



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

May 14, 2013

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-11-3903

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), please find enclosed a report received from Scott Schools, former Associate Deputy Attorney General, Department of Justice (DOJ) in response to disclosures made by Victoria Winkels, Facility Operations Assistant at the Bureau of Prisons (BOP), Federal Correctional Institute (FCI), Waseca, Minnesota. Ms. Winkels, who consented to the release of her name, alleged that FCI Waseca employees violated a law, rule, or regulation and engaged in gross mismanagement and an abuse of authority by misallocating employee salaries and overtime expenditures, and failing to obtain prior approval for overtime expenditures.

The investigation conducted by DOJ BOP Office of Internal Affairs substantiated the allegations, concluding that an estimated \$14,000 in Salaries and Expenses (S&E) expenditures should have been allocated to the Building and Facilities (B&F) funds. The investigation also found that there were seven occasions when staff worked overtime on a B&F project without the required prior approval and S&E salary expenditures of \$3,872 should have been designated as B&F expenditures. A supplemental report provided by the agency confirmed that FCI Waseca employees received the recommended training. Additional information received from the agency verified that disciplinary action had been taken against the officials found responsible. I have determined that the agency's findings appear reasonable.

The allegations in this case were referred to Attorney General Eric Holder, who tasked the BOP Office of Internal Affairs with the investigation. Mr. Schools transmitted the agency's report to OSC on May 2, 2012. Ms. Winkels provided comments on the report on June 28, 2012. The supplemental report on corrective action was received on March 26, 2013; the agency notified OSC of the disciplinary action taken on April 16, 2013.

Ms. Winkels declined to comment on the supplemental report. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.¹

The Allegations

Ms. Winkels alleged that FCI Waseca Facility Manager Paul Cole regularly misallocated appropriated funds and failed to adhere to agency requirements for charging employee salaries as set forth in BOP's Program Statement No. 3210.03 and the Facilities Operations Manual. She alleged that Mr. Cole did not follow the 40-hour rule, which establishes whether the salaries of the employees in the Facilities Department are paid from S&E funds or B&F funds, and failed to allocate overtime attributable to a construction project to B&F funds or obtain prior approval from the Regional Facilities Administrator and the Chief, Facilities Management Branch, as required for overtime related to B&F projects.

Ms. Winkels explained that BOP receives two types of appropriations—S&E and B&F funds. According to a 2006 policy memorandum, BOP is required to ensure that expenses are properly charged to these appropriations. The memorandum clarifies the 40-hour rule and describes how staff time is charged for S&E and B&F employees in positions assigned to the Facilities Department.² Under the 40-hour rule, if a Facilities Department employee in a S&E-funded position works 40 or more hours on a B&F project, the time and attendance (T&A) records must show that the employee's time that pay period was charged to the B&F funds. If Facilities Department employees work less than 40 hours on a B&F project, no adjustment to the T&A records is necessary. The memorandum also sets forth the requirement that salary and overtime obligations receive prior approval before being charged against any B&F project.

On August 11, 2008, the Regional Director approved \$610,000 in funding for Project 4NQ 08 Transition Female (Project 4NQ 08), without funds for salaries, benefits, or overtime. The project involved converting FCI Waseca from a minimum security male

¹The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). The Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c) and (g).

Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

²The Facilities Department positions are Facility Manager, Facility Operations Assistant, Communications Technicians, General Foreman, and Foremen in the following areas: General Maintenance, Electric, Plumbing, HVAC Systems, Pipe Fitting, Utility, and Garage.

correctional facility to a female facility and is the type of project typically funded through B&F funds. The project funds were transferred and administered by Mr. Cole. Ms. Winkels reported that FCI Waseca officials should have sought approval to use these funds for employee salaries, benefits and any overtime associated with the project, but that no such request was made and no additional funds were approved. She noted that the initial installment of \$610,000 had been spent but that the project continued with the construction of a multipurpose room.

Ms. Winkels alleged that throughout the construction of Project 4NQ 08, Mr. Cole violated the 40-hour rule by failing to charge the time of Facilities Department employees working on the project to the B&F funds as required and, instead, charging their time to S&E funds. Additionally, she alleged that Mr. Cole approved overtime payments from S&E funds when overtime payments for work on Project 4NQ 08 should have come from B&F funds. Further, as noted above, overtime payment for work on B&F projects requires prior approval from the Regional Facilities Administrator and the Chief, Facilities Management Branch. Thus, she alleged that salaries and expenses for Project 4NQ 08 and the construction that followed were not charged to the proper appropriations fund and, as a result, any related overtime was not properly approved and allocated.

The Report of the Department of Justice

BOP's Office of Internal Affairs conducted the investigation, which included interviews of twelve employees at FCI Waseca and a review of the accrual forms for the relevant pay periods and other records at the institution. The investigation substantiated violations of BOP appropriations guidelines, which prohibit the use of S&E funds for salaries of S&E Facilities Department staff who are assigned to B&F projects for more than 40 hours a pay period, unless the use of the funds is approved in advance. The investigation confirmed eight violations of the 40-hour rule resulting in approximately \$14,000 in S&E salary expenditures that should have been charged against B&F appropriations.³

As Facility Manager, Mr. Cole was responsible for ensuring that salary funds were appropriately charged and the required approvals were obtained. Mr. Cole stated that he had a general knowledge of the rule and had discussed the guidelines with his staff. However, he could not describe the specific guidance he gave nor identify the staff members to whom he gave the guidance. FCI Foreman Michael Gullickson acknowledged his understanding of the rule and admitted that he had violated the prior approval requirement twice. Some FCI Waseca employees interviewed reported that they were aware of the 40-hour rule and acknowledged working on a B&F project without prior approval. Employees who were not

³The investigation also included a review of handwritten notations on some records in response to concerns raised by some witnesses that a few of the records appeared to have been altered. However, the investigation determined that the notations at issue were insufficient to justify requesting handwriting samples and there were no investigative leads on who may have altered the documents. For these reasons, and because the records without handwritten notation confirmed multiple violations of the 40-hour rule, the agency did not further pursue the issue of whether or not records had been improperly altered.

familiar with the 40-hour rule explained that they did not receive any instruction on its application until December 2011 or January 2012 and denied being told that prior approval was required before they could work on a B&F project for more than 40 hours a pay period.

The investigation also substantiated a violation of agency guidelines involving the allocation of overtime funds, finding that the Facility Manager did not follow BOP appropriations guidelines for obtaining written approval from the Regional Facilities Administrator and the Chief, Facilities Branch prior to incurring any salary obligation against a B&F project. The investigation found there were seven incidents where personnel worked overtime on a B&F project without the required prior approval. The report states that an S&E salary cost of \$3,872 should have been allocated to B&F funds. Mr. Cole reported that he was unaware of the requirement and accepted responsibility for the error.

In response to the investigative findings, the agency planned to propose disciplinary action against Mr. Gullickson and Mr. Cole. The report also noted that Mr. Cole would receive training on the 40-hour rule and the procedures for overtime approval and would, in turn, be responsible for providing the same training to the FCI Waseca staff.

On March 26, 2013, the agency provided OSC with a supplemental report on the corrective actions. The agency confirmed that training on the 40-hour rule was completed and noted that the requirements of the 40-hour rule have been discussed and reinforced regularly at facility staff meetings since June 2012. Subsequently, on April 16, 2013, the agency notified OSC that Mr. Cole received a one-day suspension and Mr. Gullickson received a Letter of Reprimand for the violations of agency guidelines and procedures.

Ms. Winkels' Comments

Ms. Winkels commented that the 40-hour rule has been routinely discussed and contended that the foremen and Mr. Cole were aware of its requirements. She stated that facility staff received training on the 40-hour rule and that compliance was not an issue until Mr. Cole became the Facilities Manager. She also noted that it is difficult to believe that the foremen interviewed could remember the number of hours they worked several months ago, when they frequently do not complete the proper paperwork and cannot remember how many hours they work on specific projects. Ms. Winkels did not comment on the supplemental report from the agency.

The Special Counsel's Findings

I have reviewed the original disclosure, the agency report and the whistleblower's comments. Based on that review, I have determined that the reports contain all of the information required by statute and the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency reports and the whistleblower's comments to the Chairmen and Ranking Members of the Senate and House

The Special Counsel
The President
May 14, 2013
Page 5

Committees on the Judiciary. I have also filed a copy of the agency reports in OSC's public file, which is available online at www.osc.gov. Ms. Winkels did not consent to the inclusion of her comments in OSC's public, thus, they are not included. This matter is now closed.

Respectfully,

A handwritten signature in cursive script that reads "Carolyn Lerner".

Carolyn N. Lerner

Enclosures