

IN THE MATTER OF THE ARBITRATION BETWEEN

INTERNATIONAL BROTHERHOOD OF )  
TEAMSTERS, LOCAL 117, )  
 )  
UNION, )  
 )  
and )  
 )  
STATE OF WASHINGTON, )  
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EMPLOYER. )  
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ARBITRATOR'S OPINION  
AND AWARD

LANETTE WILDS  
IMPROPER BID POST REMOVAL  
GRIEVANCE

FMCS NO. 110928-04225-6

BEFORE: JOSEPH W. DUFFY  
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HEARING HELD: MARCH 14, 2014  
TACOMA, WA

## OPINION

### Introduction

Teamsters Local Union 117 (“union”) serves as exclusive bargaining representative for a bargaining unit of workers who are employed by the State of Washington Department of Corrections (“employer”). The union and the employer (“parties”) submitted this dispute to arbitration under the terms of their July 1, 2011 – June 30, 2013 collective bargaining agreement (“Agreement”), a copy of which they introduced at the hearing as an exhibit. (S1)

This arbitration arose from a grievance filed by the union protesting temporary reassignments from her bid post of the grievant, Lanette Wilds, a member of the bargaining unit.

The hearing took place on March 14, 2014 at the offices of the Attorney General in Tacoma, WA. At the hearing, the parties agreed that the grievance is properly before me for a final and binding decision on the merits. (TR6:25-TR7:4) The parties also agreed that I should retain jurisdiction to aid in the implementation of the remedy, if a remedy is awarded. (TR8:1-5)

The hearing proceeded in an orderly manner. The attorneys did an excellent job of presenting the respective cases. Both parties had a full opportunity to call witnesses, to submit documents into evidence and to make arguments. Witnesses were sworn under oath and subject to cross-examination by the opposing party. A court reporter transcribed the hearing and made a copy of the transcript available to me and to the parties.

A total of seven witnesses testified at the hearing, including the grievant. They were: Local 117 Director of Corrections and Law Enforcement Michelle Woodrow, Corrections Officer and Shop Steward Noelle Guenette, Corrections Officer Melissa Titus, Superintendent of the Washington Corrections Center for Women Jane Parnell, WCCW Roster Manager Kelly Kelly, Labor Relations Manager Angela Roberts and Officer Wilds.

The parties submitted eight union exhibits (U1-U8) and seventeen state exhibits (S1-S17) into the record. At the close of the hearing, the parties elected to submit closing briefs simultaneously to me and to each other by electronic means on May 9, 2014. (TR213:17-21) The parties later extended the deadline by mutual agreement. I received the briefs by the new deadline and closed the record on June 27, 2014.

### Issue for Decision

At the hearing, the parties could not agree on a statement of the issue, and so they left it to me to frame the issue based on their proposals. (TR7:22-25)

The union proposed the following issue statement:

Did the employer violate the Agreement by temporarily reassigning employees from their bid post instead of first assigning overtime? If so, what is the appropriate remedy? (TR7:7-11 and Union Brief, p. 2)

The employer proposed the following:

Did the Department of Corrections violate Article 19.1, 19.11 and 19.12 of the Agreement when operational needs required Ms. Wilds to be placed in a temporary position other than her bid position? (TR7:12-21)

Based on the record and the proposals submitted by the parties, I have framed the issue as follows: Did the employer's decision to reassign Officer Wilds temporarily from her seniority bid position to work different posts within the facility on the dates of April 8, 2011, April 15, 2011, May 3, 2011, and May 10, 2011 violate the Agreement? If so, what is the appropriate remedy?

#### Background

The Washington State Department of Corrections ("DOC") operates the Washington Corrections Center for Women ("WCCW") which has about 925 to 950 female offenders held in the reception center and in minimum, medium or close custody. The prison employs about 455 people, which includes about 220 custody staff positions (238 custody employees). (TR141:4-21)

Two significant historical events have relevance as background to this dispute. Those are: 1.) The expansion of bona fide occupational qualification female-only positions ("BFOQ")<sup>1</sup> at WCCW. 2.) The 2011 closing of McNeil Island prison, which resulted in the transfer of a number of senior, male Officers to WCCW.

Certain duties at WCCW can only be performed by female staff. Included in those duties are: pat searches, suicide watch, UA collection, strip searches, staff transports, offender releases and hospital watch. (S14) In addition, only female staff can monitor the prison bathrooms and showers. (TR142:1-TR143:21)

Beginning in 2008, the employer designated certain custody staff positions as "BFOQ female-only" positions on a larger scale than previously. In early 2009, the Washington Human Rights Commission approved female gender as a bona fide occupational qualification when

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<sup>1</sup> I have used the shorthand reference "BFOQ" throughout to mean BFOQ female-only.

hiring or assigning staff into certain specific positions at WCCW and other institutions for women. (S17) Currently, about 87 or 88 positions at WCCW are designated BFOQ, which is about 40% of the custody positions. (TR141:22-24)

WCCW has a custody staffing model for staffing the institution. The State legislature determines how many staff work at a prison per shift. (TR145:14-TR146:7; TR147:1-9)

The custody staff at WCCW includes positions designated as relief positions. Relief personnel either fill in for absent workers or assist other staff where needed. (TR37:1-11) Male relief personnel cannot fill in for BFOQ positions, however. The employer uses a formula to calculate the number of relief personnel needed to cover for anticipated absences for annual leave and sick leave. The formula is called the “relief factor”. The record shows that the relief factor for BFOQ positions is inadequate to the need. (S14) Ms. Parnell testified:

Q. Well, a significant portion that are men that cannot work in 40 percent of the positions; right?

A. Yes.

Q. And so applying the same [relief factor] formula in that circumstance just doesn't work, thus the statement that it's untenable; right?

A. That's what caused the problem, yes. (TR177:9-14; and see TR180:22-25)

Ms. Parnell also testified that within the DOC, the problem at WCCW with the relief factor related to BFOQ positions does not exist at other institutions. (TR193:10-TR194:4)

In 2011, the McNeil Island prison closed. (TR160:16-TR161:16) As a result of the closure, a number of senior, male Officers transferred to WCCW. (TR207:1-14; TR56:21-TR58:4) Ms. Parnell testified that the closure occurred in May 2011 and the Officers at both McNeil and WCCW had already bid for vacation time for the year. Therefore, the employer had to deal with a significant and unusual number of vacation absences during 2011.

The McNeil closure also resulted in WCCW having to lay off less senior WCCW staff, including female staff, in order to absorb a number of male staff from McNeil. These events occurred at a time when changes in procedure related to BFOQ requirements limited the posts at which male staff could work.

In order to address the concerns of the staff that resulted from the creation of the BFOQ positions, the employer unilaterally adopted an order of priority for covering temporarily vacant BFOQ positions. (TR33:25-TR38:7)

In January 2010, the employer issued a memo entitled “BFOQ Coverage Assignment Procedures.” (U1) The memo established an order of priority for filling temporarily vacant BFOQ positions. The memo has two sections. The first deals with the situation in which “there is adequate staff on shift to fill positions.” The order is as follows: 1.) Female relief staff covering a non-BFOQ post will be moved to the BFOQ post and a male Officer will take over the non-BFOQ post. 2.) Female staff assigned to a non-BFOQ post that is not a bid position will be moved to the BFOQ post using inverse seniority. 3.) Female staff in non-BFOQ bid positions will be moved to the vacant BFOQ post using inverse seniority.

The memo provides that when a BFOQ position needs to be filled and “there is not an adequate number of staff on shift to fill the post”, then the following order will apply: 1.) On-call female staff. 2.) Female staff on the voluntary overtime list. 3.) Female staff who respond to a call for additional overtime volunteers. 4.) Mandatory overtime in inverse seniority. (U1)

In August 2011, the employer issued another memo on BFOQ coverage. (S7) The order for filling temporarily vacant BFOQ positions “when there is adequate staff on shift to fill positions” changed from the earlier memo by utilizing on-call female staff ahead of female staff working in non-BFOQ bid positions. Therefore, the order was: 1.) Female relief staff covering a non-BFOQ position. 2.) Female staff assigned to a non-BFOQ position that is not a bid position. 3.) On-call female staff. 4.) Female staff in non-BFOQ bid positions.

The order for filling positions when “there is not an adequate number of female staff on shift” did not change in the August 2011 memo. (S7)

In June 2013, the employer revised the memo, but the order for filling vacant BFOQ positions remained the same as in the August 2011 memo. (U2, S9) The revised version added the following statement at the beginning:

In the event it is necessary to move staff to cover BFOQ positions the below outlined directive applies. It’s important Shift Commanders review the alpha roster to ensure those assigned to a bid position are moved as a last resort. Also, the Superintendent has asked that we document in the operations log (as noted below), whenever staff moves are necessary to accommodate BFOQ issues. (U2, S9)

In September 2013, the employer issued another memo on BFOQ vacancy procedures. This time, the order of filling temporarily vacant BFOQ positions changed so that female on-call staff came second after female relief staff.<sup>2</sup> The overtime provision was rewritten as follows:

If there are no female on-call staff available or other staff available to move from a non-BFOQ position, the Lt. will fill the vacancy by scheduling voluntary or mandatory overtime of a female staff member according to the Collective Bargaining Agreement (CBA) Article 17. (S8)

The problem that led to the present grievances results when relief is needed in a BFOQ position and the only relief person available on duty is male. The employer has, at times, temporarily moved a female Officer working a non-BFOQ bid position to the vacant BFOQ position and then temporarily placed the male relief Officer in the female employee's non-BFOQ bid position. (S16) The record shows that ten or eleven female Officers, including the grievant, hold bids in non-BFOQ positions. (U5) The union contends that the employer should fill the temporarily vacant BFOQ positions with Officers on overtime rather than moving senior, female employees from their bid positions.

The grievant, Lanette Wilds, went to work for the employer on August 1, 1991. She has been a CO the entire time. For the past eight years her bid has been mailroom officer. Previously, she worked in a wide range of positions within the institution. In the mailroom position, the grievant scans 800 to 1,300 emails per shift and handles other correspondence within the institution. The grievant works a Monday through Friday schedule with week-ends and holidays off. She works shift two from 0610 to 1410. She testified that moving her from her bid position greatly increases her workload when she returns to the mailroom because the people who replace her in the mailroom are not sufficiently familiar with the work to keep up with the volume of work involved. Thus, work is left over for her to complete in addition to her regular work.

The grievant testified that she filed approximately twenty-seven grievances between January 3 and March 5, 2011 concerning reassignments from her regular bid job in the mailroom

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<sup>2</sup> Superintendent Parnell testified, however, that the order that currently applies is: 1.) Female relief staff. 2.) Female staff assigned to a non-bid non-BFOQ position. 3.) Female on-call employees. 4.) Female staff in a non-BFOQ bid position. That testimony seems to conflict with the order described in the September 2013 memo. (TR156:20-TR158:1) The conflict is not significant for my decision, because this dispute focuses on moving a female Officer in a non-BFOQ bid position, and under either order of filling temporary BFOQ vacancies, non-BFOQ bid positions come after on-call female Officers and female Officers in non-BFOQ, non-bid positions.

to cover temporarily vacant BFOQ positions. (Testimony from Ms. Roberts conflicted with this number. Ms. Roberts testified that Ms. Wilds filed or was part of a group that filed in a total of four grievances in 2011. (TR211:18-TR212:8)) The grievances in this case, however, involve the dates of April 8, 2011, April 15, 2011, May 3, 2011, and May 10, 2011.

Grievance 89-11, filed by the union on about May 11, 2011, alleges the following:

On May 3, 2011, and again on May 10, 2011, Officer Wilds was removed from her bid post in the mail room to work different posts at the facility. Officer Wilds was told she was being moved due to “operational need” without further explanation, yet neither the Union nor Officer Wilds has been able to ascertain what the “operational need” was as defined in Article 19 of the CBA. It is not sufficient for Management to simply quote the buzzwords “operational need” without providing further explanation to determine if the actions are in compliance with the CBA. The action referenced above constitutes a violation of Article 19 of the CBA, including but not limited to Sections 19.1 (E), 19.11 and 19.12. (S2)

The correspondence that occurred between the parties later in the grievance process indicates that the parties have also included grievance 77-11 in this arbitration. The employer’s letter of May 31, 2011 states the following:

In both grievances you allege that the Department of Corrections violated Article 19 of the Collective Bargaining Agreement (CBA) when on the dates of April 8, 2011, April 15, 2011, May 3, 2011, and May 10, 2011, it’s alleged that Officer Wilds was removed from her bid post in the mail room and assigned to work different posts inside the facility. (S4)

At the hearing, the parties noted that other similar grievances involving other Officers have been filed by the union and that the decision in this case will no doubt have an impact on those other pending grievances. Although this case deals only with Officer Wilds and the dates noted in the two grievances (77-11 and 89-11), the union offered testimony at the hearing from other Officers in order to show that the issues in this case are not unique to Officer Wilds. (TR8:9-TR9:18).

At the hearing, the union indicated that no monetary remedy is being sought in this case. The union stated that the employees simply want the practice to stop and to have their seniority rights respected. (TR14:22-TR15:4) The union also asks that the employer use Officers on

overtime to fill temporarily vacant BFOQ positions before moving anyone from a bid position. (TR179:14-16; Union Brief, p.11)

The parties were unable to resolve this dispute in the grievance procedure and so this arbitration followed.

### Discussion

#### Contract Interpretation Principles

This case involves issues of contract interpretation. When asked to interpret a collective bargaining agreement, the arbitrator's task is to carry out the intent of the parties. As one leading commentator put it:

Labor arbitration is a matter of contract. It is the role of the parties to a collective bargaining agreement to determine the value of their exchange and, then, the role of arbitrators to interpret the labor contract consistent with the parties' negotiated preferences. Arbitrators generally refrain from evaluating the prudence of a particular contract term or inquiring into bargaining power imbalances and issues of justice. It is the role of arbitrators to use standards of contract interpretation to understand the meaning of the parties' contractual goals and to render a decision in keeping with the parties' intent. (St. Antoine, Ed. *The Common Law of the Workplace*, 2<sup>nd</sup> Ed. (BNA Books; 2005) p. 69. See also Elkouri & Elkouri, *How Arbitration Works*, 7<sup>th</sup> Ed., Chapter 9 (BNA Books; 2012) p. 9-1)

Standards of contract interpretation commonly applied in labor arbitration include the following principles: 1.) The meaning of a contract cannot be derived from a single word or phrase. The labor agreement must be interpreted as a whole and words or phrases must be interpreted in context. 2.) When alternative interpretations of a contract provision are possible, the arbitrator should select the interpretation that gives meaning and effect to all provisions of the labor agreement. 3.) When alternative interpretations of a contract provision are possible, the arbitrator should select the interpretation that produces just and reasonable results over the interpretation that produces harsh, absurd or nonsensical results. 4.) Words are given their ordinary meaning, absent evidence that the parties intended another meaning. 5.) Evidence concerning bargaining history always has relevance to show the context in which the parties reached agreement on a contract. Bargaining history cannot be a basis for altering clear contract language, however. 6.) To express one thing is to exclude another. (Elkouri, *supra* and St. Antoine, *supra*, p. 69-75)

Another overarching principle in labor arbitration is that arbitrators may look for guidance from many sources, but the award must draw its essence from the contract.

In addition, the Agreement in this case places limits on an arbitrator's authority. Article 9.5 of the Agreement provides as follows:

The arbitrator will have the authority to interpret provisions of this Agreement to the extent necessary to render a decision on the case being heard. The arbitrator will have no authority to add to, subtract from, or modify any of the provisions of this Agreement, nor will the arbitrator make any decision that would result in a violation of this Agreement. The arbitrator will be limited in his/her decision to the grievance issue(s) set forth in the original grievance unless the parties agree to modify it. The arbitrator will not have the authority to make any award that provides an employee with compensation greater than would have resulted had there been no violation of the Agreement.... (S1, p. 31)

### Burden of Proof

Generally, in a contract interpretation case the party alleging the violation has the burden of proof, which in this case is the union.

### The Bidding System

In the Agreement, the parties have established a seniority-based bidding system that gives employees a choice of positions that have a particular combination of post, shift and days off. (S1, Articles 19.1, 19.2, p. 67-69; TR27:20-TR30:5) Once an employee has been awarded a bid, the employee commits to request no other bids for a minimum of six months. (S1, Article 19.8, p. 59) The provision on awarding bids for new or vacant positions, found in Article 19.6, includes the following:

...The Appointing Authority or designee will consider all bids in order of seniority. If the vacant position has any bona fide special requirements or qualifications, only those employees who meet the required criteria will be considered for the position. The senior employee who has the skills and abilities necessary to perform the duties of the bid position will be appointed to the position. Each senior employee, considered but not appointed, will be notified in writing of the reason(s) he/she was not appointed.... (S1, p. 70)

Testimony in the record clearly showed the importance of the seniority-based bidding system to the employees. Ms. Woodrow testified that seniority-based bid rights are "one of the

most important articles in the contract for our members.” (TR29:2-4 and see TR43:11-TR44:5)  
She described the importance of bid rights further as follows:

I think it’s because of the environment that they work in. You come in as a new employee, and you pay your dues, so to speak. You work the graveyards. You work every holiday, every Christmas. You miss the family time. It’s not until you achieve a certain level of seniority that you actually have control over your environment within the prison, so to speak. (TR29:6-12)

Officer Noelle Guenette testified that she went to work as a CO at WCCW in 1999 and started as a responsive movement officer (“RM”). The RM position is a roving position that involves a variety of duties and constant interaction with inmates. (TR65:13-25) Officer Guenette testified that about ten years ago she bid into a perimeter post, which is a non-BFOQ position. This position is an armed position that maintains a roving patrol around the perimeter of the facility. The perimeter post involves limited inmate contact.

Officer Guenette expressed strong feelings about the importance of her bid rights. She testified:

[I]t is quite honestly a matter of respect to me—respect for the contract; respect for my seniority, the years I’ve given to DOC.... (TR67:15-18)

Officer Guenette testified that having some control through the bidding process over where she works and the duties she performs is tremendously important in the stressful environment of prison work. (TR68) She also testified to the practical difficulties for a perimeter officer to change out of equipment that she needs in the perimeter position and to secure the equipment before moving to a different post. (see also TR111:19-TR112:8)

Officer Melissa Titus testified that she went to work as a CO at WCCW in 1996. She testified that she bid into a graveyard shift perimeter post in 2007. The position is a non-BFOQ position and Officer Titus is the only female Officer on graveyard in a non-BFOQ position. She has held that position since 2007, although she has sometimes been out of the position on special assignments, including working as a temporary sergeant.

Officer Titus testified:

[W]hen I'm arbitrarily pulled, it completely erodes the bid right, the privileges, and it sets a precedent that's not only of us here at WCCW or Mission Creek for BFOQ. I think it's setting a precedent against bid rights available for statewide, and that's one thing that I think is not really being addressed. And it frustrates me. (TR103:9-16 and see TR107-TR108)

...here's the principle of the thing: Yes, I can work inside and outside no problem. I just think it's unfair to put pressure on someone because you are female that you need to move in...I think it's disrespect. (TR104:4-8 and see TR117)

Officer Wilds testified as follows concerning the importance of bid rights:

Because it's a respect issue. I mean, we have so little really that we can claim as our own, and our seniority is ours to claim. If we're going to put that much time in, then we deserve the respect that we have—we've earned that. We've earned it. We've earned our bid rights. Our bid rights are one of the few things that we have that's worthy of anything.

I mean, we come to work every—I come to work every day...and I do my job, and I don't do half-ass work....I do a good job for my team. Anybody that I've ever worked for can tell you that. I'm a hard worker. I am an honest worker. I'm loyal. I'm faithful. I'm a good team player, but I don't want to be the whole damn team.

I don't mind helping out when that's what it is, but I'm not a Band-Aid. Don't use me as a Band-Aid to fix something that's broken. Fix what's broken. How simple is that? (TR127:22-TR128:16)

The Officers who testified also expressed concern that the practice of temporarily moving female Officers from non-BFOQ bid positions to BFOQ-female only assignments essentially result in downgrading the seniority benefits of female employees and enhancing the seniority rights of less senior male employees in certain situations.

Ms. Woodrow summarized the Officers' concerns as follows:

For the women that are being subjected to these bid post removals, ...it's infuriating because they are very senior staff and they've worked...under this same bid language for many years and they know what the Department is doing is wrong. They were never subjected to these bid post moves prior to the BFOQ implementation.

Their co-workers aren't even subject to these bid post pulls. So there's no one else in WCCW who is routinely removed from their bid post except for these...10 or 11 women.

I think there's a sense of...disparate treatment, and it feels discriminatory, and they're certainly not happy about it. They know how the bid language is supposed to work, and they know that their rights are being violated, and it's been going on for too long. (TR43:13-TR44:5)

### The Focus of this Dispute

The essential question in this case is whether the employer's decision temporarily to reassign Officer Wilds from her seniority bid position to work different posts within the facility on the dates of April 8, 2011, April 15, 2011, May 3, 2011, and May 10, 2011 violated the Agreement. (As noted earlier, at the hearing and in the closing briefs, the parties acknowledged that if the decision in this case answers the question: "Can you do this, yes/no", then the outcome here will most likely affect other similar, pending grievances. (TR8:18-24; Union Brief p. 1 f.n. 1))

### Relevant Contract Provisions

The following provisions of the Agreement have relevance to this dispute.

#### Article 3 – Management Rights

The Agreement contains a Management Rights provision that includes a non-exclusive list of those rights. The provision also contains the following limitation:

It is understood and agreed that the Employer possesses the sole right and authority to operate the institutions/offices and to direct employees, subject to the provisions of this Agreement and federal and state law. (S1, Article 3, p. 17)

Accordingly, although the employer has broad discretion to manage the operation, that discretion has limits, including those found in other provisions of the Agreement.

#### Article 19.1.E – Operational Need Defined

Article 19.1 of the Agreement provides definitions for a number of terms. Article 19.1.E defines the term "operational need." This provision has fourteen numbered items that are characterized as operational needs. Included among the items are such things as training, reassignment to correct a supervisor/subordinate nepotism situation and reassignment because of

pending litigation involving the employee. Many of the items that are included in the definition of operational need have no relevance to this dispute.

Article 19.1.E includes the following item that has been cited by the employer as applicable to this dispute<sup>3</sup>:

7. Special qualifications for particular tasks, such as translation of foreign languages or gender searches. (S1, p. 68)

#### Article 19.1.F - Position Defined

Article 19.1.F defines a position as “a particular combination of post, shift and days off.” (S1, p. 68)

#### Article 19.11- Temporary Reassignment

Article 19.11, entitled Temporary Reassignment, reads as follows:

Nothing in this procedure will preclude Management from temporarily reassigning an employee(s) to other position(s) if an operational need arises. Assignments made for operational need will be designed to have the least adverse affect on the employee, and will not be made for the purpose of avoiding the requirements of the bid system. Management will provide any reassigned employee with a written statement as to the reason(s) for the reassignment. (S1, p. 72)

#### Article 19.12 – Placement During Temporary Reassignment

Article 19.12 reads as follows:

Whenever it is necessary to temporarily reassign an employee for operational need placement in a position which accommodates the purpose(s) for reassignment will be achieved in the order of:

- A. With the mutual agreement of Management, employees may volunteer to temporarily exchange bid positions;
- B. Vacant positions for which there is no bid;
- C. Assigned position;
- D. Bid position.

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<sup>3</sup> Superintendent Parnell testified that she believed item 3 also applied, but that provision was not included in the cited provisions in the employer’s closing brief. (Employer’s Brief, p. 11 and see TR185:15-20) Item 3 reads: “3. When there is a need to balance the skills or experience of staff in a particular area.”

If none of the above provides a position for the displaced employee and it is necessary to displace an employee in a bid position for purposes of resolving an operational need as provided in 19.1.E, the displacement will be temporary and provide the least adverse impact on the displaced employee. Bid position displacements will normally be unique and extraordinary; will be in order of inverse seniority, and will occur only after exhausting steps A, B and C above. No temporary assignments will delay the award of a bid. (S1, p. 71)

## Article 17 – Overtime

### 17.1 Determination and Assignment of Overtime

#### A. Right to assign

The Employer has the right to request an employee to work overtime. When the Employer determines that overtime is necessary and determines to assign such overtime to a bargaining unit employee, the Employer will:

1. Identify the job classification to be assigned the overtime, the number of positions requiring overtime, the specific post assignments and the anticipated duration of the overtime.
2. Assign overtime as voluntary or mandatory, as set forth in this Article. (S1, p. 57)

Article 17 goes on to describe the procedures related to voluntary and mandatory overtime.

### Application of the Contract Provisions to the Facts of this Case

The first sentence of Article 19.11 states that the employer has the discretion to reassign an employee to “other positions”. A “position” is defined in Article 19.1.F as “A particular combination of post, shift and days off.” (S1, p. 68) Therefore, the plain language of the Agreement establishes that the employer can reassign employees temporarily to another position consistent with the terms of Article 19.

The employer’s discretion to make temporary reassignments has some limitations, however. The first of which is that the reassignment may be made “if an operational need arises.” “Operational need” is a defined term in the Agreement. The definition in 19.1.E includes fourteen circumstances, one or more of which constitutes an operational need.

Nearly all of the fourteen circumstances defined as operational needs can reasonably be seen as requiring reassignment for an entire shift or for an indefinite amount of time. Those

items include, for example, reassignment for training, for an emergency such as a riot, for an employee's documented medical reasons, for an investigation of misconduct by the employee, for the safety of the employee or others and to correct a supervisor-subordinate nepotism relationship.

One of those listed items, however, states that an operational need exists when the reassignment calls for: "Special qualifications for particular tasks, such as translation of foreign languages or gender searches." (S1, p. 68) The examples provided relate to short-term tasks. A gender search, meaning either a pat down or a strip search of a female inmate, would not require a full shift. Translating a foreign language most likely would not usually involve a full shift. The question then, which is essentially what brings us to this arbitration, is: what is the scope of the term "special qualifications for particular tasks"?

The union argues that the limitation to "particular tasks" cannot reasonably be expanded to include taking over the duties of a BFOQ position for an entire shift. To expand the meaning in that manner would mean treating the "particular tasks" limitation as surplusage, which, the union contends, is inconsistent with the rule of contract interpretation that an arbitrator should adopt the interpretation that gives meaning and effect to all provisions of the labor agreement and the presumption that parties do not add words to an agreement that they intend to have no meaning. Ms. Woodrow testified that to her knowledge this provision in the Agreement has never been used as a basis for reassigning an employee for an entire shift or multiple shifts. She testified:

Q. So it starts by identifying special qualifications for particular tasks, and then it identifies two particular tasks. What is your understanding of that language and the concept behind it?

A. ...It was also a common practice at WCCW where female officers would be asked to leave their post for a short amount of time, come and do a pat search or a strip search or a UA collection, and then they would go back to their post. It's never been utilized as justification to remove them for the entire day or multiple days. (TR61:2-24 and see TR35:8-25 and TR186:20-TR188:2)

The employer contends that female gender is one of the "special qualifications" and the "particular tasks" are the duties that only female Officers can perform. Therefore, in the employer's view, a reassignment for an entire shift to cover a BFOQ position constitutes an operational need, as defined.

The record identifies some or all of the duties that are female-only. Those include: suicide watch, UA collection, strip searches, staff transports, offender releases and hospital watch, as well as monitoring the prison bathrooms and showers. (TR142:1-TR143:21, S14) Clearly, many of those duties, such as suicide watch, hospital watch and monitoring bathrooms and showers, could reasonably be seen as requiring reassignment for an entire shift.

In my judgment, when reading Article 19.1.E.7 in the context of the entire definition of operational need, the employer's conclusion that assigning a female Officer to cover a BFOQ position for a full shift is reasonable. The examples of "particular tasks" contained in Article 19.1.E.7 raise a question about the scope of the provision, but the examples provided are not meant to be exhaustive. The union argues that BFOQ duties in general are not included in the definition of operational need and they could have been when the contract was renegotiated after the expansion of the number of BFOQ positions. Nevertheless, I find that the term "special qualifications for particular tasks" is sufficiently broad to take in the female-only duties involved with covering a BFOQ position for an entire shift. (see TR173:16-TR174:15)

The analysis does not end there, however. The employer's discretion to make temporary reassignments to other positions when an operational need exists has limits. Article 19.11 states that when making a temporary reassignment in response to an operational need: 1.) The temporary reassignment "will be designed to have the least adverse [e]ffect on the employee." 2.) The temporary reassignment "will not be made for the purpose of avoiding the requirements of the bid system."

Taking the first of the above-described limitations, the employer argues that any adverse effect on the employee who is temporarily reassigned, such as the grievant on the dates in this case, is reduced by the fact that the employee remains on the same shift, in the same classification, at the same pay rate with the same days off. The employer argues that making reassignments such as those at issue here is preferable to using overtime assignments that have a potentially greater negative impact on employees. For example, an employee on first shift, if held over to work overtime on second shift to cover for a BFOQ position, would work four or eight additional hours. The additional work would reduce the employee's rest and free time and might interfere with child care responsibilities or other similar concerns. The employer argues that safety could be affected when an employee has to work two consecutive shifts. (TR169:10-TR171:19)

At the same time, the employer clearly has the right to assign overtime and overtime work is a frequent occurrence. Employees have the opportunity to volunteer for overtime, thus potentially reducing the need for mandatory overtime. The overtime article of the Agreement does not have the same protective language (“least adverse effect”) that appears in Article 19.11. In addition, the overtime article includes limits on the frequency that mandatory overtime can be assigned and provides a number of exemptions from mandatory overtime. (S1, p. 47-48)

I did not find the employer’s contention that reassigning employees from bid positions has less impact on employees than assigning the work to Officers on overtime persuasive as a basis for resolving this dispute.

One step that the employer has taken to deal with the problem of temporarily reassigning female Officers from non-BFOQ positions to cover BFOQ positions is to use on-call employees. The record shows that in a six week period preceding July 18, 2011, the employer used on-call employees fifty-three times to cover BFOQ positions in situations that could have involved moving an employee from her bid position. Testimony in the record showed that the decision to use on-calls improved the situation in 2012 and reduced the number of times that female Officers were removed from bid positions to cover BFOQ positions. (S11-S13, S16, U4; TR41:9-23; TR127:4-21; TR167:3-TR168:14)

Officer Wilds testified to the increased workload that results when she is pulled from the mailroom to cover a BFOQ position. (TR123:2-12) She also described the anxiety associated with coming to work and not knowing from day to day whether she will be reassigned and where she will be reassigned. One of the great values of seniority-based bidding is the predictability and stability that holding a particular bid provides.

Among union-represented employees, as the testimony by the Officers in this case shows, collectively bargained seniority rights have significant importance. The rights associated with seniority, such as bidding rights, provide a substantial benefit to employees in that they have choice and a certain amount of control over where and when they work and the kind of work they perform. Seniority benefits also provide an incentive for employees to remain in the bargaining unit. Senior employees provide value to the employer by staying in the job. The employer has the benefit of reduced turnover as well as the benefit of the knowledge and experience that the senior employees acquire over time. In the stressful environment of prison

work, seniority-based bidding rights take on even greater significance for the control the rights give an employee over her work life.

In my judgment, frequency of reassignment is the critical issue. If, as Officer Wilds testified, the employer frequently reassigned her in 2011, even to the point that reassignments occurred three days or more in a work week, those facts are inconsistent with actions designed to have the least adverse effect on the employee. (TR123:17-TR124:12; see also S16) The stability and predictability of holding a bid is lost in those circumstances and the benefits of seniority-based bidding are undermined. Clearly, Officer Wilds' bid position is not intended to be a relief position. (see also U7, U8) Superintendent Parnell testified that temporarily reassigning employees from bid positions to cover BFOQ positions should be a last resort. (TR179:5, U2)

The parties recognized, when they agreed in Article 19.11 to temporary reassignments under Article 19, that such assignments will be necessary from time to time. The parties also recognized that reassignments could have an adverse effect on the employees and could undermine the bid system and so the parties placed limits on the employer's discretion to reassign and included protective language. Within that negotiated structure that authorizes temporary reassignments from bid positions, the critical question is how many reassignments are too many? Reasonable people may differ about where that line should fall, and no clear, absolute answer to that question is apparent. The fact that the employer has stated that moving female employees from bid positions to cover BFOQ assignments is a last resort implies that the number of reassignments should be small and infrequent.

In this case, we are dealing with four dates over the course of two months in 2011 (April 8, 2011, April 15, 2011, May 3, 2011, and May 10, 2011). Reassignment on four days in two months averages out to one every other week. These reassignments are not unreasonable considering that they occurred during the period that the record shows the employer had significant challenges dealing with the influx of senior male Officers from the McNeil closure that also resulted in the layoff of some female staff. Clearly, the McNeil situation was an extraordinary situation that is not likely to reoccur. For the same reason, a pattern of reassignments such as the one that occurred in 2011 should not reoccur. (TR161:9-16; S16)

Therefore, I cannot find that, in the context of this particular dispute, the reassignment of the grievant on the four dates in question had an adverse impact on the grievant in violation of Article 19.

Article 19.11 provides that reassignments for operational need “will not be made for the purpose of avoiding the requirements of the bid system.” Based on the record, I find that the evidence does not establish that reassignments on April 8, 2011, April 15, 2011, May 3, 2011, and May 10, 2011 were made for the purpose of avoiding the requirements of the bid system.

Article 19.12.D states:

If ... it is necessary to displace an employee in a bid position for purposes of resolving an operational need as provided in 19.1.E, the displacement will be temporary and provide the least adverse impact on the displaced employee. Bid position displacements will normally be unique and extraordinary; will be in order of inverse seniority, and will occur only after exhausting steps A, B and C above. No temporary assignments will delay the award of a bid. (S1, p. 72)

A question exists whether Article 19.2 applies to the present grievances. Article 19.2 deals with the situation in which the employer moves an Officer out of a bid position (displaces her) in order to make room for another Officer who has to be moved because of an operational need, for example, because that Officer is the subject of a lawsuit. The present case deals with moving an Officer temporarily out of a bid position to cover a vacant BFOQ position, which does not seem to be the same form of displacement dealt with in Article 19.2.

Nevertheless, assuming for the sake of this analysis that Article 19.2 applies in this case, I find that the reassignments of Officer Wilds did not violate 19.2. The closure of McNeil in 2011 and the problems that the transfer of male Officers to WCCW created was an extraordinary and unique situation. Superintendent Parnell testified:

Q. So was McNeil Island considered a major facility?

A. Yes.

Q. How often does a prison facility like that close down?

A. That’s the only major facility I think that’s ever closed...in the history of Washington State.

Q. So it’s pretty unique and extraordinary?

A. Yes. Absolutely. Absolutely. (TR161:9-16)

Consequently, the higher number of reassignments from bid positions in 2011 also was unique and extraordinary. The record shows that Officer Wilds had about seventeen BFOQ reassignments in 2011, which was the year in which WCCW dealt with the McNeil closure. In

2012, the record shows that Officer Wilds had one BFOQ-related reassignment and she had two in 2013. (S16)

Conclusion

Based on the entire record submitted by the parties, I find that the employer's decision to reassign Officer Wilds temporarily from her seniority bid position to work different posts within the facility on the dates of April 8, 2011, April 15, 2011, May 3, 2011, and May 10, 2011 did not violate the Agreement. Consequently, no remedy is appropriate.

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IN THE MATTER OF THE ARBITRATION BETWEEN

INTERNATIONAL BROTHERHOOD OF )	
TEAMSTERS, LOCAL 117, )	ARBITRATOR'S
)	AWARD
UNION, )	
)	
and )	LANETTE WILDS
)	IMPROPER BID POST REMOVAL
STATE OF WASHINGTON, )	GRIEVANCE
)	
EMPLOYER. )	FMCS NO. 110928-04225-6
_____ )	

For the reasons set forth in the Opinion that accompanies this Award, the grievance must be and it is denied.

Dated this 1<sup>st</sup> day of August 2014

  
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Joseph W. Duffy  
Arbitrator