Negative: Union Disempowerment

By “Coach Vance” Trefethen

***The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

Case Summary: The AFF plan strips unions for prison guards at the federal Bureau of Prisons from most of their negotiating and bargaining rights. They blame the unions for blocking needed policies in federal prisons, apparently unaware that their own article they cite for that claim goes on to say the Bureau itself is responsible for the blockage, NOT THE UNION.

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Negative: Union Disempowerment

TOPICALITY

1. Employees, not prisoners

Link: Plan changes policy on employees of the Bureau of Prisons and their unions (not prisoners)

That’s all the Plan does – it’s only about employees, not prisoners

Violation: Plan doesn’t require affirming the resolution

We can deny that the federal government should change any policy toward convicted prisoners and still do this plan. Since the plan doesn’t need the resolution, it doesn’t prove the resolution to be true – it doesn’t affirm it.

What AFF is trying to sneak in: Effects topicality

AFF is hoping that reforming federal policies towards the union for the BOP employees might have some beneficial effect on the prisoners. There are 2 problems with this. 1) This is “effects” topicality and is abusive. There are millions of policy changes that might in some indirect way affect prisoners. Interest rates, climate change, income taxes, the list is endless. But the resolution limits us only to policies regarding the prisoners, not policies on someone else that might have a side effect on prisoners. 2) AFF fails to meet even their own low standard. Nowhere in their 1AC do they prove their plan would even have any effect on the prisoners. They read you not 1 piece of evidence saying their plan would do anything to help, reform or punish the prisoners.

Impact: Negative ballot

AFF plan as presented prima facie in the 1AC doesn’t even claim to uphold the resolution. Their case is evidence for a different resolution, one that involves the federal government reforming policies toward its employees. We deny the resolution and they failed to offer any case affirming it. Since there are 2 Negative teams in this round, no matter who wins, you should vote Negative.

NEGATIVE PHILOSOPHY / GOAL

1. Goal should be Officer safety

Correctional Officer (CO) safety should be the paramount goal. It’s more important than any AFF goal

Frank V. Ferdik & Hayden P. Smith 2017 (Ferdik - Department of Criminology and Criminal Justice, University of West Florida, Pensacola. Smith - Department of Criminology and Criminal Justice, University of South Carolina, Columbia) Correctional Officer Safety and Wellness Literature Synthesis, July 2017 <https://www.ojp.gov/pdffiles1/nij/250484.pdf> (accessed 20 Sept 2021)

Officers are tasked with demanding and often conflicting work responsibilities that increase their risk for physical and mental health problems such as injuries, stress, and even death. Officers must interact with and supervise potentially dangerous individuals such as gang members, inmates with mental illness, and those with communicable diseases, which further complicates officers’ health issues. According to the research cited above, officers, regardless of security assignment, recognize the danger to which they are subject as a result of their profession. Many scholars conclude that employment as a CO is among the most dangerous and life threatening of all professions, including law enforcement. Given how COs are heavily relied upon to supervise inmate behavior, establish order in their facilities, and maintain wider institutional security, it is paramount that correctional practitioners, researchers, administrative officials, and other interested stakeholders begin developing more effective and widely used strategies for enhancing the general well-being of this critically important workforce.

INHERENCY

1. JPC solves for negotiations

Joint Policy Committee meetings are a working alternative to the stalled negotiations, and they’re getting the job done instead

Michael Carvajal 2021 (Director, Federal Bureau of Prisons) 3 Nov 2021 Response to the Office of Inspector General 's (OIG ) Formal Draft o f a Management Advisory Memorandum: Impact of the Failure to Conduct Formal Policy Negotiations on the Federal Bureau of Prisons' Implementation of the First Step Act and Closure of OIG Recommendations (A-2020-003-A) <https://oig.justice.gov/sites/default/files/reports/22-007.pdf> (accessed 3 Jan 2022)

The BOP has already made substantial progress in developing and implementing a thoughtful plan to implement policy negotiations in a responsible manner. Although formal negotiations pursuant to Article 3 of the Master Agreement have not yet resumed, on September 29, 2021, the BOP and Council of Prison Locals (Union) entered into an agreement to negotiate policies during Joint Policy Committee (JPC) meetings. JPCs are an alternative to formal negotiations described in Article 3 and are conducted in person by representatives of both management and the Union. During the week of November 15, 2021, the parties are expected to conduct three JPCs concerning multiple policies related to the First Step Act, Security/Correctional Services, and Health/Safety.

2. New Justice Dept. policy solves for inmate bank accounts

Justice Dept. issued a new policy in Aug. 2021 (updates AFF 1AC evidence) to reform inmate accounts and stop them from avoiding restitution payments

Associated Press, August 2021. “Justice Dept. Bolsters Monitoring of Federal Inmate Accounts” 19 Aug 2021 <https://www.usnews.com/news/politics/articles/2021-08-19/justice-dept-bolsters-monitoring-of-federal-inmate-accounts> (accessed 3 Jan 2022)

The directive, issued this week by Deputy Attorney General Lisa Monaco, instructs the Bureau of Prisons to overhaul its current policies on so-called inmate trust accounts to “strengthen appropriate monitoring and reporting.” The Associated Press obtained a copy of Monaco’s directive and a subsequent Bureau of Prisons memo providing new guidance to wardens. “In administering this program, the Bureau must take appropriate steps to prevent inmates from using such accounts to engage in unlawful activity or to avoid obligations like paying court-ordered restitution to victims,” Monaco wrote. On Thursday, the Bureau of Prisons issued new guidance requiring wardens at the government’s 122 federal prisons to report the amount of money inmates have in their accounts each month and identify inmates with balances over $2,500. The memorandum also directs officials to refer cases to other law enforcement agencies when a crime may have been committed. It also instructs the agency to investigate inmates who receive large sums of money that result in skyrocketing balances, identify outside sources depositing money in accounts of multiple inmates or former inmates depositing money for prisoners still in custody. A Justice Department official said Monaco’s directive is meant to create a uniform policy across the federal prison system and to ensure Bureau of Prisons officials are taking appropriate steps to monitor inmate accounts. The official said the Justice Department's new policies were aimed at ensuring that inmates aren’t using their accounts to avoid financial obligations or to break the law.

HARMS / SIGNIFICANCE

1. A/T “Union blocking prison improvements”

There was a breakdown in negotiations, but Affirmative source admits the Bureau of Prisons was responsible, not the Union

**If you keep reading a couple paragraphs after the part they quoted in their 1AC, Inspector General Michael Horowitz in November 2021 goes on to say BOP was to blame by refusing to come to the meetings**

(Affirmative source) Michael Horowitz 2021 (Justice Dept. Inspector General) Impact of the Failure to Conduct Formal Policy Negotiations on the Federal Bureau of Prisons’ Implementation of the FIRST STEP Act and Closure of Office of the Inspector General Recommendations, 15 Nov 2021 <https://oig.justice.gov/sites/default/files/reports/22-007.pdf> (accessed 3 Jan 2022)

As described below, the BOP’s decision to not conduct formal in-person negotiations with the national union has delayed the Department of Justice’s (Department, DOJ) ability to move forward with FSA-related policies, as well as policy changes to address OIG recommendations on systemic correctional and safety issues. In response to a draft of this memorandum, the BOP explained that it has declined to meet with the national union in person due to pandemic-related guidance from the Office of Management and Budget (OMB) that was issued in March 2020. However, we note that OMB’s memorandum allows mission-critical travel and that the memorandum specifies factors for agencies to consider in determining which travel is mission critical, including whether such travel is required by “statute or contract.” As described above, the BOP and the national union have a contract that requires travel for in-person formal policy negotiations unless both parties agree otherwise. Moreover, the imperative of meeting both the FSA’s mandates and dozens of additional pending policy matters that concern safety and security issues, as well as the fact that most BOP employees have been working in person throughout the pandemic, further undercuts the BOP’s reliance on the OMB guidance as a basis for suspending formal policy negotiations for such a lengthy period. Additionally, as of August 5, 2020, the BOP’s own travel guidance allows for essential official travel.

2. Policies not blocked

Breakdown in negotiations didn’t block prison policy implementation. They continued anyway

Michael Carvajal 2021 (Director, Federal Bureau of Prisons) 3 Nov 2021 Response to the Office of Inspector General 's (OIG ) Formal Draft o f a Management Advisory Memorandum: Impact of the Failure to Conduct Formal Policy Negotiations on the Federal Bureau of Prisons' Implementation of the First Step Act and Closure of OIG Recommendations (A-2020-003-A) <https://oig.justice.gov/sites/default/files/reports/22-007.pdf> (accessed 3 Jan 2022)

Despite the lack of formal negotiations, the BOP has issued FSA-related policies since the passage of the legislation through the use of in-person informal negotiation. Since the passage of the FSA in December 2018, the BOP has revised and issued 12 policies to implement the FSA's requirements. In other instances, FSA implementation was effectuated using the issuance of guidance memoranda to institutions or other guidance documents. A description of the BOP's FSA implementation during 2020 is contained in "The Attorney General's First Step Act Section 3634 Annual Report (December 2020)". In sum, the BOP developed a new Risk & Needs Assessment System (RNAS), implemented the RNAS including the use of new tracking codes for program participation, screened inmates and assigned programming, expanded BOP programs and implemented new ones, and expanded the use of home confinement. As well, BOP continued to perform existing activities further refined by the FSA, most notably processing compassionate release requests, processing requests for the elderly offender home confinement pilot, the award of good conduct time, the delivery of Medication Assisted Treatment, and the transfers of inmates closer to home.

No shortfalls: ALL mandatory requirements of the First Step Act (FSA) are being implemented

Michael Carvajal 2021 (Director, Federal Bureau of Prisons) 3 Nov 2021 Response to the Office of Inspector General 's (OIG ) Formal Draft o f a Management Advisory Memorandum: Impact of the Failure to Conduct Formal Policy Negotiations on the Federal Bureau of Prisons' Implementation of the First Step Act and Closure of OIG Recommendations (A-2020-003-A) <https://oig.justice.gov/sites/default/files/reports/22-007.pdf> (accessed 3 Jan 2022)

Although the COVID19 pandemic has created unprecedented challenges for the federal government, BOP has taken significant steps in implementing the FSA's requirements, consistent with the FSA's phased approach, and has complied with all mandatory statutory guidelines to date.

3. Net benefits

Union representation of federal employees is net beneficial for public administration

Rep. Gerald E. Connolly 2019 (D-Virginia; chairman of the House Subcommittee on Government Operations) House committee hearing: “EXAMINING FEDERAL LABOR-MANAGEMENT RELATIONS” 4 June 2019 <https://docs.house.gov/meetings/GO/GO24/20190604/109591/HHRG-116-GO24-Transcript-20190604.pdf> (accessed 2 Jan 2022)

More than two million Federal employees work on behalf of the American people. They care for veterans, enforce the law, ensure the safety and quality of our food and drinking water, conduct scientific research, and repair our warfighting equipment, among many other important tasks on behalf of the American people. They are also represented in many cases by unions because Congress—Congress—determined by law that giving Federal workers the right to join unions and bargain collectively over their conditions of employment was ‘‘in the public interest.’’ In fact, that law states, and I quote: ‘‘The statutory protection of the right of employees to organize, bargain collectively, and participant through labor organizations of their own choosing in decisions which affect them safeguards the public interests, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment.’’

DISADVANTAGES

1. Reduced prison officer safety

Link: Union negotiations on work conditions are key to promoting officer safety

Charles Colson Task Force on Federal Corrections 2016. (The Task Force was established by Congressional mandate in 2014 as a nine-person, bipartisan, blue ribbon panel charged with developing recommendations for creating a more just and efficient federal corrections system. Chairman is former congressmen J.C. Watts) “Transforming Prisons, Restoring Lives Final Recommendations of the Charles Colson Task Force on Federal Corrections” January 2016 http://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf

Moreover, after 16 years of negotiations, in July 2014 the BOP signed a collective bargaining agreement with the union representing 85 percent of BOP staff, the Council of Prison Locals, American Federation of Government Employees. This improved working relationship with the union has enabled the BOP to enact significant policy changes that promote safety inside correctional facilities and improve public safety when individuals in BOP custody return home.

Impact: Injuries and deaths. Federal prisons are very dangerous for staff.

Charles E. Samuels 2014. (Director, Federal Bureau of Prisons) 25 Feb 2014 Statement before the Subcommittee on the Constitution, Civil Rights and Human Rights of the Senate Judiciary Committee <https://www.congress.gov/event/113th-congress/senate-event/LC60861/text?s=1&r=46> (accessed 19 Sept 2021)



2. Slave labor

Link: Bureau of Prisons used to require officers to work 30 minutes of unpaid free labor per day

Arbitrator Jack H. Calhoun 2008. (arbitrator with Federal Mediation & Conciliation Service) Arbitration Award, Federal Bureau of Prisons, Atwater, California and AFGE Local 1242, FMCS Case #05-57849, 18 Sept 2008 <https://www.aele.org/law/2009all01/bop-afge1242.html> (accessed 2 Jan 2022)

The evidence supports the conclusion that it is normal practice for both officers to be present to perform shift change at the towers and, for that reason, the shift change takes a minimum of 30 minutes to perform properly. The prime question here is whether correction officers at Atwater were required to work in excess of their eight-hour work day engaged in activities that are integral and indispensable to their principal work for which they should be compensated. The pre-shift activities of the officers, as discussed earlier, meet this standard inasmuch as they are all closely related to their principal activities and are indispensable to the performance of those activities. The Agency has failed to comply with the collective bargaining agreement and the law. It did so knowingly and willfully. In summary, I find that bargaining unit employees have been required to work more than a de minimus amount of time in excess of their regular shifts without compensation performing work that is integral and indispensable to their primary work activities during the applicable statutory period.

Link: Union got back pay for 3 years of mandatory unpaid labor by filing a grievance decided in their favor under arbitration

Arbitrator Jack H. Calhoun 2008. (arbitrator with Federal Mediation & Conciliation Service) Arbitration Award, Federal Bureau of Prisons, Atwater, California and AFGE Local 1242, FMCS Case #05-57849, 18 Sept 2008 <https://www.aele.org/law/2009all01/bop-afge1242.html> (accessed 2 Jan 2022)

All affected bargaining unit employees are to be paid overtime in the amount of 30 minutes per day for the three years preceding the date of the grievance and up to the time the Agency takes steps to remedy the problem. Interest in the amount allowed by law is awarded along with attorney fees.

Impact: Not paying people for their labor is really bad.

Aside from the fact that it’s dishonest and cheating a fellow human being, we fought a Civil War in this country over the issue of making people work without pay. And we decided we weren’t going to do that any more in 1865. It’s unfortunate, but 143 years later, the workers’ union had to enforce this simple moral value on the Bureau of Prisons. That’s the kind of behavior you can expect after the AFF plan is enacted because the union is the only thing stopping them from treating their employees like slaves.

3. Low morale

Link and brink: Status Quo morale is low and officers are quitting

Tracy Harmon 2021 (journalist) PUEBLO CHIEFTAN “Here's why morale is reportedly 'horrific' at the federal prison complex near Florence“ 30 Sept 2021 <https://www.chieftain.com/story/news/2021/09/30/federal-prison-workers-protest-staffing-shortage-safety-issues/5921824001/> (accessed 2 Jan 2022)

Federal prison workers calling themselves “the forgotten law enforcement” protested outside the Florence Correctional Complex Sept. 30[to bring attention to dangerous working conditions](https://www.chieftain.com/story/news/2020/12/11/florence-federal-prison-worker-details-covid-19-staffing-strain/6513673002/) they face daily inside the four-prison complex which is 130 correctional officers short of a full staff. American Federation of Government Employees local union members were joined by union officials from state, national and AFL-CIO groups to speak out about short staffing issues said John Butkovich of Pueblo, acting president for the AFGE Local 1169 which represents about 450 workers at the complex.  “We are the forgotten law enforcement. Our morale is horrific," Butkovich said. “We don’t know what time we are going home or what our day is going to consist of,” Butkovich said, pointing out that officers are often asked to work a 16-hour-day. “We are working at least eight hours of forced overtime a week, we have a retention problem and those who are eligible to retire are gone as soon as they hit 25 years."

Link: Lack of bargaining leads to big further losses of BOP employees

Jessie Bur 2021 (journalist) 29 Oct 2021 FEDERAL TIMES “Feds worry vaccine mandate could lead to staffing crisis” <https://www.federaltimes.com/management/2021/10/29/feds-worry-vaccine-mandate-could-lead-to-staffing-crisis/> (accessed 2 Jan 2022)

Federal employees, predominantly from the Bureau of Prisons, held a protest outside the Department of Justice Oct. 29 to decry the lack of collective bargaining they have received over [President Joe Biden’s mandate](https://www.federaltimes.com/breaking-news/2021/09/09/biden-issues-full-vaccine-mandate-for-federal-employees/) that all federal employees receive a COVID-19 vaccine. The employees, represented by the American Federation of Government Employees, say they’re worried the inability to negotiate over the details of the mandate could lead to mass resignations or firings from agencies that are already short-staffed.

Impact: Exponential increase in prison violence when staffing is lost

Shane Fausey 2020. (president of the American Federation of Government Employees (AFGE) National Council of Prison Locals 33 ) 14 May 2020 “Being a prison officer is now more dangerous than ever” <https://federalnewsnetwork.com/workforce/2020/05/being-a-prison-guard-now-more-dangerous-than-ever/> (accessed 2 Jan 2022)

**Shane Fausey:** We have been plagued with staffing concerns since about 2005. They implemented a program called mission critical, which they took about 20% of the correctional services staff or your officers in your prisons. And consistently over the years, most notably January of 2017, they executed another series of cuts. We’re down probably close to 9000 to 10,000 positions since 2005. Unfortunately, in a prison when you reduce your overall staffing numbers, your violence exponentially increases.

4. Low wages

Link: Federal prison officer pay has stagnated and they can make more elsewhere. Some are so poor they qualify for welfare

Tracy Harmon 2021 (journalist) PUEBLO CHIEFTAN “Here's why morale is reportedly 'horrific' at the federal prison complex near Florence“ 30 Sept 2021 <https://www.chieftain.com/story/news/2021/09/30/federal-prison-workers-protest-staffing-shortage-safety-issues/5921824001/> (accessed 2 Jan 2022) (brackets added)

To add to the frustration, [acting union president John] Butkovich said he fears some correctional officers will quit when COVID-19 vaccinations become mandatory by Nov. 22. He also said the staff has faced stagnant wages for years.  “You can go to work for the state (Colorado Department of Corrections) eight miles up the road from here and make $14,000 more a year. With entry-level at $44,000 that the Federal Bureau of Prisons pays, if you have a family of four and make $44,000 a year you are eligible for welfare — that is embarrassing,” [union vice president John] Holbrooks said.

Link: Union gets wage increases (unless you vote Affirmative)

Tim Kauffman 2021 (spokesperson for American Federation of Government Employees, union representing BOP employees) 17 Sept 2021 “‘Big win’ for correctional officers and staff at USP Thomson” <https://www.afge.org/publication/big-win-for-correctional-officers-and-staff-at-usp-thomson/> (accessed 2 Jan 2022)

In a major victory for staff at US Penitentiary Thomson in northern Illinois, the U.S. Office of Personnel Management has approved a request to pay 25% retention pay to all officers and staff at the facility. The high-security federal prison has suffered with critical shortages of correctional officers and staff due to low pay and lack of affordable housing. AFGE Local 4070 has been fighting for two years to secure additional pay for officers and staff and help attract qualified job applicants. On July 30, the Bureau of Prisons [approved a 10% retention pay incentive](https://www.afge.org/globalassets/documents/generalreports/2021/10-retention-all-staff-approval-tom-07032021_1.pdf) for all eligible staff at the facility, which is the maximum BOP can offer, and submitted to OPM a request for approval to pay 25% retention pay to all officers and staff.

Link & Brink: Attorney General admits federal prison staffing is “a serious problem”

[KERI BLAKINGER](http://www.themarshallproject.org/staff/keri-blakinger), [JAMILES LARTEY](http://www.themarshallproject.org/staff/jamiles-lartey), [BETH SCHWARTZAPFEL](http://www.themarshallproject.org/staff/beth-schwartzapfel), MIKE SISAK and [CHRISTIE THOMPSON](http://www.themarshallproject.org/staff/christie-thompson) 2021 (staff writers for The Marshall Project, a non-profit research group on criminal justice) “As Corrections Officers Quit in Droves, Prisons Get Even More Dangerous” 1 Nov 2021 <https://www.themarshallproject.org/2021/11/01/as-corrections-officers-quit-in-droves-prisons-get-even-more-dangerous> (accessed 3 Jan 2022)

Asked last week in a U.S. Senate hearing about federal prison staffing, Attorney General Merrick Garland said, “I agree this is a serious problem at the Bureau of Prisons.”

Link: BOP can’t attract and hire new prison officers because pay is too low

FEDAgent 2021. (News group for federal law enforcement employees) “Lawmakers Request BOP Director Provide Insight on Augmenting Personnel, Staff Shortages” 11 Nov 2021 <https://www.fedagent.com/news/lawmakers-request-bop-director-provide-insight-on-personnel-augmentation-staff-shortages> (accessed 3 Jan 2022)

GAO found that although BOP budgeted for 20,446 full-time correctional officer positions in 2020, the agency reported that it currently employs 13,762 officers. Despite efforts to attract recruits with 25 percent bonuses, there has been little progress. While there are promises of making $62,615 as a recruitment incentive, the starting salary is just under $43,500. The highest end of this salary scale is still much lower than what other federal agencies offer, especially compared with the competition from police departments, state prisons, oil refineries, and warehouses.

Impact: Low staffing = more prison violence

Cross apply the impact card from Disad #3 – we get even more of it with Disad #4.