

68 FLRA No. 45

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
YAZOO CITY, MISSISSIPPI
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL OF PRISON LOCALS
LOCAL 1013
(Union)

0-AR-5041

DECISION

January 28, 2015

Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

The Union filed a grievance alleging that the Agency violated the Fair Labor Standards Act (FLSA)¹ by failing to compensate correctional officers for work that they performed “before and/or after their scheduled shift[s].”² Arbitrator John W. Hanson sustained the grievance in large part, and ordered retroactive overtime pay for approximately a dozen categories of correctional officers. Among the correctional-officer categories for which the Arbitrator ordered relief were facilities officers who, with an inmate work detail, perform maintenance and repairs throughout the prison complex. The Arbitrator awarded the facilities officers overtime pay of ten minutes per workday for the applicable recovery period.

The only question before us is whether the award of ten minutes overtime pay per workday is contrary to 5 C.F.R. § 551.412(a)(1). Because § 551.412(a)(1) requires that a preparatory or concluding activity exceed ten minutes per workday in order to be compensable, and the Arbitrator awarded the officers only ten minutes per workday, the answer is yes.

¹ 29 U.S.C. §§ 201-219.

² Award at 1.

II. Background and Arbitrator’s Award

The Agency is a federal correctional complex. The correctional officers who work at the prison perform a variety of activities before and/or after their scheduled shifts. For example, correctional officers stop at a control center on their way to their posts to pick up necessary equipment. This equipment includes such things as keys, radios, batteries, body alarms, flashlights, and handcuffs. They also pass through the control center after their shifts to return their equipment. In addition, correctional officers must go through sally ports and compound gates, and certain correctional officers must check-in with a supervising officer before they report to their posts.

The Union filed a grievance alleging that the Agency violated the FLSA by failing to compensate correctional officers for work that they performed before and/or after their scheduled shifts. The grievance was not resolved and was submitted to arbitration.

The parties jointly submitted the following issue to the Arbitrator: “Did the [Agency] suffer or permit [correctional officers] to perform work before and/or after their scheduled shift[s] in violation of the [FLSA]? If so, what is the remedy?”³

The Arbitrator identified the legal framework that he intended to apply. Quoting an Office of Personnel Management regulation, 5 C.F.R. § 551.412(a)(1), the Arbitrator explained that compensable “preparatory or concluding activities [must be] closely related to an employee’s principal activities, and [be] indispensable to the performance of the principal activities.”⁴ Further, the Arbitrator recognized that “the total time spent in [such compensable] activit[ies] [must be] more than ten minutes per workday.”⁵

The Arbitrator found that the Agency “did suffer or permit [correctional officers] to perform work before and/or after their scheduled shift[s] in violation of the [FLSA].”⁶ The Arbitrator reviewed the circumstances of approximately a dozen categories of correctional officers, and awarded retroactive overtime pay to most of them for additional minutes worked.

Among the correctional-officer categories whose circumstances the Arbitrator reviewed were facilities officers. The Arbitrator found that the facilities officers begin their shifts at 7:30 a.m. After picking up their equipment at the control center, they wait for a shuttle to

³ *Id.*

⁴ *Id.* at 33 (quoting 5 C.F.R. § 551.412(a)(1)).

⁵ *Id.*

⁶ *Id.* at 49.

take them to their post in the “[g]arage [a]rea.”⁷ Once at their post, the officers must conduct a tool inventory and be ready for the arrival of an inmate work detail between 7:40 a.m. and 7:45 a.m.

The Arbitrator awarded the facilities officers retroactive overtime pay. The Arbitrator found that “[g]iven the distance between [the control center] and the [g]arage [a]rea where [f]acilities is located, and given the need to use the [i]nstitution[’s] shuttle to cover that distance, it is difficult to believe that” a facilities officer could be prepared for the 7:40 a.m. inmate work detail “on a daily basis without the [o]fficer reporting *at least ten minutes early*.”⁸ Accordingly, the Arbitrator ordered that the facilities officers “be compensated for an additional *ten minutes per shift*” for shifts worked during the recovery period.⁹

The Agency filed an exception to the award, and the Union filed an opposition to the Agency’s exception.

III. Analysis and Conclusions

The Agency argues that the award of overtime pay to the officers is contrary to § 551.412(a)(1), because it grants overtime pay for only ten minutes of pre-shift work.¹⁰ When an exception involves an award’s consistency with law, the Authority reviews any question of law raised by the exception and the award de novo.¹¹ In applying the standard of de novo review, the Authority assesses whether an arbitrator’s legal conclusions are consistent with the applicable standard of law.¹² In making that assessment, the Authority defers to the arbitrator’s underlying factual findings unless the appealing party establishes that those findings are deficient as nonfacts.¹³

Authority precedent holds that an award granting employees overtime pay under the FLSA for performing preparatory or concluding activities for ten minutes or less per workday is contrary to § 551.412(a)(1).¹⁴ Section 551.412(a)(1), quoted in part above, provides:

If an agency reasonably determines that a preparatory or concluding activity is closely related to an employee’s principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is *more than [ten] minutes* per workday, the agency shall credit all of the time spent in that activity, including the [ten] minutes, as hours of work.¹⁵

Here, although the Arbitrator acknowledged that activities must be more than ten minutes per workday to be compensable, the Arbitrator nevertheless ordered only that the facilities officers “be compensated for an additional *ten minutes per shift*.”¹⁶ As discussed above, an award granting employees overtime pay for performing preparatory or concluding activities for ten minutes or less per workday is contrary to § 551.412(a)(1).¹⁷

The Union acknowledges § 551.412(a)(1)’s ten-minute limitation, but contends that the regulation does not apply, because it concerns only preparatory and concluding activities.¹⁸ In the Union’s view, the compensable time that the Arbitrator awarded the facilities officers was understood by the Arbitrator to be part of the officers’ principal activities.¹⁹

The award does not support the Union’s claim. The entire award is focused on work performed “before and/or after [correctional officers’] scheduled shift[s].”²⁰ Moreover, the Arbitrator did not make any finding, nor does the Arbitrator recognize any claim, that the facilities officers reporting ten minutes early was part of the officers’ “principal activit[y]” that the officers were “employed to perform.”²¹ Accordingly, we reject the Union’s interpretation of the award.

Consequently, because the Arbitrator awarded overtime pay to the facilities officers for preparatory or concluding activities that do not exceed ten minutes per workday, we find that the award is contrary to § 551.412(a)(1).

Where the Authority is able to modify an award to bring it into compliance with applicable law, it will do

⁷ *Id.* at 48.

⁸ *Id.* (emphasis added).

⁹ *Id.* (emphasis added).

¹⁰ Exceptions at 6.

¹¹ *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).

¹² *U.S. DOD, Dep’t of the Army & the Air Force, Ala. Nat’l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998).

¹³ *Id.*

¹⁴ *U.S. DOJ, Fed. BOP, Fed. Prisons Camp, Bryan, Tex.*, 67 FLRA 236, 238 (2014) (*BOP Bryan*) (citing *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Sheridan, Or.*, 65 FLRA 157, 159 (2010); *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Terminal Island, Cal.*, 63 FLRA 620, 624-25 (2009); *U.S. DOJ,*

Fed. BOP, U.S. Penitentiary, Leavenworth, Kan., 59 FLRA 593, 598 (2004)).

¹⁵ 5 C.F.R. § 551.412(a)(1) (emphasis added).

¹⁶ Award at 48 (emphasis added).

¹⁷ *BOP Bryan*, 67 FLRA at 238.

¹⁸ Opp’n at 4-6.

¹⁹ *Id.* at 5-6.

²⁰ Award at 1, 49.

²¹ 5 C.F.R. § 550.112(a).

so.²² Applying this principle, we modify the award to exclude the payment of ten minutes of overtime pay per workday to the facilities officers for the applicable recovery period.²³

V. Decision

We grant the Agency's contrary-to-law exception and modify the award to set aside the portion of the award that orders the Agency to pay the facilities officers ten minutes of overtime pay per workday for the applicable recovery period.

²² *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Coleman II, Fla.*, 68 FLRA 52, 57 (2014).

²³ *Id.*