

ARBITRATION DECISION
FMCS Case No. 10-02220

In the Matter of:)	
)	
FEDERAL BUREAU OF PRISONS)	
FEDERAL CORRECTIONAL COMPLEX)	BEFORE
FORREST CITY, ARKANSAS)	
AND)	FREDERICK P. AHRENS,
)	ARBITRATOR
AFGE, LOCAL 0922)	
FORREST CITY, ARKANSAS)	

Re: Reassignment of Unit employees

INTRODUCTION

The Federal Bureau of Prisons, Federal Correctional Complex, Forrest City, Arkansas, (Agency) posted a memorandum (Joint Ex. 9) dated August 3, 2009, from T. C. Outlaw, Warden. The memo was posted for all concerned employees regarding unit staff assignment changes. The American Federation of Government Employees, Local 0922 (Union) objected to the changes and ultimately filed a grievance claiming the Agency should have negotiated with it prior to making these assignment changes.

The Agency is represented by Whitney A. Coleman, Labor Relations Specialist, Department of Justice, Federal Bureau of Prisons of Grand Prairie, Texas.

The Union is represented by Jeffrey M. Roberts, President, AFGE/CPL33, Local 922 of Forrest City, Arkansas.

Frederick P. Ahrens, Esq., is the Arbitrator properly selected by the parties to hear this matter. The Parties stipulated on the record that the Arbitrator has jurisdiction to

hear this matter and make an award in this case.

The hearing was held on April 13, 2011 in the Training Conference Room located at The Federal Correction Complex located in Forrest City, Arkansas.

The parties filed briefs. A transcript of the hearing was prepared by Sandra J. Vaughn, a licensed Court Reporter of Memphis, Tennessee.

The Arbitrator's Award is to be issued after receipt of the parties' briefs and is due on or before July 31, 2011.

BACKGROUND

On July 29, 2009, an electronic message was forwarded to all unit management staff by the Agency from C. Norment, Assistant Warden, informing these employees of staff assignment changes within unit management units. On August 3, 2009, the Agency posted a memorandum for "all concerned" (Joint Exhibit 9) from T. C. Outlaw, Warden, listing the changes in staff assignments for ten (10) unit management staff employees.

On August 12, 2009, the Union filed a grievance with Warden Outlaw citing violations of the Federal System Directive, Executive Order or Statute including but not limited to Articles 1, 6, 9, 18, 22, 5 USC 7116, local agreements and past settlements.

CONTRACT PROVISIONS

Including provisions from the Master Agreement (MCBA) between the Federal Bureau of Prisons and the Council of Prison Locals AFGE (Joint Exhibit 1); the Local Supplemental Agreement (LSCBA) between the Agency and the Union (Joint Exhibit 2); and the FCC Forrest City Unit Management Department Compressed

Work Schedule Agreement (UMDCWS) dated May 26, 2005 (Joint Exhibit 5).

The MCBA Article 1. Recognition, Section b provides:

The Employer recognizes the Union as the exclusive bargaining agent under the provisions of the Federal Service Labor Management Relations Statute, 5 USC, Chapter 71, 7101 et. seq., hereinafter referred to as "the Statute", and the Civil Service Reform Act of 1978, of all the employees in the unit, as the recognized Union for bargaining purposes with respect to conditions of employment of employees represented by the Union. The Union has full authority as provided by Statute to meet and confer with the Agency for the purpose of entering into negotiated agreements, concerning changes in conditions of employment covering bargaining unit employees, and to administer this Collective Bargaining Agreement.

The MCBA, Article 6, Rights of the Employee. Section a 2.

Each employee shall have the right to form, join, or assist a labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided by 5 USC, such right includes the right:

2. to engage in collective bargaining with respect to conditions of employment through representatives chosen by the employees in accordance with 5 USC.

The MCBA, Article 7, the Rights of the Union, Section b.

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

The MCBA Article 9, Negotiations at the Local Level. This article provides for negotiations at the local level to supplement the MCBA but in no case may local supplemented conflict with, be inconsistent with, amend, modify, alter, paraphrase, detract from, or duplicate this Master Agreement except as expressly authorized herein.

The NCBA 18, Hours of Work, Section b.

The parties at the national level agree requests for flexible and/or compressed work schedules may be negotiated at the local level in accordance with 5 USA.

The NCBA 18, Hours of Work, Section f.

Roster committees outside the Correctional Services department will be formed to develop a roster unless mutually waived by the department head and the Union. It is

recommended that the procedure in Section d. be utilized. These rosters will be posted three (3) weeks prior to the implementation. Copies will be given to the local President or designee at the time of the posting.

The grievance also cites 5 USC 7116 a 5 which states: It shall be an unfair labor practice for an agency to refuse to consult or negotiate in good faith with a labor organization as required by this chapter.

The grievance also states the Agency's actions violated the FCC Forrest City Unit Management Department Compressed Work Schedule Agreement. This agreement states "Management may assign a staff member an assignment in an area other than where the staff member is normally assigned during an emergency situation. Staff will not be arbitrarily moved from their assigned unit to another unit on a permanent assignment by management".

ISSUE

The parties did not completely agree on the framing of the issues and therefore the Arbitrator determines the issues to be:

1. Was the Agency in violation of the Master CBA and/or 5 USC 7116 when it did not negotiate or consult with the Union regarding the reassignment of the Management Staff Units employees in August 2009? If so, what is the proper remedy?
2. Did the reassignment involve a change of working assignments and/or a change in the conditions of employment? If so, what is the proper remedy?
3. Did the reassignment violate the Master Agreement Article 18 and or FCC Forrest City Unit Management Department Compressed Work Schedule Agreement? If so, what is the proper remedy?
4. Did the reassignments violate past practices? If so, what is the proper remedy?

AGENCY'S POSITION

The Agency claims it felt it was necessary, to the orderly running of the institution, to

move several unit staff members from one unit to another. They felt it was necessary to exercise their management right of assignment to more efficiently distribute the Unit Team experience among the various units. The Agency also claims the reassignments were discussed with Union officials, prior to implementation and that there was no adverse impact on any of the reassigned employees. The Agency maintains there is no violation of the Master Agreement, 5 USC 7116, or any local Agreement. (see Joint Exhibit 3)

UNION'S POSITION

The Union maintains reassignments were made without consultation or negotiation and involved a change in working assignments. They also maintain the reassignments violated the Master Agreement Article 18 and the Unit Management Department Compressed Work Schedule Agreement as well as past practice. (see Joint Exhibit 3)

DISCUSSION

In this case the Union has the burden of proof. At the hearing, the parties submitted nine joint exhibits and the Union submitted six exhibits. The Agency called no witnesses and submitted no Agency exhibits. Both parties filed briefs.

The evidence presented and the testimony at the hearing stated the Agency informed the employees on July 29, 2009 at a team retreat of the reassignments. On that same date the Union President sent the Agency a cease and desist letter calling for initiation of formal and proper negotiations. (see Joint Exhibit 6) There were no negotiations and on August 3, 2009 the Agency posted a memo to all concern listing the changes in ten staff unit assignments in the Unit Management Department. The Union filed a grievance that was signed as received on August 12, 2009. (see joint Exhibit 2)

On September 11, 2009 the Agency sent a grievance response to the Union stating management felt it was necessary, to the orderly running of the institution, to move several Unit Management Staff Department members from one unit to another and that this initiative was discussed with Union officials prior to implementation of the reassignments. The Agency response went on to state it was necessary for the Agency to exercise its right to assign in order to more efficiently distribute the unit team experience among the various units. (see Joint Exhibit 3) There was no evidence presented by the Agency on the necessity of making these the reassignments or how its selection of those employees to be reassigned distributed the unit team experience among the various units. Nor did the Agency present any evidence it had discussed the reassignments with the Union prior to their implementation. The Arbitrator concludes through the evidence and testimony presented, the Agency did not establish that the Agency was exercising its management right to assign in making the reassignments nor had it discussed he reassignments with the Union prior to implementation.

The evidence and testimony did establish the Agency violated the Master CBA and 5 USC 7116 when it failed to negotiate or consult with the Union regarding the reassignment of the Management Staff Units employees in August 2009. The arbitrator decides the remedy for the lack of negotiating with the Union is to order the parties to bargain regarding the reassignment. The Agency is also required to post a copy of this Award in all units of the Unit Management Staff Department for sixty (60) days commencing one week after the earliest date the Agency or the Union receives the Award.

In bargaining on the reassignment issue, the parties are to consider how the change in assignment was justified under the Agency's claims the reassignment was an exercise of its management right of assignment made in order to more efficiently distribute the Unit

Management Staff team experience among the various units. In discussing this, consideration is to be given by the parties to any changes in assigned duties whereby the reassigned employees were given additional duties, including but not limited to, supervising, training and mentoring the less experienced employees in the reassigned unit.

The parties should also bargain as to the remedy, if any, with or without retroactive effect, caused by any prohibited implementation of the reassignment changes and/or any prohibited changes in work assignments. The length of the reassignment, permanent or temporary, as determined by the Agency is a factor to be discussed to assess if there are any violations of the Master CBA, the Local Supplemental Agreement, the Unit Management Department Compressed Work Schedule Agreement, and/or any past practices.

The Arbitrator determines the evidence and testimony established the Agency violated the Master CBA and 5 USC 7116 when it did not negotiate or consult with the Union regarding the reassignment of the Management Staff Units employees in August 2009.

The parties are to complete bargaining on the above mentioned matters, no later than ninety (90) days from the earliest date the Agency or the Union receives the Award. At that time any unresolved issues under this Award are to be submitted to the Arbitrator for consideration and Award.

AWARD

The evidence and testimony establish the Agency violated the Master CBA and 5 USC 7116 when it did not negotiate or consult with the Union regarding the reassignment of the Management Staff Units employees in August 2009.

After consideration of the evidence submitted and the hearing testimony, the

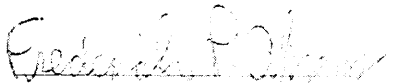
arbitrator determines the remedy for the lack of negotiating with the Union and the unilateral implementation of the reassignments is to order the parties to bargain regarding the reassignment. The parties should also bargain as to the remedies for any violations caused by the implementation of the reassignment changes.

The parties are to complete bargaining ninety (90) days from the earliest date the Agency or the Union receives the Award. At that time any issues under this Award, not resolved by the parties in bargaining, are to be submitted to the Arbitrator for consideration and Award.

The Agency is also required to post a copy of this Award in all units of the Unit Management Staff Department for sixty (60) days commencing one week after the earliest date the Agency or the Union receives the Award.

The fees and expenses of the arbitrator are to be shared equally by the parties.

Signed and issued this 20th day of June, 2011


Frederick P. Ahrens, Arbitrator