LABOR MANAGEMENT RELATIONS QUARTERLY MEETING

400 FIRST ST., NW
WASHINGTON, DC
APRIL 20 - APRIL 21, 1999

PARTICIPANTS:

MANAGEMENT:
Ron Thompson
Linda Doeblin
Joe Chapin
Phillis Morgan
Don Laliberte
Aaron Marshall
Christopher Wade
Nikki Gallo

UNION:
Phil Glover
Jim Turner
Dennis Biesik
Charlie Bohannon
Allen Green
Manny Borquez
Paul Rissler
James Schroeder
James Manning
Brian Lowery

Subject Matter Experts:
Matthew Hamidullah
Tom Kane
Mina Raskin
Jeff Shorba
Vicki Verdeyen
John Chreno
Bobbi Butler
Bo Saylor
Scott Camp

POLICIES NEGOTIATED

SEE SEPARATELY ATTACHED POLICY NEGOTIATION NOTES ON:

P.S. 5267.XX: Visiting Regulations
P.S. 1480.XX: News Media Contacts
P.S. 1070.XX: Research

Summary of Issues Addressed During LMR Meeting:

Alternative Dispute Resolution
Compressed Work Schedules
Cross Gender Pat Searches
Domestic Violence
Local Supplemental Agreements
New Media Contacts Policy
Ombudsman Program
Overtime Rosters
Position Descriptions
Privatization
Proposals for Negotiations
Research Policy
Self-Contained Breathing Apparatus (SCBA)
Shift Start and Stop Times
Shoes/Boots for Designated Foot Hazard Areas
Turnover Rates in Institutions
Union Dues
Vacating Posts
Visiting Regulations Policy

National Agenda Item: MANAGEMENT

***** **Introduction of the Bureau's Ombudsman**

Matthew Hamidullah, the Bureau's Ombudsman, introduced himself and explained the Ombudsman program. He provided examples of what other government agencies have been doing for years in regard to this type of program. He emphasized that the program is both informal and confidential, as well as accessible to all employees. Mr. Hamidullah provided the Union with specific information about how to contact him.

* **Presentation on Privatization**

The Union requested the Bureau's formal position on privatization and to have a discussion on HR 215 and HR 979. Tom Kane, Assistant Director of the Information, Policy and Public Affairs Division, spoke to the Union.
Mr. Kane provided handouts detailing the statistics on drug and immigration cases in the Bureau. He went on to state that the Bureau's inmate population is growing at a very fast pace and the need for flexibility to accommodate such a growth will require the Bureau to sometimes use private contractors.
Mr. Kane emphasized that the agency wants Bureau staff to operate as many facilities as possible since it believes that Bureau staff are the best staff to do the job. However, there will be occasions when the inmate population will be fluctuating and expanding so quickly that it will not always be possible to use Bureau staff. It was explained that the agency will only use outside contractors when it sees the need for the use of private sector beds, and when it is considered a safe and secure option.

The Union wanted it known that they are opposed to privatization but appreciated the presentation by Management which explained a lot that had previously been unclear to them. Management provided the Union with a copy of an article explaining the Bureau's compliance with the National Environmental Policy Act of 1969 (NEPA). This article, which will appear in the USA Today newspaper, also announces upcoming "Scoping Meetings" to be held in May.

* **Video Presentation on ADR**

Mina Raskin, Counsel for Dispute Resolution, presented a 40-minute video to Management and the Union entitled "Conflict Resolution". Ms. Raskin updated the Union on what has been done thus far with the program and explained that a pilot is currently ongoing in the Mid-Atlantic Region. She stated that she has been working closing with Charlie Bohannon, Mid-Atlantic Regional Vice President, Council of Prison Locals, and will continue to keep the Union involved in this program.

* **ISSUE:** When can Management expect to receive proposals on policies that the Union has invoked negotiations on?

The Union said that they would provide proposals by April 30th for negotiations occurring during the week of May 10, 1999. For general purposes, the Union stated that they will do their best to get proposals to Management as soon as possible after invoking negotiations but gave no specific time frame.

National Agenda Items: UNION

1. **ISSUE:** "Cross Gender Pat Searches. Since the Union's presentation at the last meeting, an additional inmate has been placed on a 'no male pat search' restriction. The Union is not aware of a court order for this and are concerned with this trend at Danbury. The Union would like this restriction rescinded unless it is court ordered."

Response: Management stated that currently the Bureau of Prisons has two inmates at FCI Danbury who have been exempted from cross gender pat searches. Both of these inmates are parties in a case filed against the Agency challenging its cross gender pat search policy.

The first inmate to be placed under the exemption is currently the subject of a court order which prohibits cross gender pat searches of this inmate by staff of the opposite sex. Following this court order, and as part of ongoing litigation, both inmates were examined by an independent psychiatrist. Although the first

inmate was found by the psychiatrist to be suffering from post traumatic stress disorder, the psychiatrist determined that it was not so severe to require an exemption from cross gender pat searches. However, the court order remains in effect. The second inmate was found to be suffering from post traumatic stress disorder serious enough which, in the psychiatrist's opinion, required an exemption. Based on this independent assessment and the possibility of another court order, the Agency agreed to exempt this second inmate from cross gender pat searches. This exemption was based on criteria set forth in Agency policy and explained in a memo from Vicki Verdeyen, Psychology Administrator, which was provided to the Union.

Closing arguments on this case (involving both inmates) is scheduled to begin on May 3, 1999.

The Union's main concern was that other inmates, nationwide, would start claiming that they could not be pat searched by members of the opposite gender. They also expressed the concern that female staff have of becoming "matrons" to female inmates, and thus, being transferred to another institution to serve that purpose. Management reiterated what was detailed in Vicki Verdeyen's memo, emphasizing that inmates cannot arbitrarily make such claims.

This was a discussion item only.

2. **ISSUE:** "Shoes and/or Boots at FCI Sandstone: This has been on the agenda before, however, it was the Union's understanding that a call would be made about the number of shoes or boots to be given to employees upon initial issue and upon initiation of the new agreement. Currently, even new staff are not being authorized two pairs of shoes or boots."

Response: Management began the discussion by informing the Union that they are still waiting for a list from the Union which details which institutions have changed the number of designated foot hazard areas since the Master Agreement went into effect last March.

After a lengthy discussion between Management and the Union concerning the different interpretations of Article 28, Section g. of the Master Agreement, a resolution was reached. Management agreed to put out a message to Assistant Directors, Regional Directors and Wardens, specifying the official interpretation of this section. This memo will be endorsed by Phil Glover, President, Council of Prison Locals, before being distributed to the field.

3. **ISSUE:** "Position Descriptions are being changed without notification to the Union, and without an opportunity for employee and Union input."

Response: The Union expressed their concern that Human Resource Managers and specific supervisors are revising position descriptions and then not notifying staff of the changes. In addition, when staff realize that their duties have been changed, they cannot find out from the HRMs when the changes were made. The Union gave FCI Tallahassee, FCI Sandstone and FCI Petersburg as examples of where this has happened. The Union believes that the employee's supervisor should speak to the employee before changes are made to ensure they understand their responsibilities. Management responded that supervisors should already be doing this, especially at the annual review period.

The Union implied that negotiations should take place before positions descriptions are changed. Management believes that position descriptions are an assignment of work, whereas the Union contends that they are conditions of employment. Management disagreed, stating that unless working conditions are changed (more than diminimus), there was no obligation to negotiate. However, Management did agree to put out a message to the field stating that all staff members should be given a copy of their position descriptions when duties change or upon request, and that no supervisor should change an employee's duties without informing the employee.

4. **ISSUE:** "HRMs are putting out that Union dues cannot be retroactively withheld."

Response: A draft memo was presented to the Union which would go out to HRMs and HRAs explaining "retroactive" deductions of union dues. It stated that because dues are considered a payroll action, they cannot be "retroactively withheld". However, with the completion of an AD-343, deductions can be made to account for union dues which were erroneously omitted. The Union approved the memo and it will go out in the near future.

The Union also asked for clarification about the transfer of a bargaining unit staff member from one institution to another, i.e., which institution keys the employee into the system as having switched to a different local. Management stated that it is the receiving institution that keys the employee into the system.

5. **ISSUE:** "Compressed Schedules are continuing to go through Regional Offices for approval or review. This is taking up time in the process and is not part of the Master Agreement procedure."

Response: Management agreed that the Regional Offices are not the approving authority and according to a memo that went out on June 5, 1998 from Ron Thompson and Wally Cheney, this was reiterated. The memo also stated that if a compressed work schedule is sent to the Regional Office, it should be done at the same time the schedule is sent to the Central Office for review.

Management agreed to put together some language and send it out to the field in combination with another message, e.g., clarification on position descriptions.

6. **ISSUE:** "SCBA policy discussion. The Union is filing to negotiate this policy formally."

Response: The Union is concerned that individuals with facial hair cannot be fit-tested for a respirator and therefore, will be removed from SORT or DCT. Management explained that it is the new

Occupational Safety and Health Administration's (OSHA) standards in 29 CFR that have resulted in strict fit testing and medical evaluation procedures. It has been discovered that facial hair interferes with the proper sealing of a respirator, thus endangering the life of the rescuer, as well as those individuals he or she is trying to rescue. Management also stated that those individuals who want to be fit-tested must also fill out the proper forms and get medical clearance.

The Union expressed their belief that the OSHA standard could not have been intended for an institution setting. Management agreed that some portions are inappropriate, however, OSHA would not provide the Bureau with an exception to the standards but rather alternatives on how to implement the standards. Either way, the Bureau is obligated to comply with the standards.

The Union is also concerned that the agency may take adverse action against staff for physical inability to perform the duties of their jobs if a medical evaluation reveals that the staff member is unable to wear SCBA.

The Union said they would take a closer look at the regulations, standards and the policy, and formulate proposals for negotiations. When Management asked if the inclusion of this issue in the agenda was the formal notice of intent to negotiate this policy, the Union responded that it was. This has been noted and the respective discipline was notified.

7. **ISSUE:** "Local Supplemental Agreements - The Union wants to replace local Management negotiating teams with staff from the LMR branch. The information Management is receiving from LMR is coming too slow for local Management which has resulted in negotiations being stopped when LMR officials go on vacation, and time zone problems occur."

Response: The Union stated that local Management at FCI El Reno and FCI Forrest City believe they can end negotiations and direct staff back to work, whether or not the Union is willing to end the local negotiations. The Union asked Management to get involved by

informing local Management that they cannot arbitrarily end negotiations or wait until particular Central Office staff are available for consultation. Management stated that many local Management and Union officials are new to the process of negotiating a local supplemental agreement and training may be an option in the future. However, historically, negotiations have always taken a long time, no matter what the circumstances. In addition, the Union stated that they are bringing a tremendous amount of proposals to the table, to which Management responded that this is likely one of the main reasons negotiations are taking so long (researching the legality of proposals takes a long time).

Management stated that they would continue to work with the institutions as they have been doing all along, via phone consultations. Management went on to state that they will ask the Regional Directors to track the process of local negotiations to ensure that negotiations are taking place in a timely and efficient manner. The Regional Vice Presidents for the Union indicted they would do the same with their institution counterparts.

8. **ISSUE:** "Local Supplemental Agreements - Union officials are being prosecuted for robust negotiations at the table; this is a protected activity."

Response: Management informed the Union that regulations state that "robust" language cannot be targeted toward someone's race, gender, religious affiliation, etc. If this occurs, it is considered beyond the boundaries of reasonable, robust negotiations and is not protected. The Union responded that if the person apologizes, it should be accepted and negotiations should continue. They further stated that if one person gets disciplined for his or her remark, this will be just the beginning for both parties filing on each other.

This was a discussion item only.

9. **ISSUE:** "Local Supplemental Agreements - Management refers to Article 9 which states that nothing can be altered, paraphrased, etc. These are local supplements not the Master Agreement. We are negotiating at the local institutions for a local supplement to implement the Master."

Response: Management began by stating that the language the Union has a problem with was their own language from Master Agreement negotiations. They went on to state that during Master Agreement negotiations, Management informed the Union that the Master Agreement covered so many issues that there would be very little remaining for the field to negotiate. In addition, many locals are attempting to negotiate issues that the national Union was unsuccessful at obtaining. Thus, these items are being struck with the reasoning that the Union had already given up their opportunity to negotiate certain issues.

The Union believes that despite the fact that the Master Agreement includes almost everything, it should not preclude the locals from using language from the contract to clarify their local agreement. When the Union asked why the Central Office strikes provisions dealing with the purchase of a computer for the local union, Management responded that they are not striking the provision but rather commenting that it will be approved with the understanding that this is not new equipment purchases solely for use by the Union. The Union then stated that they should do a Memorandum of Understanding (MOU) instead to bypass the Central Office review. Management informed the Union that such an MOU would still be illegal, and could not be enforced by a third party.

This was a discussion item only.

10. **ISSUE:** "The Union wants a discussion of ways to help eliminate the problems occurring on overtime rosters, i.e., the non-selection of people signed up properly for overtime."

Response: Management stated that they had spoken with Joe Smith, Deputy Regional Director for the Western Region, about trying a new

computer software system which has been utilized elsewhere in the Bureau and has assisted in the tracking of overtime assignments. The Union said they were aware of the computer program but did not believe that it would remedy the situation. They asked Management to send a message to the field, specifically to the Captains, to instruct them to "keep an eye out for any problems".

Management stated that according to the Master Agreement, the Union is equally responsible for monitoring the overtime rosters and procedures. The Union said they are monitoring overtime and have filed several successful grievances over the issue. The problem, according to the Union, is that Lieutenants are "jumping over" the next person on the overtime list and going to someone else. A computer program cannot fix that. This was a discussion item only.

11. **ISSUE:** "Local Supplemental Agreements are being held up in the field because the Central Office is telling the field that they cannot print the agreement because of items that have been rejected by Central Office...Request for the Agency to show how they have come up with this answer. Request the Agency send an EMS out to the field addressing this issue."

Response: The Union said this is occurring all over the country. They will get more specifics from Mr. Raney (who was absent from the meeting) and get back to Management. Management did agree to mention this issue during an upcoming teleconference with the field.

12. **ISSUE:** "Institutions' Shift Starting and Stopping Time: The Agency did a survey concerning this issue and the Union is requesting copies of that survey. The Union would like for the Agency to show all institutions who are in compliance with Policy Statement 3000.02, Section 610.1, and a list of all institutions who have not to date negotiated start and stop times with the local unions. The Union would also like for the Agency to show how they are accommodating those affected Bargaining Unit employees."

Response: Management informed the Union that the survey they were requesting is being used for the defense of Management in ongoing litigation and is considered protected information under the terms of attorney-client privilege. The Union asked for a copy once the case has been resolved. Management said they would look into this possibility.

13. **ISSUE:** "Domestic Violence Grievance: On December 30, 1998, a grievance was sent to Mr. Chapin's Office concerning the above grievance. The Union has not received a response from the Agency as to the status of that grievance. The Union is requesting a response so we can proceed forward."

Response: The Union believes that staff who hired attorneys to defend their case should be reimbursed for attorney's fees considering that the law had changed in December 1998. However, Management informed the Union that the D.C. Circuit Court of Appeals had reversed itself on April 16, 1999. This case decision was handed out to the Union. Management stated that they would be meeting with staff from the Office of General Counsel within the next few weeks to discuss the options for affected staff. It would appear that the affected individuals are no longer protected by the earlier decision.

The Union asked for an updated list of institutions which employ those individuals who were convicted of a crime of domestic violence. This list had been provided at a previous national LMR meeting. Management stated that they would try to obtain this information again and forward it to the Union.

14. **ISSUE:** "Vacating Posts: After conducting a survey in the NC region, the Union has decided to file a class action grievance pertaining to the amount of posts that are being vacated. Congress has funded the Agency to operate at 100%, however, the Agency is not manning all posts, and in some cases, they have set up posts that can be pulled on every shift, every day of the week.

Following is a list of institutions that are vacating posts daily: FPC Duluth; USP Florence; FCI Sandstone, FMC Rochester, FCI Greenville, MCC Chicago, FCI Pekin, ADX Florence, USP Marion, FCI Waseca, USP Leavenworth, FPC Yankton, FCI Florence. Local presidents have informed the Union that the Agency is vacating 3-4 posts per day, per shift. This practice is unsafe and needs to be stopped."

Response: The Union presented statistics on where and how many posts were being vacated daily. They emphasized that their main concern is the safety of staff. The Union believes that posts are being vacated because of per capita and stated that procedures have changed when vacating a post, i.e, the post is being eliminated on the roster rather than writing in the word "vacant" on the roster. Both Management and the Union agreed that this, in part, may be due to the fact that the Warden believes that the post isn't needed anymore.

Management stated that this is a recurring issue at our national LMR meetings and after the last meeting, it was brought to the attention of the Executive Staff. According to Management statistics, assaults on staff are decreasing. This is contrary to what the Union is presenting, i.e., that vacating posts results in more assaults on staff.

The Union stated that institutions are using GS-9s and GS-11s to fill GS-6 and GS-7 posts, which is not cost effective. As a business practice, this does not make sense. Management stated they are doing everything they can to ensure a safe environment for staff. Although this has been brought up at many previous meetings, the Union emphasized that they will continue to bring this issue up until there are no vacated posts. This was a discussion item only.

15. **ISSUE:** "The following institutions are not fully staffed:

Institution	Officers Down
FPC Duluth	1
FMC Rochester	2-3
FCI Greenville	6

Institutions	Officers Down
FMC Springfield	20
MCC Chicago	10-15
FCI Pekin	5-10
ADX Florence	5-10
USP Marion	5-6
FCI Waseca	5-6
FPC Yankton	1
FCI Florence	10
USP Leavenworth	15-20
USP Florence	OK
FCI Englewood	[No response by due date]
FCI Oxford	[No response by due date]"

Response: Management presented statistics which showed that the above numbers are normal turnover rates in an institution. The Union agreed but wanted to know why the agency cannot overhire staff in order to accommodate the amount of staff separating. This would be the only solution to remain at 100% all the time. Both Union and Management recognize that this is not necessarily the solution.

This was a discussion item only.

✤ ***P.S. 5267.XX: VISITING REGULATIONS***

Prior to the meeting, Management had put together a memo agreeing to the changes proposed by the Union. Management had also already incorporated those changes in the policy in order for the Union to review. This memo and the changed policy were presented to the Union during the meeting.

Both Management and the Union signed off on the changes.

✤ ***P.S. 1480.XX: NEWS MEDIA CONTACTS***

The Union had asked for the following language to be inserted anywhere in the policy:

"The Union continues to have the right to contact the media independently of the institution to express its concerns or accomplishments to the public. There will be no restrictions on the Union's contact with the media for informational pickets, press releases, press conferences, or other types of events."

Management presented a counter-proposal. This proposal was the same language Management and the Union had agreed upon during previous policy negotiations on "Employee Speeches and Publications Review Process":

"This policy shall not restrict the Union's role in representing bargaining unit employees in their day-to-day, labor management relations as outlined by law, the Hatch Act, and the Federal Labor Relations Authority decisions. Union officials will be allowed to represent the Bargaining Unit in their official capacity (e.g., providing interviews with the print or broadcast media, placing advertisements in newspapers, appearing on public talk shows and radio stations, and speaking at conferences and conventions) without fear of reprisal from the employer or representatives of the employer."

The Union agreed to the above language for the News Media Contacts policy.

✤ ***P.S. 1070.XX: RESEARCH***

The Union had concerns with a researcher's access to records without the subject's consent.

Management explained to the Union about the kinds of data that are accessible and who is authorized to use this data for research purposes. There was some discussion about placing language into the policy regarding the Privacy Act but it was discovered that Privacy Act language was already in the policy.

The Union withdrew their proposal.

SIGNATURE PAGE

"I concur that the preceding meeting minutes for the April 1999 National LMR meeting are accurate and representative of what was discussed and/or agreed to by the parties."

_____ _____

Joseph E. Chapin, Chief Date
Labor Management Relations and Security Branch

_____ _____

Phil Glover, President Date
Council of Prison Locals