

Comments on OSC File No. DI-24-001615

Provided by [REDACTED]

1. The synopsis alleges I'm contesting the Federal Prison Oversight Act. The basis for my complaint is language within the Appropriations Act signed in December of 2022 which eventually became the Oversight Act. So, am I to understand that between Dec. 2022 and July of 2024, that H.R. 2471; Public Law 117-328 signed by POTUS means nothing? And that no funding stemmed from H.R. 2471? (pg. 1, OSC File no. DI-24-001615 / hereinafter DI-24-001615) The BOP has dramatically increased their hiring efforts, hosting recruitment/job fairs and sending BOP personnel to schools and other events. Am I to assume that none of the additional 1.8 million dollars provided via these very Appropriations Acts was used for these events?

2. H.R. 2471, Public Law 117-103 and P.L. 328 directs the BOP to "provide quarterly reports to the Committees on the use of augmentation." However, P.L. 328 added the language, "In addition, BOP is directed to ensure that non-custody correctional employees must spend 90 percent of their work week in their primary positions." (pg. 3, DI-24-001615). Also, on this same page it acknowledges that the BOP has provided quarterly reports for FY 22. So, the direction for providing reports is valid but the language stipulating augmentation limits is not?

3. Paragraph 5 of page 4 (DI-24-001615) under P.L. 118-71 states, "BOP is not required to comply with the augmentation language contained in the joint explanatory statement accompanying the December 2022 appropriations act (P.L. 117-328), because such statements do not have the same force and effect as statutory language." However, the Congressional Research Service (CRS) Report R46497, titled Authorizations and the Appropriations Process, dated May 16, 2023, states on page 9, section 3, "Although congressional rules are designed to limit it, Congress can and does "legislate" in appropriation acts. Ultimately, appropriation acts are, like any other statute, passed by both houses of Congress and either signed by the President or enacted over a presidential

veto. As such, **they have the same legal force and effect as ordinary bills relating to a particular subject.**” Dating back even further, CRS R46899, titled Regular Appropriations Acts: Selected Statutory Interpretation Issues, dated September 3, 2021, states in the last paragraph of page 2, “Not only do modern-day regular appropriations acts pose unique questions, courts often read such acts through lenses that are not applied to other statutes. That is because, over time, courts have arrived at a particular understanding of Congress’s appropriating function, influenced by such factors as the perceived nature of appropriations acts and the effect of chamber rules that govern consideration of general appropriations bills. Given this understanding, courts have crafted presumptions concerning regular appropriations act provisions **to yield conclusions about statutory meaning that appear to most faithfully reflect legislative intent.**”

4. Page 7 (DI-24-001615) begins the statement from EX1 who is correctly identified as a Lieutenant at FCI Beckley but is acting in the capacity of the Captain. It is my opinion, EX1’s statement would be prejudicial based on the fact he is coworkers with the Lieutenants assigning the Augmentation as well as he is their acting direct supervisor. If an unbiased, truthful statement was really desired, speaking with staff in non-supervisory roles should have been accomplished.

5. The first paragraph of page 8 (DI-24-001615) continues EX1’s statement in which he states, “correctional posts vacated due to the use of unscheduled leave by the assigned correctional officer are not eligible for augmentation-only posts vacated by training.” While this is part of a Memorandum of Understanding (MOU) signed by the Union and Management, it is not followed, and I have proof to contradict EX1’s assertion via an e-mail from EX1 to all Lieutenants at FCI Beckley. In fact, it details when to Augment in violation of the MOU. (*see attachment 1*) Will this false statement be further explored? Within this same MOU it states that “the need for augmentation will be relayed to the affected staff member the day prior to assignment.” EX1 claims advance notice of augmentation can be given in most instances. Yet, more often than not, this does not occur, and staff are notified upon their arrival to the Institution. Had any non-correctional, non-supervisory staff been interviewed, this would have been relayed to the Director’s Senior Counsel.

6. Within the second paragraph of page 8 (DI-24-001615), EX1 explains how the process of staff being exempted or excused from Augmentation works at FCI Beckley. He states, “When excused, the staff member’s name remains at the top of the augmentation

list for the next time augmentation is necessary.” While this is how it is supposed to work, there have been numerous instances of this not being completed in accordance with the MOU. In fact, the local Union has filed informal resolutions to management in order to address this very issue. Exempted staff are skipped over on the “Non-custody pull roster” well after the date their exemption was set to expire. When this is pointed out to the Lieutenants augmenting to fill the Correctional Services roster, the exemption date for the exempted staff is magically updated to extend their exemption. Frequently, the “Non-Custody pull roster” icon that EX1 references is available for all staff to view via a desktop shortcut is not updated. So, in essence, staff are viewing inaccurate information and can’t even plan ahead when “their turn” for augment is approaching. How are staff to have any confidence that Augmentation is being accomplished in good faith?

7. In paragraph 4 of page 8 (DI-24-001615), EX1 indicates he does not receive a lot of complaints about the use of augmentation at FCI Beckley. One simple interview of our Union President or Vice President would have revealed that statement is false. Additionally, I can provide at least one e-mail from a Case Manager inquiring about receiving boots (which are provided annually to Correctional Officers) since augmentation is occurring so frequently. Furthermore, as a Correctional Counselor I receive rosters from Regional staff that perform audits of various functions that are time sensitive (i.e. Initial TEAM, FRP, FSA eligibility) and those tasks are often overdue because staff were augmented to work Correctional Officer posts. Again, one simple interview of our Union President, Vice President or most any non-custody line staff would have shown these to be facts.

8. There are other Institutions within the BOP that are adhering to the 90 percent language within P.L. 328 so it is obvious that I am not the only employee interpreting the law this way.

In summation, for the reasons listed above, staff at FCI Beckley have no confidence and actually fear being a Whistleblower because this is the result. An investigation conducted by BOP staff on alleged BOP misconduct revealing that no wrongdoing has occurred. This is also why the public’s perception of the BOP is at the lowest point I have seen in my career, not to mention how often the BOP is negatively highlighted in the media. Because I have chosen to stand up for what many people believe to be the law, I have been subjected to an unending stream of comments about my loyalty to the mission. I have been told I’m not a “team player”, that “I’m too good to be a Correctional Officer” and “I have forgotten where I

came from.” This just creates a divide between Custody and Non-Custody staff in a stressful and dangerous environment where all staff need to be united in order to carry out the mission. I have been told by countless coworkers that they agree 100% with me but they fear retribution in the form of being passed over for promotions or other retaliatory acts if they speak up. Will the false statements provided be investigated or disregarded as “misspoken words?” Are we all not subject to the same Standards of Conduct as it pertains to behavior and ethics? Should I expect this to be investigated further?

From: [REDACTED] (BOP) <[REDACTED]@bop.gov>

Sent: Monday, July 1, 2024 7:47 PM

To: BEC-Lieutenant (BOP) <BEC-Lieutenant@bop.gov>

Cc: [REDACTED] (BOP) <[REDACTED]@bop.gov>

Subject: Augmentation

We will utilize augmentation of non-custody staff under the following circumstances:

- All available officers on the M/W shift have been mandated and unassigned posts remain on the D/W shift.
- Augment non-custody before mandating an officer on their Friday.
- If an officer has been mandated two days back-to-back, augment non-custody before mandating the officer a third time.