

**MICHIGAN CIVIL SERVICE COMMISSION
EMPLOYMENT RELATIONS BOARD
IMPASSE PANEL**

IP 2023-01

**IMPASSE PANEL
RECOMMENDATION**

for the

SECURITY UNIT

CONTRACT TERM

January 1, 2022, to December 31, 2024

November 22, 2023

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A. INTRODUCTION

Civil Service Commission Rule 6-9.4 provides for resolution of impasses between parties negotiating collective bargaining agreements. Requests for impasse assistance were made for the security unit by the Michigan Corrections Organization (**MCO** or the **Union**) and the Office of the State Employer (**OSE**).

The parties' primary agreement provides that Article 27, Wages and Longevity, Section B, Fiscal Year 2024-25, may be reopened for negotiations as provided in the agreement. In SPDOC 23-07, the state personnel director established a schedule to allow impasse assistance and Commission review with adequate time to transmit any pay increases within constitutionally required time limits. The parties submitted proposed language, position statements, and exhibits on matters certified as at impasse.

An impasse hearing was held on October 31, 2023. Both parties presented arguments on the provision at impasse. The panel has considered all testimony and evidence presented in making the following recommendation.

B. IMPASSE ISSUE

The parties certified one provision as at impasse: Article 27.B, *Wages and Longevity, Fiscal Year 2024-25*.

C. IMPASSE PANEL CRITERIA

Civil Service Rule 6-9.4(b) establishes the following criteria for the impasse panel to consider in making its recommendation:

- (1) Stipulations and agreements.
- (2) The interests and welfare of the public.
- (3) The financial condition and ability of the state.
- (4) Comparison of the rates of compensation and other conditions of employment of classified employees with other governmental and private sector employees.
- (5) Appropriate economic indicators and forecasts.

- (6) Total compensation, including fringe benefits, presently received by employees.
- (7) Such other factors that are normally taken into consideration in determining rates of compensation and other conditions of employment.

In IP 2000-05, the impasse panel further clarified that:

At impasse, when one party requests a significant change to current language to which the other party objects, the proponent of change should present concrete evidence of the need for the change, such as inefficiencies in operations, inequitable treatment, hardships, or other convincing justifications for the change.

D. DISCUSSION AND RECOMMENDATION

The parties are at impasse over wages for fiscal year 2024-25, which was the sole issue reopened for bargaining this year. The employer proposes a 5% base-wage increase effective October 1, 2024. The Union proposes a Letter of Understanding for the following: increase the minimum base pay for all classifications in the security unit to \$25.00 per hour; decrease the time needed to reach the top pay step in each classification from 66 to 36 months; and increase the base wages of all classifications (except for the minimum step) by 14% effective October 1, 2024. The Union proposes a revised wage schedule showing the effect of its proposed changes.

1. POSITION OF THE UNION

The Union argues that the Michigan Department of Corrections (**DOC**) faces problems due to low recruitment and high turnover. Jobs in the security unit are demanding and sometimes dangerous, with high risks. Employees must watch over members of society found unfit to live in the outside world. Employees are outnumbered and subject to physical and psychological assaults. The environment contributes to high rates of PTSD and mental-health issues. Because of several failed policies, the number of Corrections Officers has dwindled recently to dangerously low levels. In the past five years, 1,994¹ Corrections Officers have quit. The Union argues that the employer spent a large amount to train these individuals, for which it now has no benefit. Remaining staff must work unreasonable amounts of mandatory overtime. Employees in classifications other than Corrections Officer are permitted to work overtime performing Correction Officer duties, provided they have the required training, to ensure that facilities have minimum required staffing. The Union brought these same concerns before the panel in 2018, and they have only worsened.

The Union's witnesses, which included both Corrections Officers and supervisors, also commented extensively on the relationship between staffing shortages, alleged misuse of mandatory overtime, and the safety of corrections officers, prisoners, and the public. Several witnesses stated that staffing shortages and fatigue due to mandatory overtime have made it difficult for them to conduct their job duties with necessary security awareness. Witnesses noted that both prison staff and inmates have commented on decreased safety. They have observed increased prisoner fights. Officers must sometimes work for up to 18 hours in a day, which impairs their ability to think clearly.

There are about 1,000 security unit positions short of full staffing, about 900 of which are Corrections Officers. The Union argues that higher wages are needed to both retain and recruit

¹ The Union corrected this number at hearing from 1,694 indicated in its brief.

employees for security unit positions. The working conditions of these higher-risk positions in a prison environment require higher pay to entice employees to them. The Union argues that the average length of service of security unit employees voluntarily resigning is 3.9 years. According to the Union there have been over 300 voluntary resignations since January 2023. Overtime costs to the DOC since 2021 have been over \$230 million.

The Union also argues that before staff scheduling became a prohibited subject of bargaining from January 1, 2019, the Union's collective bargaining agreement precluded employees from being required to work within the 32-hour period after the beginning of the beginning of the last overtime shift of more than four hours, or more than two hours for employees assigned to 12-hour shifts. In July 2023, the DOC partially reinstated the 32-hour rule, with important qualifications, through a director's office memorandum, but the Union argues that the memorandum is regularly violated.

The Union estimates that the 14% wage increase would cost the state approximately \$41 million in fiscal year 2025. It argues that the state's revenues remain above the ongoing spending budget, despite recent estimates of revenue declines, and the state's budget stabilization fund balance is the largest in more than two decades.

The Union also argues that the pay increases would attract new employees and increase retention, which would lessen mandatory overtime costs that the state has been required to pay because of staffing shortages. The Union estimates that the DOC has paid about \$7 million per month in overtime costs since 2022. These overtime costs could instead be used to pay for new recruits even at the higher \$25 per hour minimum rate, including training costs. The Union also argues that the 2023 estimated overtime costs could have paid for collapsing the pay scale as in its proposal and provided a double-digit salary increase.

The Union argues that raising wages is the only way to recruit and retain employees. Many private employers offer starting pay greater than \$20 per hour and lack the unfavorable working conditions found in correctional facilities. Decreasing the time required for employees to reach the pay scales' maximum rates would incentivize employees to remain.

The Union argues that the states of Alabama, Georgia, West Virginia, and Wisconsin have recently increased starting correctional officers' pay in efforts to cure staffing shortages. The Union also argues that although all classified employees have typically received the same pay rate increases, no other bargaining unit is suffering under the staffing crisis as is the security unit and so a higher increase for these classes is warranted. For example, both Wisconsin and West Virginia granted higher increases to corrections staff than to other state employees.

2. POSITION OF THE OSE

The employer notes that the estimated cost of the Union's proposal is \$132.6 million. There is cautious optimism about the state's financial picture for the fiscal year 2025. There are uncertainties about the effect certain tax changes will have on revenues. The total compensation of employees includes both wages and benefits.

The wages at issue during this bargaining cycle are the third-year of wages in a three-year collective bargaining agreement. Employees received a 5% base wage increase in fiscal year 2023 and a 2% base wage increase in fiscal year 2024. If the employer's proposal for a 5%

base wage increase is adopted, employees will have received a total of 12% over the life of the agreement.²

The Union has already received a \$250 retention bonuses and other retention bonuses. The continuation of high vacancy rates shows that money is not the sole answer. The OSE indicates that it is interested in discussing a change to the pay schedule, not just collapsing the pay schedule. Collapsing the pay schedule would eliminate any planning for future pay increases for the majority of security unit employees, except for any negotiated pay increases. The OSE notes that letters of understanding (LOUs) are a tool available to it to address problems. Not all facilities have the same vacancy rates. The Union's proposal would give all security unit employees pay raises, regardless of facility. The OSE argues that it and the Union must comprehensively review the pay structure of security unit employees. Prior bonus programs have shown that money is not the answer. The \$250 retention program had low participation. The OSE also argues that if the impasse panel awards the Union more than other units, other units would be unlikely to reach voluntary agreements in the future.

The OSE provided information on comparable positions from other Great Lakes states. The OSE argues that the State of Minnesota has increased its corrections officers' pay in recent years, including a \$10,000 signing bonus, but 53% of its new hires resigned anyway.

The OSE estimates that a 5% base wage increase for the security unit would cost \$29.9 million in FY 2025.

3. RESPONSE OF THE UNION

The Union argues that the employer has not made any attempt in the past five years to lessen the staffing crisis in the security unit. A 5% base wage increase may be adequate for employees with regular work schedules and outside of a prison environment, but employees in the security unit face consecutive days of mandatory overtime that negatively affect employees' health and family life. There are also the poor working conditions inside prisons. The employer's only response during bargaining was that it did not believe that money was the answer.

The Union argues that a 5% pay increase would not balance the conditions facing security unit employees. The employer, it argues, has a responsibility to these positions whose duties involve maintaining public safety. The Union argues that the state has ample funds to be able to handle pay increases. It also argues that the pay increases would increase recruitment and retention, which would decrease the costs associated with mandatory overtime. While the pay increases requested would not be immediate, security unit employees would be aware of the coming increases and be less likely to depart.

Regarding the offered LOU for a recruitment and retention committee, the Union argues that an LOU was unnecessary because the OSE can invite the Union anytime to discuss these issues.

The Union also argues that the employer's statements that higher wages would not help with recruitment and retention are unfounded. The pilot program in 2022 that provided corrections staff with \$250 each pay period in which they worked 80 hours did not have the desired effect because employees, after being mandated multiple days in a pay period's first week, earned more than \$250 through overtime and needed leave to rest in the second week. The Union also argues that higher wages were recently used in an effort to increase recruitment and retention

² The actual increase since the start of the contract would be 12.46%.

in certain classes when the employer agreed with several unions for 20% pay schedule increases in those classes. These increases were needed because employees in the affected classes were leaving the classified service for positions in the private sector with higher wages and benefits. The employer's position that money is not the answer to recruitment and retention problems in the security unit conflicts with its prior actions involving other units' employees.

4. RESPONSE OF THE OSE

The OSE agrees that in some facilities there is a significant staffing crisis. The employer offered an LOU to create a recruiting and retention committee to understand why there were staffing problems at certain facilities. Finding out the root cause of these problems will require work, not just blanket pay increases. The Union repeatedly declined this offered LOU.

The employer argues that despite putting blame solely the employer, the Union had opportunities in 2019 and 2021 to bargain changes and in both instances came to voluntary agreements. The employer argues that in the 2021 primary agreement, the parties agreed to a pilot program to provide additional pay for working 80 hours in a pay period whether the hours were paid at the regular rate or the overtime rate. This approach permitted offsetting approved absences in a pay period with additional work hours to remain eligible for the bonus. The parties agreed to extend the program through 26 total pay periods. The program did not achieve sufficient results and was not renewed. The employer argues that the program's results showed that staffing challenges in the security unit are not necessarily resolved by paying higher wages.

After the pilot program, the employer and the Union agreed to try a one-time recruitment and retention bonus program, including for newly hired security unit employees. Only the first two out of four phases have been completed, making it too soon to judge the efficacy of the program.

The OSE disagrees with the Union's cost calculations for its proposed increases because it does not include the costs of associated roll-up costs. The OSE also disagrees that any staffing crisis worsens daily. The workforce constantly changes based on new academy recruitment. The DOC has seen an increase in the vacancy rate at various facilities.

The OSE also disagrees with the Union's assertion that non-pay efforts to increase recruitment have failed. The non-pay improvements, include a wellness program, workout facilities, and improved breakrooms.

The employer argues that the DOC director must not only maintain public safety but also safeguard public funds. Money spent on wages is unavailable to spend elsewhere. The fiscally responsible approach leads to hesitancy to assume that money fixes all problems.

Despite requesting a higher starting rate for newly hired employees, the Union fought the DOC's efforts to use regulation 5.01's provisions as incorporated into the MCO bargaining agreement to pay new employees rates above the minimum. The employer also offered the Union an LOU to establish a recruitment and retention committee to discuss possible ideas that could be acted on during next year's negotiations for full successor agreements. The Union declined. The Union has also not used the various processes provided in the current contract to discuss recruitment and retention problems with DOC leadership.

The employer also describes other efforts the DOC has taken since 2018 to improve the health and wellness of DOC staff, including a committee focused on health and wellness, a wellness advisory board, and a peer-support program. A wellness team is on call 24 hours per day.

Facilities now, or will soon have, wireless internet to make staff's jobs easier by eliminating some paper processes.

The DOC has also engaged in efforts to reduce Corrections Officer mandatory overtime including permitting qualified, non-uniformed staff to volunteer for overtime instead of mandating custody staff and implementing 12-hour shifts in some facilities. Regarding the Union's arguments that the 32-hour protections in a DOC office memorandum are regularly violated, DOC staff noted that the memorandum provides such protections subject to operational needs. An officer who would normally be protected from a mandate under the 32-hour rule could still be mandated if no other eligible employee is available for the shift. The memorandum also provides that any employee mandated in violation of the 32-hour rule would be offered the first opportunity to be relieved.

The DOC described some of its efforts to increase recruitment. The DOC has increased its advertising budget by almost \$1 million to increase recruiting. It has produced promotional videos and provides tours for interested candidates. It takes surveys of new and prospective employees. The DOC now has its own academy, which it did not before have. It runs four academies per year. The DOC graduated 599 recruits in fiscal year 2023, 732 in fiscal year 2022, and 569 in fiscal year 2021. It has extended the amount of time employees can take to obtain their required 15 credit hours. It also maintains a permanent recruiter at the Green Oaks academy and has several recruiting initiatives for veterans. The DOC conducts exit interviews for departing employees. The top three cited reasons for departures by former employees are lack of pension, low pay, and culture.

Regarding the 20% pay scale increases for certain non-security unit classes, the OSE argues that the vacancy rate for Registered Nurses was over 50% compared to Corrections Officers' vacancy rate of 19%.

5. IMPASSE PANEL EVALUATION AND RECOMMENDATION

A. 5% Pay Increase

The panel finds that a 5% base-pay increase for all steps in all pay schedule in the bargaining unit effective October 1, 2024 is justified by the record and is in accordance with the impasse criteria. The panel therefore **recommends** a 5% base-pay increase for all steps in all pay schedules in the bargaining unit effective October 1, 2024.

B. Eliminating Current Minimum and Six-Month Steps for all 8-and 9-Level Classes in the Bargaining Unit

Following the hearing, the panel asked for the parties' thoughts and concerns on an approach that, effective October 1, 2024, would increase all steps in the security unit's pay schedules by 5%, eliminate the minimum step from the 8-level security unit classifications' schedules, move any 8-level employees in the unit at the minimum step to the new minimum step while retaining their hours since step, and move any other 8-level employees to the step corresponding to their current rates of pay.

The Union argued that this approach would not go far enough in attracting persons to the workforce, nor would it help retain current employees. It argues that the approach would slightly increase starting pay, but starting pay would still be below what the federal government and some counties offer. The OSE notes that while it could work with the

concept, it would prefer the panel to recommend its original 5% proposal and allow the parties to work out any new pay schedules themselves.

After further consideration, the panel finds that a more generous approach than circulated to the parties would be more likely to increase recruitment and retention and bring starting pay closer to that of other correctional employers, while preserving current relative pay levels between bargaining unit and supervisory positions, and that this approach is justified by the record and is in accordance with the impasse criteria. The panel therefore **recommends** the following, effective October 1, 2024:

1. Eliminating the current minimum and six-month steps for all 8- and 9-level classes in the bargaining unit, which would make the new minimum step equal to the current one-year step (plus 5%), the new six-month step equal to the current eighteen-month step (plus 5%), and so on.
2. Moving any 8- 9-, or E9-level employees in the security unit from the minimum or 6-month steps on September 30, 2024, to the new minimum or six-month steps as of October 1, 2024, while retaining their hours since step.
3. Moving any 9- or E9-level employees in the security unit at the end-of-one year through the end-of-3-years steps on September 30, 2024, to the new end-of-30-month step as of October 1, 2024, with their hours since step set to 0.
4. Moving any E10-level employees in the security unit below the maximum step on September 30, 2024, to the maximum step as of October 1, 2024, with their hours since step set to 0.
5. Any other 8-, 9-, or E9- level employees on October 1, 2024, would change to the step corresponding with their current rate of pay plus 5%, and retain hours since step.

The panel recognizes that these recommendations would, as indicated in numbers 3 and 4, require some employees to be moved to higher rates of pay to avoid potentially inequitable pay setting depending on when an employee entered a higher level position. These movements to higher pay rates should also encourage employee retention, with the increased minimum steps ideally increasing recruitment. The panel notes that these increased minimum pay rates for entry-level classes would make the state's entry-level hourly pay more competitive with those of other midwestern Great Lakes states. The panel understands that the parties are expected to negotiate new agreements next year, including wages, and could then negotiate pay schedules to address any issues that they believe should be resolved.

6. ADDITIONAL DISCUSSION

Mandatory Overtime and the Health, Safety, and Welfare of Corrections Officers, Prisoners, and the Public

Overview

While, as explained below, the panel recognizes that health and safety issues described by the MCO in connection with its arguments for compensation increases are not before it as issues at impasse for which it is making recommendations to the Commission, it nonetheless finds they merit discussion.

As part of its arguments on compensation, MCO strenuously objects to the DOC's alleged abuse of mandatory overtime.³ MCO's argument on the subject is actually two-pronged. The first prong is based upon the anecdotal evidence of DOC employees on the negative impact that mandatory overtime has on their health and well-being. See, for example, the affidavit of Craig Adams, attached to MCO's Pre-Hearing Impasse Brief:

"I have two kids fully into sports. I am constantly missing their events/games due to the mandate. And I am working more overtime to avoid getting mandated on certain days that I need off to watch their events. I haven't felt so tired and beat down every day like this before in my life. It's taking a toll physically and mentally on myself and creating a real strain with my family and outside obligations. I feel like a prisoner some days because I spend more time at the prison than I do outside of it." MCO's witnesses also commented extensively on the relationship between the alleged misuse of mandatory overtime and the safety of corrections officers, prisoners, and the public. (See also affidavits of Chris Lamentola, Cary Johnson, and Shane Reynold set out more fully below.)

The second prong of MCO's argument, more implicit than overt, is that the alleged misuse of mandatory overtime is the DOC's basic response to the "staffing crisis" that MCO asserts exists in DOC's facilities. By imposing allegedly excessive amounts of mandatory overtime, MCO implies, the DOC is avoiding dealing with the hiring and retention problems that are at the root of this "staffing crisis." According to MCO, these problems must and can be dealt with directly only through significant compensation increases.

History of Mandatory Overtime

Article 17 of the agreement between the MCO and the State of Michigan previously dealt with the subject of mandatory overtime. The language concerning the "32-Hour Rule" stated that, "An employer shall not be required to work overtime on a mandated basis within the 32-hour period following the beginning of the last overtime shift of more than four hours (two hours for employees assigned to 12-hour shifts). The employee shall notify the scheduling supervisor if he or she qualifies for this exemption."

Staff scheduling was made a prohibited subject of bargaining from January 1, 2019. The "32-Hour Rule" was identified as implicating a prohibited subject of bargaining by Commission staff before bargaining in 2018 and parties omitted it from the collective bargaining agreement to take effect January 1, 2019.

A Director's Office Memorandum of July 13, 2023, partially reinstated the "32-Hour Rule," with important restrictions. Sections 2f. and 2g., respectively, provide that:

- f. Subject to operational needs, an employee will not be required to work mandatory overtime within the 32-hour period following the beginning of the last overtime shift of more than four hours the employee worked (two hours for employees assigned to 12-hour shifts). The employee must notify the scheduling supervisor if they qualify for this exemption. (Emphasis in original.)
- g. Any officer that was mandated in violation of the 32-hour rule or the next day leave rule will be offered the first opportunity to be relieved. The highest-senior employee mandated to work overtime will be the next employee offered to be relieved.

³ See MCO Pre-Hearing Impasse Brief, p 13.

The “Staffing Crisis”

The OSE appears to concede that there is a “staffing crisis,” at least at some DOC facilities, as the following interchange illustrates:

Judge Whitbeck: Do you agree it’s a staffing crisis?

Ms. Olson: In some facilities, yes.

Judge Whitbeck: Is that a yes or a no?

Ms. Olson: It is a in (sic) some facilities there is a significant staffing shortage.⁴

Jeremy Bush of the DOC was able to be more specific on this subject. He was able to say that in the four correctional facilities with more than 30% vacancy rates (Alger, Baraga, Women’s Huron Valley, and the Reception and Guidance Center) there would be a “crisis situation.”⁵ He went on to agree that, with respect to these facilities, the crisis is getting worse on balance rather than better.⁶

Health and Safety

MCO presented the affidavits of several witnesses who spoke directly to the question of the safety of both officers and prisoners as that issue relates to mandatory overtime, both directly and indirectly. Specifically:

Chris Lamentola is the Assistant Deputy Warden assigned to the St. Louis Correctional Facility. In his affidavit, he states that:

- “Most days, we must close custody positions due to lack of staff availability. However, we do not cease prisoner activity during these shortages. *It makes the operations of the facility unsafe.*” (Emphasis added.)
- “*These unsafe conditions brought about by the forced mandatory overtime are often brought up by the facility staff and prisoners during rounds.* The staff are so fatigued it is impossible for them to conduct their job duties with heightened security awareness, which is essential in a prison.” (Emphasis added.)
- “*Moreover, the security of the prison is compromised, as well.* Closing positions daily reduces the number of staff monitoring prisoner movement and activities. It also means less staff are available to respond to emergencies. The prisoners observe this and we’ve had a noticeable increase in prisoner incidents (fights, assaults, etc.) *Additionally, staff don’t feel safe or they are tired and worn out, so their level of vigilance is also reduced when monitoring while monitoring prisoners.*” (Emphasis added.)

Cary Johnson is a Corrections Officer at the G. Robert Cotton Correctional Facility. In her affidavit, she states that:

⁴ Tr, at 17.

⁵ Tr, at 19.

⁶ Tr, at 24.

- “First, the amount of mandatory overtime is unsustainable for our officers. It is not unusual for officers to work—at many of our facilities multiple sixteen-hour days in a row without a break.”
- “This grueling schedule depletes officers of much needed rest time to effectively do their duties.”
- “Officers due to this fatigue lack the heightened awareness needed to maintain good security practices at the facilities.” (Emphasis added.)
- “Furthermore, communications between line staff and supervision are non-existent in terms of conducting correctional business. Officers are no longer communicating their observations related to the good order and security of the facility to their supervisors. Officers, instead, are resentful of the supervision because of the massive mandatory overtime being forced upon them.” (Emphasis added.)
- “When this type of important communication has broken down, the administration should take caution. In my study of the reports concerning the riots of 1981, particularly the Milliken Report, it is this lack of communications that was part of the problem that led to the tragedy of the riots.”

Captain Shane Rennells is on the second shift of the G. Robert Cotton Correctional Facility. In his affidavit, he states that:

- *“The staffing crisis creates a safety hazard to both staff and prisoners. A truck driver is allowed to only drive 14 hours a day, and that is after a 10-hour break, that is tracked through electronic logs now. These laws and regulations were put into effect because it was deemed unsafe to have truck drivers work more than 14 hours a day. [Corrections] Officers are not afforded the same rules. Officers frequently must work more than 16 hours a day, sometimes these officers work 17 or even 18 hours a day and are expected to report on their next scheduled shift, leaving only six or seven hours between shifts. Working 17 or 18 hours does not include that officer’s time driving to or from work, and then getting ready for the next shift.”* (Emphasis added.)
- “The Centers for Disease Control (CDC.gov) states some studies suggest that when someone has been awake for 17 hours it has similar effects to having a Blood Alcohol Content (BAC) of .05%. If a staff member is awake for 24 hours, it is like having a 0.10% BAC.”
- *“The staffing crisis affects the safety of all staff, prisoners, and the public. On numerous day multiple funded positions must be closed due to lack of staff to fill those positions. The mandatory overtime list will be exhausted and there is no one left to staff these positions. If you combine a lack of staff members, closed assignment, and an overly tired staff, all the elements for a disaster are there. With closed assignments it puts even more stress on staff, it forces them to do more with less.”* (Emphasis added)

We note that this testimony is entirely unrebutted. The panel finds that the DOC has a staffing crisis in at least some of its facilities. The panel finds further that the DOC does not have in place a system-wide automated reporting system that would allow it to more closely monitor

the alleged abuse of mandatory overtime. And, based upon the testimony of MCO witnesses—several of whom are at the management level—the panel finds further that the combination of a staffing crisis and the extensive use of mandatory overtime is affecting the health, safety, and welfare of Correction Officers, prisoners, and the public.

Potential Action

Thus, the OSE and the DOC have explicitly conceded that at certain facilities, the DOC is in the middle of a worsening staffing crisis. The implications of this concession are very serious, both with respect to the health, safety and well-being of both the corrections officers and the prisoners at these facilities . . . and at other facilities under the DOC’s control that have not yet reached the crisis level. The question facing this panel is whether within the framework of an impasse proceeding, it can deal with the discreet question of the amelioration of the DOC’s imposition of mandatory overtime.

The Commission and its staff have made it clear that overtime scheduling is not a proper subject of bargaining. Thus, this panel does not have the power within the framework of this impasse proceeding to recommend to the Commission direct changes to the DOC’s mandatory overtime policy as contained in the Director’s Office Memorandum of July 13, 2023. The panel therefore finds that mandatory overtime—and specifically the contours of the “32-hour Rule”—are not compensation issues over which this panel has jurisdiction.

This does not mean, however, that this panel cannot comment on the effect that the violations of the DOC’s mandatory overtime policy, as contained in the Director’s Office Memorandum of July 13, 2023, that MCO alleges are in fact occurring. Indeed, Section 2g of the Memorandum explicitly concedes that “violations” can occur. Rather astoundingly, as the following colloquy illustrates, the DOC does not have an automated reporting system that would provide up-to-date information on this rather serious allegation:

Judge Whitbeck: And how do you document this?

Mr. Bush: So, all the overtime is documented on what’s called an activation list. So there are lists they go through to document all of that. And the facility documents on a, a daily manning sheet so they are tracking who’s getting mandated, who’s working overtime, and who they need to relieve first, if we get into a situation like that.

Judge Whitbeck: So if I were to ask you for that documentation in summary form, you’d be able to provide it?

Mr. Bush: So it isn’t a report that we pull. This would be something that we would have to confer with all facilities, and they would have to provide us documents that support that. So it’s . . . I guess I’m just, what I’m trying to say is it’s not a report that I can reply. I can certainly work on getting that information.

Ms. Olson: *It’s a manual report and they’re trying to get it automated, but that hasn’t occurred.* (Emphasis added.)⁷

* * * * *

⁷ Tr, at 35.

Judge Whitbeck: So on a factual basis you can't contradict MCO's assertion that the director's letter, letter is (sic) or the director's memorandum is being frequently violated?

Mr. Bush: I can go and check the information against whatever is being asserted, sir.

Judge Whitbeck: Well, is the answer yes or no? Yes, you can document it? No, you can't?

Mr. Bush: Yes, we can check that information.

Judge Whitbeck: I didn't ask you to check it.

Mr. Bush: I'm sorry.

Judge Whitbeck: Is it available?

Ms. Olson: It is available. *It is only available manually.* So he will have to go and manually get every one of those pages and then somebody's going to have to sit there and count it for how far back you'd want us to go over and then put it together as a document. But there is nothing that automated about how they keep track of that. (Emphasis added.)⁸

Thus, on the basis of the evidence before us, this panel can only conclude that the DOC and the OSE cannot rebut MCO's allegation that the DOC is abusing its own Director's Memorandum on mandatory overtime. We strongly suggest that the DOC, at a minimum, implement an automated reporting system that would, again at a minimum, allow careful analysis of and prompt corrective action with respect to these allegations.

E. OTHER PROVISIONS OF THE CBA

All other provisions of the CBA were previously approved by the Commission, have not expired, and were not reopened for bargaining.

F. SUMMARY

The panel's recommended text for the security unit's CBA appears in Appendix 1. This text, at Article 27, Section B, and the recommended pay schedule at new Appendix I, reflects the panel's recommendations on the impasse issue for this bargaining unit, as outlined above. The impasse panel **recommends** that the Commission adopt the text in Appendix 1 as the CBA for the security unit.

⁸ Tr, at 36-37.