

**FEDERAL MEDIATION AND CONCILIATION SERVICE**

<b>In the Matter of the Arbitration</b>	)	
<b>between</b>	)	
	)	
American Federation of Government	)	
Employees, Local 2034	)	
<b>("Union")</b>	)	FMCS No. 16-54456-7
and-	)	Non-custody department overtime
	)	Contract dispute
Department of Justice, Federal Bureau of	)	
Prisons, FCI Pollock, Louisiana	)	
<b>("Company")</b>	)	
	)	
	)	

Before: Maretta Comfort Toedt, Arbitrator, duly selected by the parties from the roster of the Federal Mediation and Conciliation Service (FMCS).

**Appearances:**

For the Union

John-Ed L. Bishop	Advocate
Brian Richmond	Local Union President, witness
Adam Smith	Correctional Officer, witness
Scotty Lemoine	Food Foreman, witness
Karen Millicks	Assistant Food Service Administrator, witness
James Byrd	Correctional Officer, witness

For the Union

Daniel W. Johnson	Advocate
Michael LaCaze	Human Resources
Frank Gotreaux	Emergency Preparedness Officer, witness
Sarina English	Lieutenant, witness

**Summary of the Case**

1. On February 16, 2016, the Union filed a grievance alleging that the Agency had violated Article 18, section p, of the Master Agreement when it failed to equitably distribute overtime among qualified bargaining unit employees.
2. The grievance is sustained. The Union met its burden to establish by a preponderance of the evidence that the Agency violated Article 18, sections p (1) and (2). A violation of the

parties' agreement constitutes an unjustified or unwarranted personnel action and results in missed overtime opportunities for custody bargaining unit employees.

### **Hearing**

3. I presided at a hearing in the above matter on August 16-17, 2017, at the Federal Correctional Institution (FCI), Pollock, Louisiana, pursuant to the Master Agreement. The parties agreed that the matter was properly before me for final and binding opinion and award.
4. The witnesses were sworn and (by agreement of the parties) were not sequestered during the hearing. The parties had full opportunity to make opening statements; to examine and cross-examine witnesses under oath; to offer exhibits; to raise objections on procedural rulings; and otherwise to make known their respective positions and arguments on the issues involved in the grievance.
5. A court reporter transcribed the hearing; I received the transcript on November 10, 2017. The parties submitted post-hearing briefs; I received the briefs on February 9, 2018, via email.
6. The parties agreed that I would retain jurisdiction for the purpose of clarification, interpretation, or implementation of any remedy issued, if necessary.
7. In reaching the decision below, I carefully considered the entire record in the case, all arguments made, and any arbitral citations, whether discussed or not.

### **Stipulations**

8. The parties stipulated to the following:
  - (a) The arbitrator is to initially determine liability under the Back Pay Act for the violations alleged by the Union. *See Tr. at 9.*
  - (b) If the arbitrator finds liability, the parties will make a good faith effort to resolve any damage issues prior to resubmission to the arbitrator. *See Tr. at 9.*

- (c) The Union properly invoked its right to negotiate a local supplemental agreement (LSA). See Tr. at 204-05. Master Agreement, Section B, page 22.

### Statement of the Issues

9. The Agency proposed the following issue statements:
- (a) Has the Agency established a past practice regarding the rotation of Custody overtime assignments which has been followed consistently over a number of years to which the Union has acquiesced due to their inaction? If so, the grievance should be denied. If not, go to issue statement #b.
  - (b) Does the manner in which overtime assignments are rotated constitute a clear violation of Article 18(p)(1) of the Master Agreement? If not, the grievance should be denied. If so, what is the appropriate remedy?
  - (c) Are non-custody overtime records being maintained in accordance with Article 18(p)(2) of the Master Agreement? If so, the grievance should be denied. If not, what is the appropriate remedy? [*Agency brief at 1.*]
10. The Union proposed the following issue statement:
- Whether the Agency violated Article 18, Section (p) of the Master Agreement by failing to ensure equitable rotation and distribution of custody overtime assignments to qualified bargaining unit members when it did not adjust the last overtime dates worked in the Roster Program of non-custody employees when they worked overtime within their respective departments and were subsequently allowed to remain at the top of the custody overtime list. [*Union brief at 4.*]
11. Article 32(a) of the Master Agreement states that: If the parties fail to agree on joint submission of the issue for arbitration, each party shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard. Based upon my consideration

of the issue statements submitted by both parties and the record as a whole, I have formulated the following issue statements:

*(a) In assigning custody overtime, did the Agency violate any law, rule, regulation, or Article 18 (p) (1) of the Master Agreement? If so, what is the appropriate remedy?*

*(b) In keeping non-custody overtime records, did the Agency violate any law, rule, regulation, or Article 18 (p) (2) of the Master Agreement? If so, what is the appropriate remedy?*

### **Factual Background**

12. The evidentiary facts are undisputed; the weight of the evidence indicates as follows:
13. The Federal Correctional Complex (FCC) at Pollock, Louisiana is comprised of three facilities: the U.S. Penitentiary (USP), which is a maximum-security facility; the Federal Corrections Institution (FCI), which is a medium-security facility; and the camp, which is a minimum-security facility. FCC Pollock opened as a federal prison in 2000 and the bargaining unit employees were covered by the 1998 Master Agreement (MA). The current Master Agreement runs from July 21, 2014 until July 20, 2017.
14. **Custody and non-custody positions:** FCC Pollock employs correctional officers, all of whom are bargaining-unit members, in both custody and non-custody positions. When hired, all officers receive training at Glyngo, Georgia (Tr. 166) to become correctional officers; this qualifies them to work in custody positions. All bargaining unit members, whether in custody or non-custody positions, are considered to be correctional officers first.
15. Correctional officers might and sometimes must have additional training to work in certain custody positions, e.g., basic prisoner transport training (BPT) to perform escort work.

16. Non-custody positions at FCC Pollock include positions in the following departments: food service, education, laundry, commissary, facilities, warehouse, psychology, and education. Tr. 163-64. Correctional officers might and sometimes must have additional training to work in those non-custody positions, e.g. food service training.
17. **The overtime “equitable distribution” requirement:** Article 18 (p) (1) of the Master Agreement provides as follows:

When Management determines 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.** (*Emphasis added - MCT*)
18. **The roster program for custody-position overtime:** The record indicates that since 2002 or 2003, FCC Pollock has maintained a unified, computerized overtime, “roster program” list of officers who are willing to work overtime in custody positions. (To aid other readers while maintaining consistency with the parlance used at FCC Pollock, this award will use the term “**custody overtime roster program.**”)
19. The custody overtime roster program includes six overtime lists for which officers can sign up: custody; bus operations; outside hospital escort; outside escort; Shreveport medical; and Monday-Wednesday 10:00 p.m. to 6:00 a.m. Tr. 28, 32. (Another custody overtime category, UNICOR, is no longer used or filled. Tr. 57, 59.) Overtime for correctional officers in the custody department is a daily event.
20. Correctional officers (custody and non-custody officers) can log onto the online custody overtime roster program. There, they can check their status and sign up for the shift, time, date, and location that they wish to work overtime.
21. In the custody overtime roster program, an officer’s position on the list is initially assigned based on seniority. When an officer’s name rises to the top of the list and works custody overtime, his or her name is then dropped to the bottom of the list and begins working

- its way back up the list again. Tr. 25. Lieutenants needing correctional officers for overtime work check the custody overtime roster program and can automatically see which employee is next on the list and is qualified to perform the overtime.
22. The Union has “read only” access to the custody overtime roster program so that it can review daily assignments and overtime assignments to ensure that overtime is being distributed equitably.
23. **Separate department *non-custody* overtime lists:** FCC Pollock also maintains various separate department lists of correctional officers willing to work non-custody overtime such as in food-service, facilities, commissary, warehouse, psychology, education, laundry, ISM and R&D. Tr. 164. If an officer has completed the training required to work in a particular non-custody position, such as food-service training, then he or she may work both the food-service department non-custody overtime and the custody overtime available on the custody overtime roster program. Tr. 167-168.
24. If an officer works non-custody overtime, he or she drops to the bottom of that list — *but his or her position in the custody overtime roster program is unaffected*. This means that officers trained for non-custody positions might have the opportunity to work significantly more overtime than officers trained only for custody positions; the Union refers to this as “double-dipping.” Union Brief at 8. Overtime in non-custody departments is not necessarily a daily event, in fact, some departments have had very little overtime over the years or their overtime might be sporadic, e.g., in food service. Tr. 110-11.
25. **The 2009 Labor-Management Relations Meeting:** In 2009 the Union complained at a labor-management relations (LMR) meeting that the overtime distribution under the custody overtime roster program was not equitable as required by the Master Agreement. Minutes from an October 29, 2009 LMR meeting indicate under “Union old business” as follows:
- B. Richmond stated they are trying to integrate the OT schedules so that persons working OT other than custody would be removed from the top of the rosters to the bottom of any OT roster. For example, if a person worked a Facilities OT and

that person was also on the top of the custody roster, that person would then be moved to the bottom of the custody roster. No resolution on this item and it is left on the agenda. **Item open.** *[Union Exhibit 6; bold in original.]*

26. **2010 Local Supplement Agreement (LSA) Negotiations:** In November 2010, the parties negotiated and executed a local agreement regarding how lieutenants were to hire custody overtime. The local agreement did not address how non-custody officers were to be rotated on the custody overtime roster program. Joint Exhibit 6; Tr. 198.
27. **2015 LSA Negotiations:** In the 2015 local supplement negotiations — which are still ongoing — the Union submitted two proposals concerning overtime distribution, which read as follows:

**Article 18 – Hours of Work**

**Section H.** The Agency will maintain a single overtime program for use by the entire complex, and all employees will sign up for all institutional overtime using the program. There will be no departmental preference in assigning overtime.

**Section I.** Except for Mandatory overtime and/or List Exempt overtime, an employee’s name will automatically drop to the bottom of each overtime sign up list, regardless of the department where the employee works overtime.

Union Exhibit 7; Tr. 186-187.

28. **The 2016 Grievance:** On February 16, 2016, the Union filed the instant grievance alleging that the Agency had violated Article 18 (p) (1) and (2). Joint Exhibit 3; reproduced in Appendix B.

**Union position**

29. The Union’s position, as summarized in its post-hearing brief, is as follows:

The Agency has violated Article 18, Section (p) of the Master Agreement by failing to properly adjust the latest dates of overtime worked by non-

custody employees within their departments in the Roster Program which allowed the non-custody employees to remain at the top of the custody overtime list and double dip on the amount of overtime assigned. Considering that a violation of the Master Agreement constitutes an unjustified or unwarranted personnel action, the Agency is liable under the Back Pay Act. Based on the Agency's liability, the Union requests this Arbitrator to award the custody officers who were wrongly not offered overtime opportunities the amount they would have earned if the Agency did not violate the Agreement. *[Union brief at 15.]*

30. Encompassed within the Union's issue is the contention that the Agency violated Article 18 (p) (2) by failing to provide the Union with overtime records within the non-custody departments so that the Union and the Agency can monitor whether overtime has been offered and assigned equitably. The Union alleges that when non-custody overtime records have been provided, they are maintained differently by each department, are incomplete, and/or difficult to comprehend. Joint Exhibit 3; Union Brief at 5, 7; Tr. 190.

#### **Agency position**

31. The Agency responds that it did not violate Article 18 (p). The Agency argues that it had established a past practice regarding the rotation of custody overtime assignments that has been followed consistently over a number of years. The Agency contends that if the arbitrator finds that it has not proved up a past practice, then the Agency has established that the manner in which it rotated overtime assignments was not a violation of Article 18 (p).
32. The Agency contends that it complied with requirements of Article 18 (p) (2) in maintaining non-custody overtime records. Agency brief at 1.

#### **Discussion**

33. **Article 18 (p) (1):** The Agency argues that the word *equitably*, as used in the Master Agreement requirement, "refers to similar treatment as opposed to 'equally', which connotes *[sic]* sameness in quantity." Agency Brief at 2 n.2 (citation omitted). On this



point, I agree with the Agency. I interpret this language to mean that bargaining unit employees will be given equitable *opportunities* to work overtime, not necessarily the same amount of overtime. I also note that this section requires that the bargaining unit employee be qualified to perform the overtime work.

34. The Agency notes that in the Master Agreement, “Article 18, section d outlines the procedures for developing quarterly rosters for the Custody department only, and Article 18, section f provides separate guidance for developing rosters in non-Custody departments.” Agency Brief at 6. The Agency argues that this supports the position that “Article 18(p) of the Master Agreement does not contemplate the rotation of overtime on an institution-wide basis.” *Id.* (The actual terminology used in Article 18 (d) is “Quarterly rosters for Correctional Services employees” rather than quarterly rosters for the Custody department. Similarly, Article 18 (f) refers to “Roster committees outside the Correctional Services department” rather than rosters outside the non-Custody departments.)
35. The difficulty with the Agency’s argument is that — as shown by the sections of Article 18 cited by the Agency — the parties clearly knew how to require, or allow, different roster treatment for officers in different departments. Under a long-settled principle of contract interpretation, the fact that the parties did not do the same in Article 18 (p) (1) indicates strongly that *the parties intended for overtime to be distributed equitably among qualified correctional officers, i.e. bargaining unit employees, on an institution-wide basis, not on a per-department basis.* Stated another way: If the parties had intended for overtime to be distributed on a per-department basis, presumably they would have done just that, because elsewhere in the contract they demonstrated that they knew how to do so.<sup>1</sup>
36. The Agency argues that “Management in one department does not determine when overtime is necessary in another department, and overtime worked in one department has never had any effect on the overtime rotation in another department.” Agency brief at 2 (citations omitted). But the fact that various Agency departments manage their overtime

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<sup>1</sup> The legal maxim for this interpretive principle is *expressio unius est exclusio alterius* — “to express or include one thing is to exclude the other, or the alternative.” BLACK’S LAW DICTIONARY 701 (10<sup>th</sup> ed. 2014).

schedules independently is not relevant to whether they do so in compliance with the Master Agreement.

37. **The Agency's past practice argument:** The Agency has the burden to establish that a past practice was established here. In order to establish a past practice, the Agency must demonstrate duration, consistency of application, and acquiescence. Agency brief at 3. But, when there is clear contract language, as there is in Article 18 (p), the bar is set high so as not to disregard the intent of the parties' clear language. For the reasons discussed below, I find that the Agency has not met this burden.

38. *Duration:* The Agency correctly observes that the Union was aware of the Agency's overtime rotation procedure for far longer than before the Union filed its grievance in 2016. Tr. 199-200. As the Agency articulated in its brief:

The contractual requirement providing for the equitable rotation of overtime assignments among bargaining unit employees has been in effect since at least 1998, and overtime worked in one department has never had any effect on the rotation of overtime in another department since the opening of the institution in 2000. Though aware of the alleged continuous violation since at least 2009 (and likely well before then), the Union, by its action over this prolonged period, has assented to the longstanding practice and custom of how overtime assignments are rotated (i.e. without regard for overtime worked in other departments). As the Union has acquiesced to the Agency's consistent and longstanding practice regarding the rotation of overtime assignments, the Union's alleged violations of Article 18(p)(1) should be dismissed. [*Agency brief at 12.*]

39. *Consistency:* The Agency argues, without contradiction, that the language of Article 18 (p) has been in effect since at least 1998 and the current rotation of overtime assignments among bargaining unit employees has been in effect since FCC Pollock opened in 2000. The Agency notes that the custody overtime roster program has been in effect since 2002-2003. The element of consistency appears to have been met.

40. *Acquiescence*: Where the Agency's proof falls short is the third prong of the past-practice test. While the evidence tends to show that the Union did not formally protest the rotation and distribution of overtime among bargaining unit employees until 2009, the following factors must be considered in determining whether the Union acquiesced:

(a) The LMR meeting notes from October 2009 state that overtime rotation was "old business," indicating that the Union had previously raised this issue with the Agency.

(b) Union president Richmond testified, without contradiction, that he had made numerous data requests and had raised the issue of equitable overtime distribution with various wardens and Human Resources, both formally and informally, on numerous occasions over the years. Mr. Richmond stated that the Union was either not receiving regular non-custody department overtime reports or when such reports were received, they were incomplete or difficult to comprehend or to use for comparison purposes. Tr. 182-185; 191-193.

(c) Assistant Food Service Administrator Millicks, who had administered overtime in food services for the majority of her seventeen years at Pollock, Tr. 124, testified that she only started documenting when overtime was offered to an employee in June 2017, as required by Article 18 (p) (2), and whether or not they accepted it. Tr. 113-14. The receipt of non-custody overtime records from each department – and the information contained therein - would have been a significant variable for the Union to monitor in order to determine whether overtime was being equitably distributed among custody bargaining unit employees. For example, if overtime were high in the facilities department, then those employees would be receiving more opportunities to work overtime than a custody correctional officer. This Agency failure to provide overtime information for non-custody departments, as specified in Article 18 (p) (2), significantly affects whether the Union could be said to have acquiesced in the Agency's practice.

41. For the above reasons and based on the record before me, I cannot find that the Agency met its burden of persuasion regarding past practice.

42. I therefore conclude that the Agency has violated Article 18 (p) (1) of the Master Agreement by failing to distribute and rotate overtime equitably among qualified custody bargaining unit employees.
43. In its brief, the Agency cited *Cruz-Martinez v. Dept. of Homeland Security* as an example of past practice. That case is distinguishable from the instant grievance.
- (a) In *Cruz-Martinez*, the Agency had a practice of dismissing a grievance after one year if the union took no action to process the matter. In that case, the agreement was silent regarding the dismissal of grievances whereas here, the Master Agreement addresses the issue of the distribution of overtime.
- (b) In *Cruz-Martinez* the arbitrator found that the Agency's dismissal practice had been in effect for sixteen years and that the Union and all its locals were aware of it. Here, although the Agency's overtime distribution had been in effect for several years, the Agency's failure to consistently provide non-custody overtime records hindered the Union's ability to monitor the overtime rotation.
- (c) In addition, in *Cruz-Martinez*, the union had filed two unfair labor practice charges which the FLRA dismissed as being untimely.
44. **Article 3 – Governing Regulations:** Article 3 (a) of the Master Agreement states that the “Agreement takes precedence over any Bureau policy, procedure and/or regulation which is not derived from higher government-wide laws, rules, and regulations.” The Agency's practice here does not take precedence over Article 18 (p) (1) and (2), and the Agency has not cited any higher government-wide law, rule or regulation that would apply here.
45. **Recordkeeping under Article 18 (p) (2):** As discussed earlier, Brian Richmond, Union president, testified that the Union has addressed the inadequacy of records on more than one occasion. Tr. 190-93. Mr. Richmond stated that the Union has sent the warden and Human Resources data requests and he (Mr. Richmond) has spoken to wardens and department heads about overtime record requests, but the Union gets no regular information

except from food service and that this information is inaccurate and/or incomplete. Tr. 190-91. This testimony was not refuted.

46. The Agency contends that the Union failed to specify in what ways the overtime records provided were incomplete and did not provide documentation showing what records had been received. Agency brief at 8. As indicated earlier, though, Ms. Millicks testified that until recently, her records did not include documentation of offers made for overtime requested. This information, among other items listed, is required to be provided in Article 18 (p) (2).

47. The Agency argues that the Union must demonstrate a “particularized need” for the information or records requested, citing Article 12(d), which references 5 U.S.C. § 7114(b). The Master Agreement, however, provides the particularized need here:

(a) Article 12(d) applies to “other requested information,” whereas Article 18 (p) (2) is both its own data request and its own statement of particularized need. The latter section specifies that overtime records, including sign-up lists, offers made by the Employer for overtime and overtime assignments are to be monitored to determine the effectiveness of the overtime assignment system and *to ensure equitable distribution of overtime assignments to members of the unit*. The language is broad and inclusive and makes no distinction between custody or non-custody or overtime by department. In order to know whether overtime is being equitably rotated among qualified bargaining unit employees, the Union must receive or have access to both custody and non-custody overtime records.

(b) Moreover, as the Master Agreement requires that overtime records be retained by the Agency for two years from the date of the record, these records can be said to be maintained in the regular course of business. That additional requirement also contributes to the “particularized need.”

(c) I find that the Union has met the standard of 5 U.S.C. § 7114(b).

48. **The Agency waived the timeliness issue:** As required by Article 31 (e) of the Master Agreement, “[i]f a grievance is filed after the applicable deadline, the arbitrator will decide timeliness if raised as a threshold issue.” The Master Agreement also states in Article 32 (a) that “if the parties fail to agree on joint submission of the issue for arbitration, ...the arbitrator shall determine the issue or issues to be heard.”
49. At the beginning of the August 16 hearing, I asked the parties whether there were any issues of arbitrability. The Agency responded that “[d]epending on what’s presented in the opening statements, there possibly could be a threshold issue.” Tr. at 6. The Agency’s position at the hearing was that a past practice existed.
50. I carefully considered whether the Agency’s past practice position could be construed as having timely raised a timeliness issue. I concluded that the Agency had not followed through on this issue during the two-day hearing.
51. As just noted, timeliness is a threshold issue under Article 31 (e). The Agency’s post-hearing brief did not list timeliness as one of the three issues to be decided. The Agency raised the timeliness issue in its post-hearing brief (at 5), but that action was itself untimely: The Agency failed to raise the timeliness issue in its March 2016 response to the grievance and also at the August 2017 arbitration hearing. The Agency’s timeliness argument is therefore waived.
52. **Summary:** The Agency violated Article 18 (p) (1) of the Master Agreement when it failed to distribute and rotate overtime equitably among custody bargaining unit employees. The Agency also violated Article 18 (p) (2), in failing to keep non-custody overtime records, which are to be used by the parties, in the words of that section, “to determine the effectiveness of the overtime assignment system and ensure equitable distribution of overtime assignments to members of the unit.”
53. Nothing in this award is intended to affect the authority of any management official of the Agency to direct or assign work to employees in accordance with applicable laws.

**Partial Final Award**

- 54. For the reasons discussed above, the grievance is sustained. The Union met its burden to establish by a preponderance of the evidence that the Agency violated Article 18 (p) (1) and (p) (2), constituting an unjustified or unwarranted personnel action and resulting in inequitable overtime opportunities for bargaining unit employees.
- 55. The custody officers were affected by an unjustified or unwarranted personnel action and the personnel action resulted in the withdrawal or reduction of the grievants' pay, allowances, or differentials. The missed overtime opportunities are compensable under the Back Pay Act.
- 56. Inasmuch as this is a partial final award and by agreement of the parties, I retain jurisdiction concerning the remedy in case the parties are not able to agree on one.

Signed February 23, 2018 in  
Houston, Texas



Maretta Comfort Toedt, Arbitrator

**Appendix A  
(Joint Exhibit 1)**

Relevant Provisions from the Master Agreement

Federal Bureau of Prisons and Council of Prison Locals  
American Federation of Government Employees

July 21, 2014 – July 20, 2017

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

**ARTICLE 18 – HOURS OF WORK**

**Section p.** Specific procedures regarding overtime assignments may be negotiated locally.

1. When Management determines 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. Overtime records, including sign-up lists, offers made by the Employer for overtime, and overtime assignments, will be monitored by the Employer and the Union 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 Employer for two (2) years from the date of said record.

**Section u.** Except as defined in Section d. of this article, the words ordinarily or reasonable efforts as used in this article shall mean: the presumption is for the procedure stated and shall not be implemented otherwise without good reason.

**ARTICLE 31 – GRIEVANCE PROCEDURE**

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



## ARTICLE 32 – ARBITRATION

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

**Appendix B**  
**(Joint Exhibit 3)**  
**Relevant Excerpts from the Grievance**

**5. Federal Prison System Directive, Executive Order, or Statute violated:**

Master Agreement in its entirety but most notably in Article 6, Section b(2) & b(6); Article 18, Section p & q. 5 U.S.C. in its entirety but most notably in 5 U.S.C. 5596 "Back Pay due to unjustified personal (sic) action": Any other Director, Order or Statute that may apply.

**6. In what way were each of the above violated? Be specific.** It has been brought to this Local's attention that the Agency is not following the established overtime procedures outlined in the Master Agreement. Specifically in Article 18, Section (p)(1) it states that "*...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:*" A review of overtime records in the non-custody arena clearly shows that the overtime is not being rotated equitably among the qualified unit employees for non-custody overtime.

This has also greatly affected the proper rotation of the overtime being assigned to qualified bargaining unit employees in the custody arena. When an employee is hired for voluntary overtime they are then moved to the bottom of the overtime sign-up list to ensure a fair and equitable rotation for all employees. Non-custody staff are being assigned overtime in their respective department and are being able to maintain their position on the Custody overtime roster which is essentially allowing non-custody to "double dip" in the overtime hiring assignments.

In addition, a further review of the overtime records reveals that non-custody departments are not following Article 18, Section (p)(2) which states that overtime records will include sign-up lists, offers made by the Employer for overtime and overtime assignments. Numerous non-custody department records are not complete in accordance with this article.

Furthermore, the Union has not been receiving overtime logs and notifications of non-custody overtime in a timely manner. In accordance with the Master Agreement, Article 18, Section p.(2), which states, "*overtime records...will be monitored by the Employer and the Union to determine the effectiveness of the overtime assignments system and ensure equitable distribution of overtime assignments to members of the unit.*" The failure of the Agency to ensure that the Local is receiving all records of overtime in the non-custody arena in a timely manner is making the effective monitoring of the non-custody overtime by the is Local an impossibility to accomplish.

**7. Date(s) of violation(s)** Continuous

**8. Request remedy (i.e., what you want done)**

1. That the Agency establishes the proper procedures for the fair distribution of overtime in all departments in accordance with the Master Agreement.

2. That the Agency ensures that all departments follow all requirements in the maintaining of overtime records in accordance with the Master Agreement.
3. That the Agency supply the Union all non-custody issuance or non-issuance of overtime on a weekly basis in a format agreeable to the Union.
4. That the Agency give access to the Union all non-custody overtime for the previous two (2) years so that an audit can be conducted by the Union.
5. That the employees discovered to have been by-passed for overtime be made whole in accordance to the back pay act or in compliance with the FLSA.
6. The grievant(s) will suffer no reprisals, harassment or intimidations as a result of filing of this grievance.
7. That the Agency pays all legal fees associated with tis grievance.
8. All bargaining unit employees made whole and any other compensation or remedy that the arbitrator deems appropriate.