a delegation, there would be no obligation to bargain at the local level over overtime procedures. *See Hill AFB*, 39 FLRA at 1417-18.

Further, while the word "may" could be interpreted as changing an obligation to bargain to a choice to bargain (requiring mutual consent), as argued by the Respondent, Glover explained that when the parties to the CBA intended to require mutual consent, they used the term "mutual consent." By way of example, he pointed to Article 42(b), which states that "[t]his [a]greement . . . may be extended in one (1) year increments thereafter by mutual consent of the parties." Tr. 49 (citing Jt. Ex. 1 at 90). That "mutual consent" language is not found in Article 18(p). Jt. Ex. 1 at 47.

Moreover, the Authority has had the occasion to address similar language in this very CBA and made a similar assessment. *See FCI Williamsburg*, 68 FLRA at 582-83. There, the language at issue was Article 18(b), which states that "[t]he parties at the national level agree that requests for flexible and/or compressed work schedules may be negotiated at the local level." *Id.* at 580. The Authority found that this language constituted a delegation of authority by the level of exclusive recognition, the national level, to the local level of the right to engage in bargaining over compressed work schedules. It did not consider this language to authorize the agency to decline to bargain because the word "may" was used. *Id.* at 582-83. Similarly, an administrative law judge, assessing the same contract provision at issue here, Article 18(p), also found that the language "calls for [negotiations over local overtime procedures] to take place." *Fed. BOP, Metro. Det. Ctr., Guaynabo, Catano,* 2014 WL 4373607 at *13, Case No. BN-CA-12-0021 (2014) (OALJ Dec.) (*MDC Guaynabo*). He did not assess the use of the word "may" as authorizing the agency to decline to bargain over local overtime procedures. *Id.*

Secondly, Glover's explanation is consistent with what Glover testified was the intent of the parties, which was to ensure that local facilities and the local unions at those facilities would have the right to bargain locally over local overtime procedures. Even more clearly, he testified that it was not the intent of the parties to require mutual consent for local overtime procedures bargaining. Tr. 48-51. His testimony as to the parties' intent is uncontroverted, as the Agency did not provide a witness who had negotiated any of the contracts between AFGE and the BOP. By comparison, Glover was on the negotiating team for the current CBA and two others that contained the same language.

That intent is supported by a common-sense rationale as well. Specifically, Glover explained that different facilities have different components and different needs. Therefore, it made sense to provide a national overview about overtime procedures and then leave it to the local levels to flesh out the details according to the local-level needs. Tr. 44-55. To illustrate, Glover compared the sparse overview provisions in Article 18 for overtime procedures, which essentially require equitable rotation and distribution of overtime and monitoring, with local agreements that are fleshed-out and detailed. *Id.* For example, one such local agreement requires the lieutenant contacting individuals for overtime to document on the roster when an employee is offered overtime but unable to perform it by clicking on the "'unable' function" and also to "make an appropriate entry in the comment section." GC Ex. 3(d) at 10. These details and others are not found in the national CBA. Glover pointed out that, for example, an employee would not know how to sign up for overtime from reviewing the sparse provisions of Article 18(p) of the CBA. Tr. 46. The local agreements flesh that out. *See, e.g.*, GC Exs. 2 and 3.

Glover also provided a comparison provision in the CBA that showed the type of detail the national-level negotiators provided when they intended to create national, fleshed-out procedures on a subject matter. Tr. 47-48. Specifically, in Article 18(d) of the CBA, AFGE and the BOP created national procedures for establishing the quarterly rosters for correctional services employees. Jt. Ex. 1 at 43-45. That section fills almost three pages and has fifteen paragraphs full of details on processes for the quarterly rosters. For example, one paragraph requires that "seven (7) weeks prior to the upcoming quarter, the [e]mployer will ensure that a blank roster for the upcoming quarter will be posted in an area that is accessible to all correctional staff, for the purpose of giving those employees advance notice of assignment, days off," etc. Jt. Ex. 1 at 43. There is no such detail in Article 18(p). Jt. Ex. 1 at 4. It simply does not make sense that the national-level negotiators would create such a sparse provision for a subject such as overtime procedures and then give the Agency the option to decline to bargain at the local level (and thereby leave such details unaddressed).

Thirdly, the bargaining history and the many local agreements support that AFGE and the BOP did not give the Agency the option in Article 18(p) to decline to bargain over local overtime procedures. Glover testified that this provision has been in the collective bargaining agreements between AFGE and the BOP since at least 1985. Tr. 44. Since then, many local overtime procedures agreements have been negotiated over many years pursuant to the language at issue. Glover was unaware of any other instance in which a local facility refused to bargain over overtime procedures under this provision. Tr. 51, 56. He was also unaware of any facility in the Northeast Region that did not have a local overtime procedures agreement. While the Respondent is correct

that the existence of these agreements does not itself establish an obligation to bargain, the number of them and lack of objection to bargaining over them (until this point) certainly lend support to Glover's testimony that the parties intended to delegate the right to bargain over local overtime procedures and did not intend to create an option to decline. Further, Glover testified that, during national contract negotiations with which he has been involved, there was no discussion that the "may" language creates the right or option for either party to decline to bargain local overtime procedures. Tr. 51.

Fourthly, Glover's explanation comes with the weight of significant authority and experience on the issue, as he negotiated the current CBA and two others (which have the same language), has been involved with many local overtime procedures agreements, and he has served in national and local leadership positions for AFGE for many years. Tr. 40, 49-50. By comparison, Gomez has not served as a negotiator on any of the collective bargaining agreements between AFGE and the BOP (testifying that he was in elementary school when the 1998 agreement was negotiated and did not participate in the 2014 agreement or the 2021 extension) and has been a management official only since 2016. Tr. 71-72.

Therefore, I find that Article 18(p)'s language that "[s]pecific procedures regarding overtime assignments may be negotiated locally" gives the local levels the right to engage in bargaining over local overtime procedures[5] and does not give the Agency permission to decline a request to bargain over those procedures**.** As such, that language does not allow the Agency to refrain from bargaining with the Union over local overtime procedures.

The Respondent also cites to the CBA's restatement of management rights in § 7106(a) and restatement of § 7106(b)(1), regarding subjects over which agencies may bargain at their discretion, to support its claim that the CBA allows it to refrain from bargaining over local overtime procedures. Resp. Br. at 3. These arguments fail as "bare assertions" only, unsupported by any explanation. Further, because the local overtime procedures are negotiable under § 7106(b)(2) of the Statute, as explained above, the CBA's restatement of § 7106(a) and of § 7106(b)(1) do not establish that the contract allowed the Agency to refrain from bargaining over local overtime procedures. Finally, the Authority has held that a contract's restatement of management rights does not authorize an agency to refrain from engaging in bargaining over § 7106(b)(2) procedures. *U.S. DOJ, INS*, 55 FLRA 892, 899 (1999).

3. The Respondent has not established that specific local overtime procedures are "covered by" the existing agreement.

The "covered-by" doctrine provides that the Statute does not require a party to bargain over matters that already have been resolved by bargaining. *FCI Williamsburg*, 68 FLRA at 582. Where a matter is expressly contained in a negotiated agreement or is inseparably bound up with, and thus an aspect of, a subject covered by the agreement, it will be considered "covered by." *U.S. Customs Serv., Customs Mgmt. Ctr., Miami, Fla.*, 56 FLRA 809, 813-14 (2000). An argument that a matter is "covered by" an agreement is an affirmative defense that a respondent has the burden of proving. *Id.*

[5] Given this delegation, the Agency was required to respond to the Union's bargaining request just as it would respond to a request from the exclusive representative. *See SSA*, 58 FLRA at 726.

The Authority has declined to find a matter "covered by" an agreement, such that bargaining is foreclosed, where the agreement specifically contemplates bargaining over the matter. *FCI Williamsburg*, 68 FLRA at 582-83. In order to determine whether the agreement specifically contemplates bargaining, the Authority assesses the record as a whole, using the "standards and principles applied by arbitrators and the federal courts." *Id.* at 582.

For example, in *FCI Williamsburg*, the collective bargaining agreement stated that "the parties at the national level agree that requests for flexible and/or compressed work scheduled may be negotiated at the local level." *Id.* at 582-83. Based on that "plain wording," the Authority assessed that the contract provision "specifically contemplates bargaining" over compressed work schedules. *Id.* at 582. Therefore, given that the parties obviously intended additional bargaining based upon that plain language, the "covered-by" defense to the local union's request to bargain over compressed work schedules could not stand. *Id.* at 583.

The plain wording of Article 18(p) is similar: "[s]pecific procedures regarding overtime assignments may be negotiated locally." Jt. Ex. 1 at 47. That plain wording similar establishes that the parties specifically contemplated bargaining at the local level. *See also MDC Guaynabo,* 2014 WL 4373607, at *13 (finding that local negotiations over overtime procedures are not "covered by" Article 18 of the same CBA involved herein as, "if anything, the Master Agreement calls for them to take place, rather than preclud[es] them from occurring"). As such, the "covered-by" defense is rejected.

Nevertheless, in order to ensure the fullest possible record, I will also address the claim by Gomez (although not argued by the Respondent) that the substantive provisions of Article 18(p) "cover how overtime would be assigned and distributed." Tr. 70-71. In so assessing, as above, the record as a whole has been reviewed, using the "standards and principles applied by arbitrators and the federal courts." *See FCI Williamsburg*, 68 FLRA at 582.

Gomez testified that, for overtime, the Agency goes through a rotation roster, first calling volunteers and then "mandatories," and they "log the information." Tr. 69-70. He testified that all of that comes from Article 18(p), which requires equitable rotation and distribution of overtime, and which covers how overtime is assigned and distributed. *Id.* at 69-71.

Glover, on the other hand, explained that the substantive provisions of Article 18 only provide an overview of overtime procedure requirements, but do not create the actual procedures necessary for an overtime assignment program. Tr. 43-46. Indeed, Article 18(p) establishes only several overarching principles: that qualified bargaining unit employees will be given first consideration; that assignments will be distributed equitably; and that overtime records will be monitored and maintained. Article 18(q) establishes that the Agency may order a qualified bargaining unit employee to work overtime after trying to find a volunteer. Jt. Ex. 1 at 47. By comparison, the Union's proposals for overtime provide the process and the details of the process, such as, for example, requiring rotation based on previous overtime worked or declined and with a declination treated as overtime worked. Jt. Ex. 6. It cannot be said that these proposals are either contained in the agreement or inseparably bound up with that subject matter.

This is all the more clear from a comparison of the sparse nature of the overtime provisions in Article 18(p) and (q) with Article 18(d), described above, which Glover explained did in fact create a set of national procedures for correctional services quarterly rosters. Tr. 47-48; Jt. Ex. 1 at 43-45. This conclusion is also supported by Glover's description of the intent of AFGE and the BOP in negotiating the CBA, as he explained the parties wanted overtime procedures to be negotiated at the local level. Tr. 53. It is further consistent with bargaining history and prior agreements, described above. As such, it cannot be said that the existing agreement covers the subject matter and forecloses further bargaining.

Accordingly, I conclude that the Respondent violated § 7106(a)(1) and (5) of the Statute by failing and refusing to bargain with the Union over the midterm, Union-initiated, local overtime procedures.

B. The Respondent must remedy its actions.

The GC requests that the Respondent be ordered to cease and desist from its unlawful conduct and post, by hard copy and electronically, a Notice to All Employees signed by the warden of FCI Mendota. The GC also requests that the Respondent be ordered to bargain over local overtime procedures with the Union, given the Union's continued interest in so bargaining. I agree. *U.S. Dep't of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson AFB, Ohio*, 36 FLRA 524, 534-35 (1990).

Accordingly, I recommend that the Authority adopt the following order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), it is hereby ordered that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Mendota, California (the Respondent) shall:

1. Cease and desist from:

   (a) Failing and refusing to bargain midterm over local overtime procedures pursuant to Article 18(p) of the parties' Master Agreement upon request by the American Federation of Government Employees, Local 1237, AFL-CIO (the Union).

   (b) In any like or related manner interfering with, restraining or coercing bargaining unit employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

   (a) To the extent consistent with applicable law, rule and regulation, in accordance with Article 18(p) of the Master Agreement, and upon the request of the Union, negotiate over local overtime procedures in good faith.

(b) Post at the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution Mendota, California, including the business office and normal meeting places, and other places where notices to bargaining unit employees represented by the Union are customarily posted, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. On receipt of such forms, they shall be signed by the Warden of the Federal Correctional Institution, Mendota, California. They shall remain posted for sixty (60) consecutive days thereafter. Reasonable steps shall be taken to ensure that the Notices are not altered, defaced, or covered by any other material.

(c) Disseminate a copy of the Notice signed by the Warden through the Respondent's email system to all bargaining unit employees represented by the Union.

(d) Pursuant to section 2423.41(e) of the Authority's Regulations, notify the Regional Director of the San Francisco Regional Office of the Federal Labor Relations Authority in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, April 16, 2024, Washington, D.C.

LEISHA SELF

Digitally signed by LEISHA SELF
Date: 2024.04.16 11:21:07 -04'00'

LEISHA A. SELF
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Mendota, California violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice:

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT fail or refuse to negotiate with AFGE, Local 1237 over specific local procedures regarding overtime assignments.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Statute.

WE WILL upon request, bargain in good faith with AFGE, Local 1237 over specific local procedures regarding overtime assignments.

_____
(Agency)

Date:_____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director of the San Francisco Regional Office, Federal Labor Relations Authority, whose address is: 1301 Clay Street, Suite 1180N, Oakland, CA 94612, and whose telephone number is: (510) 982-5440.