

IN ARBITRATION

Federal Bureau of Prisons,)	FMCS No. 13-02693
Federal Corrections Institute)	
)	File No. 2140
And)	
)	Date of Hearing: June 19, 2014
American Federation of Government Employees)	
(AFGE) Local 1304)	
)	
)	

ISSUE

The Union’s proposed issue is neutral and is acceptable. It is, “Did the Agency violate Article 18 Section p(1) of the Master Agreement when it failed to distribute and rotate overtime opportunities in an equitable manner amongst bargaining unit employees?” “If so, what shall be the remedy?”

FACTS

The Federal Correctional Institution, Greenville, IL (Greenville) maintains a facility for the production of uniforms called UNICOR adjacent to the Institution.

Greenville makes uniforms for various government agencies including the military. The production facility is manned by prisoners who do the actual cutting of fabric, sewing, stitching and assembly. The production workers are supervised by guards who are called Fabric Worker Supervisors, sometimes simply referred to as Fabric Workers.

For a long period of time the Fabric Workers examined the finished garments for quality control at the production facility. Sometime ago, management transferred the quality control section to the warehouse section which was separate from the production facilities.

The Union evidence was that from July 2012 – January 2013 overtime work in the warehouse was given only to Mr. Prefetti and Ms. Ridings. Mr. Prefetti was employed as a Contract Specialist and Ms. Ridings was a material handler. Both worked only in the warehouse.

Union evidence was that a Greenville manager stated that moving the quality control department to the UNICOR warehouse saved money as the warehouse workers made less money than the Fabric Workers.

According to Union testimony, the overtime in question was quality assurance department work.

Agency testimony was that the warehouse had a separate computer system that was not familiar to the Fabric Workers.

The Union's testimony was that Fabric Workers frequently worked in the warehouse when Ms. Ridings was not available. They handled her absence for vacation, illness and the like, but they were not taught the computer system in the warehouse. One or two did have some skill with the computer system on a self-taught hands on basis. None the less, they managed to work in Ms. Ridings' absence.

The Union produced evidence that since the quality control program was moved to the warehouse, Mr. Prefetti and Ms. Ridings spent some of their time doing quality control work.

The Union produced a number of witnesses, all who testified as to the days that they would have been available for overtime between July 2012- January 2013 when the work was assigned solely to Mr. Prefetti and Ms. Ridings.

POSITION OF THE PARTIES

POSITION OF THE UNION

The Union acknowledges that it had the burden of proof since it is alleging a violation of the contract.

The Union maintains that management had no reason to transfer quality control to the warehouse except to save money. Mr. Perfetti and Ms. Ridings made approximately \$3-\$4 an hour less than the Fabric Workers. When this is multiplied by 1 ½ times for overtime, the saving is obviously considerable.

The employees grieving here were fully capable of doing quality assurance or control work in the warehouse as they had performed it at the production facility. They were still able to determine if garments were acceptable or unacceptable. However, there is no evidence that Mr. Perfetti or Ms. Ridings were qualified to do Fabric Worker work. They were thus not qualified for the overtime. However, the Fabric Workers had worked in the warehouse and had substituted for Ms. Riding and had apparently done so satisfactorily. They were qualified to do both quality assurance/control work and warehouse work either way.

It is clear that the Grievants were denied their fair share of overtime as the contract required in Section p(1) of Article 18. The Arbitrator should so find and award the overtime amount to the Grievants as requested.

POSITION OF THE AGENCY

The position of the Agency is not readily apparent as it did not file a post-hearing brief.

However, based on testimony, the position of the Agency is that these Grievants were not qualified for overtime in the warehouse because they were not regular warehouse employees. As evidence of this is the fact that they did not have full access to computer programs needed to run the warehouse.

The Agency also maintains that it had a right to place work where it chose for whatever reasons it believed warranted change. The Union has no right to question management's placement of the quality assurance work in the warehouse.

For these reasons, the grievance should be dismissed.

OPINION OF THE ARBITRATOR

A complaint of the Union is easily answered, the Union complains that the quality assurance work of the Fabric Workers was transferred from the production facility to the warehouse simply to save money. That is probably correct, but that does not deny management the right to make the change. Management can determine where work is done for any reason that it chose as long as it does not violate any provision of the master agreement, federal law, rules or regulations. Nothing that was called to my attention would deny management the right to assign the quality assurance function wherever it chose.

The contract provision in issue is Article 18, Section p(1). This Article states as follows:

1. when Management 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..

This section of the master agreement has two requirements. They are - 1. Overtime is for positions and assignments normally filled by bargaining unit employees, and 2. For qualified employees. The impression that I have received from the evidence is that the Bureau of Prisons violated both requirements of Article 18 p(1).

The two warehouse employees did not have positions or assignments that were normally filled by them. The position and assignment for quality assurance/control was normally and usually assigned to Fabric Workers, not warehouse employees.

The question also arises as to the qualifications of the employees receiving the overtime. There is a serious question as to whether Mr. Perfetti or Ms. Ridings were qualified employees to do Fabric Worker quality assurance. They did not do this as a matter of course and their main assignments were with warehouse work, not garment production work. I question whether they were qualified workers for the productions assignment, which apparently they did.

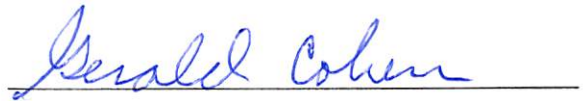
The evidence of the Union was that the overtime was quality assurance work. This seems logical. I would expect that Mr. Perfetti and Ms. Ridings would do their regular assignments of warehouse work before they would undertake other work. It is likely that they would put off the non-warehouse work in favor of the warehouse work.

I believe that the Union has sustained its burden of proof and shown that the Bureau of Prisons violated the master agreement which cost the grieving employees their overtime pay.

The grievance is sustained and the parties are ordered to equitably distribute the overtime amongst the grieving employees. I will retain jurisdiction to determine overtime assignment in the event that the parties are unable to do so.

The costs are assessed equally.

October 24, 2014

A handwritten signature in blue ink that reads "Gerald Cohen". The signature is written in a cursive style and is positioned above a solid horizontal line.

Gerald Cohen, Arbitrator

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OCT 28 2014
GENERAL COUNSEL

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