65 FLRA No. 207

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
ALLENWOOD, PENNSYLVANIA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 4047
COUNCIL OF PRISON LOCALS
COUNCIL 33
(Union)

0-AR-4691

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DECISION

June 30, 2011

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members[1]

I. Statement of the Case

This matter is before the Authority on exceptions to an initial award (initial exceptions) and exceptions to a supplemental award (supplemental exceptions) of Arbitrator Gerard Scola filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the initial exceptions (initial opposition) and an opposition to the supplemental exceptions (supplemental opposition).

In the initial award, the Arbitrator found that the Agency violated the Fair Labor Standards Act (FLSA), as amended by the Portal-to-Portal Act (the Act), 29 U.S.C. § 254, because it failed to compensate employees for pre-shift and post-shift work. In the supplemental award, he directed the Agency to pay backpay and liquidated damages, plus post-judgment interest, and to reimburse the Union for attorney fees and related expenses.

For the following reasons, we deny the Agency's exceptions in part, set aside the initial award in part, modify the supplemental award to exclude the award of post-judgment interest, and remand the initial award to the parties for resubmission to the Arbitrator, absent settlement.

II. Background and Arbitrator's Awards

The Union filed a grievance alleging that the Agency violated the FLSA by failing to compensate correctional officers at a federal prison for various pre-shift and post-shift activities. The grievance was unresolved and submitted to arbitration, where the Arbitrator framed the issue as follows: "Did the [Agency] suffer or permit bargaining unit employees to perform compensable work before and[/]or after their scheduled shifts, without compensation, in violation of the [FLSA] and the parties' Master Agreement? If so, what is the remedy?" Initial Award at 7.

The Arbitrator found that, before their shifts, all correctional officers: visit the prison's Control Center to pick up equipment such as radios, keys, and handcuffs, as well as a charged battery for their radios; walk through the "Sally Port," which is the area between the Control Center and compound[2] entrance; flip a metal chit on the "accountability board" to indicate their presence in the compound; and travel through the compound to their assigned posts. *Id.* at 10-11. At the end of their shift, officers return to the Control Center. *Id.* at 12.

Each officer has a duty belt that holds his or her equipment. *Id.* at 9. At some point during the period of time covered by the grievance, the Agency instituted mandatory security screening for all employees. *Id.* at 38, 44. During the period after institution of the screening (post-screening period), officers were required to place their duty belts on an x-ray machine, and pass through a metal detector. *Id.* at 9. Officers would then once again don their duty belts before walking to the Control Center to begin the process discussed above. *Id.*

The Arbitrator determined that "hav[ing] a radio and body alarm that was working all the time" is "a 'principal activity' required by the Agency[.]" *Id.* at 40. In addition, the Arbitrator found that picking up a battery is "'integral and indispensable' to that principal activity, and therefore . . . should be

1. Member DuBester's separate opinion, dissenting in part, is set forth at the end of this decision.

2. Although the Arbitrator did not define the term "compound," Initial Award at 10-11, there is no dispute that the compound is the area of the institution where prisoners are housed.

compensated." *Id.* The Arbitrator also found that "[o]nce the officer enters the Sally Port . . . and [he or she] turn[s] [his or her] chit on the 'Accountability Board' . . . the officer's day has begun." *Id.* at 42. In this regard, the Arbitrator determined that, prior to the institution of employee screening (the pre-screening period), "entrance into the Sally Port . . . [wa]s 'the first principal activity', and th[at] re[-]entry into the Sally Port, . . . carrying equipment back to the Control Center . . . [wa]s 'the last principal activity', that describe[ed] the outer limits of the officer's work day[.]" *Id.* at 43. According to the Arbitrator, "[o]nce the Agency made [going through] the metal detector in the screening room a requirement, it became the officer's 'first principal activity' of the day[,]" and "the donning of the duty belt [and] the stop at the Control Center . . . be[came] part of [his or her] workday." *Id.* at 44, 45 (emphasis omitted).

Based on the foregoing, the Arbitrator sustained the grievance. *Id.* at 51. With respect to the pre-screening period, he awarded compensation ranging from fifteen to thirty minutes of overtime per day[3], depending on the assigned post. *Id.* at 49-50. With respect to the post-screening period, the Arbitrator awarded the same amount of compensation, plus an additional five minutes for each post, with one exception not relevant here.[4] *Id.* at 50.

In the supplemental award, the Arbitrator directed the Agency to pay backpay and liquidated damages, and to reimburse the Union for attorney fees and related expenses. Supplemental Award at 2. He also directed the Agency to pay post-judgment interest on the total amount of the award for a period beginning on November 16, 2010, if it failed to pay the Union in full prior to that date. *Id.* at 3.

III. Positions of the Parties

A. Agency's Initial Exceptions

The Agency contends that the initial award is contrary to law in several respects. First, the Agency argues that the award is contrary to the FLSA and the Act "because it explicitly grants overtime compensation for the simple act of flipping a chit on an accountability board[.]" Exceptions at 6-9 (internal quotations omitted) (citing *IBP, Inc. v. Alvarez*, 546 U.S. 21, 40 (2005) (*Alvarez*); *U.S. Dep't of Justice, Fed. Bureau of Prisons, USP Terre Haute, Ind.*, 58 FLRA 327, 329 (2003) (*Terre Haute*)). Second, the Agency asserts that the Arbitrator erred by awarding compensation to all officers for time spent traveling between the Sally Port and their duty posts, regardless of whether or not they engage in principal activities prior to traveling. *Id.* at 16-20 (citing *Alvarez*, 546 U.S. at 37; *Terre Haute*, 58 FLRA at 330). Third, the Agency argues that the "screening procedures are not integral and indispensable such that they should be compensable" under the FLSA and the Act. *Id.* at 11-13 (citing *Bonilla v. Baker Concrete Constr., Inc.*, 487 F.3d 1340, 1344 (11th Cir. 2007) (*Bonilla*); and *Gorman v. Consol. Edison Corp.*, 488 F.3d 586, 593 (2d Cir. 2007) (*Gorman*)). Fourth, the Agency alleges that the Arbitrator failed to consider whether time spent in pre-shift and post-shift activities was de minimis under 5 C.F.R. § 511.412(a)(1), and, therefore, non-compensable.[5] *Id.* at 13-16 (citing *U.S. Dep't of Justice, Fed. Bureau of Prisons, USP Leavenworth, Kan.*, 59 FLRA 593, 598 (2004) (*Leavenworth*)).

B. Union's Initial Opposition

As an initial matter, the Union contends that the Agency's initial exceptions, which were filed on September 21, 2010,[6] should be dismissed as untimely. Initial Opp'n at 4-7. In this regard, the Union asserts that the Arbitrator served the award via e-mail on August 19, and, as such, any exceptions had to be filed by September 17. *Id.* at 4.

With respect to the merits of the Agency's exceptions, the Union contends that the Arbitrator did not err by awarding compensation for time spent by officers flipping an accountability chit and traveling between the Sally Port and their posts because those activities occurred during their continuous workday. Initial Opp'n at 9-17 (citing *U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst., Jesup, Ga.*, 63 FLRA 323, 327 (2009); *Alvarez*, 546 U.S. at 37). With regard to the employee security screening, the Union asserts that it is integral and indispensable to officers' principal activities because it is: (1) conducted at a location separate from the location where visitors are screened; (2) necessary to officers' principal work "due to the dangerous nature of the

3. Although the Arbitrator did not specify the unit of time over which he awarded minutes of compensation, there is no dispute that the award grants compensation in terms of minutes per day.

4. Employees assigned to the Perimeter Patrol Post were not awarded an additional five minutes of compensation. Initial Award at 50.

5. The relevant wording of 5 C.F.R. § 551.412(a)(1) is set forth *infra*.

6. All dates in this paragraph, and in the discussion of the timeliness issue below, are from 2010.

correctional environment"; and (3) performed for the benefit of the employer because officers must "maintain a high level of professionalism" and "be prepared to respond in the event of an emergency" when at the screening site. *Id.* at 17-19.

With respect to compensation for time spent donning duty belts, the Union claims that "courts have consistently found that donning and doffing specialized equipment -- for example, a police officer's duty belt -- is an integral and indispensable activity that would begin the compensable continuous workday." *Id.* at 21 (citing *Nolan v. City of L.A.*, 2009 U.S. Dist. LEXIS 70764, at *40 (C.D. Cal., May 5, 2009); *Maciel v. City of L.A.*, 569 F. Supp. 2d 1038, 1049 (C.D. Cal. 2008)). The Union also argues that the donning of the duty belt in this case is indispensable and integral because the belt is required by the Agency, necessary for officers to perform their duties, used primarily for the benefit of the Agency, and required to be donned on the Agency's premises. *Id.* at 24-29. In this connection, the Union contends that "the requirement that donning occur at the place of employment weighs heavily in favor of finding that the donning act is integral [and] indispensable[.]" *Id.* at 28-29 (internal quotation marks omitted) (citing *Jordan v. IBP, Inc.*, 542 F. Supp. 2d 790, 806 (M.D. Tenn. 2008) (*Jordan*); *Ballaris v. Wacker Siltronic Corp.*, 370 F.3d 901, 911 (9th Cir. 2004) (*Ballaris*); *Alvarez v. IBP, Inc.*, 339 F.3d 894, 903 (9th Cir. 2003) (*IBP*); and *Dep't of Labor Wage and Hour Advisory Memorandum No. 2006-2* at 2 (May 31, 2006)).

Finally, the Union contends that the award does not grant compensation for de minimis time. *Id.* at 29-31.

C. Agency's Supplemental Exceptions

The Agency argues that the supplemental award is contrary to the FLSA because it awards both liquidated damages and post-judgment interest. Supplemental Exceptions at 20-23.

D. Union's Supplemental Opposition

The Union argues that "the Arbitrator properly awarded liquidated damages because the Agency failed to prove that it acted in good faith or on reasonable grounds." Supplemental Opp'n at 30.

IV. Preliminary Issue

The Authority ordered the Agency to show cause why the initial exceptions should not be dismissed as untimely (Order). Section 7122(b) of the Statute requires that exceptions be filed within thirty days from the date of service of the award. 5 U.S.C. § 7122(b). Under the Authority's Regulations that were in effect when the Agency filed its initial exceptions, the first day of the thirty-day period for filing exceptions was the date of service of the award. *See former* 5 C.F.R. § 2425.1(b).[7] The Authority has held that when an award is served by two methods, timeliness is measured based on completion of the earliest method of service of the award. *U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot., U.S. Border Patrol*, 63 FLRA 345, 346 (2009), *recons. denied*, 64 FLRA 807 (2010); *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 60 FLRA 966, 967 (2005). Section 2429.22 of the Authority's Regulations provides that five days will be added if the award is served by mail or commercial delivery. 5 C.F.R. § 2429.22.

In response to the Order, the Agency asserts that the Arbitrator served his initial award by mail on August 18 -- one day prior to his service by e-mail on August 19. Agency's Response to the Order at 4. The record substantiates the Agency's assertion by showing that the initial award was postmarked on August 18. *Id.*, Attach. A at 1. Thus, the thirty-day deadline for filing the initial exceptions was September 16. As the initial award was first served by mail, five days were added to the filing period, extending the due date until September 21. The Agency's initial exceptions were filed by personal delivery on September 21. Accordingly, we find that the initial exceptions are timely.

V. Analysis and Conclusions

When a party's exceptions involve an award's consistency with law, the Authority reviews the questions of law raised by the arbitrator's award and the party's exceptions de novo. *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying a de novo standard of review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law. *NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998). In making that assessment, the Authority defers to the arbitrator's underlying factual findings. *See id.*

7. The Authority's Regulations concerning the review of arbitration awards, as well as certain related procedural Regulations, including 5 C.F.R. § 2429.5, were revised effective October 1, 2010. *See* 75 Fed. Reg. 42,283 (2010). Because the Agency's exceptions in this case were filed before that date, we apply the prior Regulations.

A. The initial award is contrary to the FLSA and the Act in part.

In passing the Act, Congress distinguished between "the principal activity or activities that an employee is hired to perform," which are compensable, and "activities which are preliminary to or postliminary to said principal activity or activities," which are not compensable. 29 U.S.C. § 254(a)(1) & (2). *See AFGE, Local 1482*, 49 FLRA 644, 646-47 (1994); *Gen. Servs. Admin.*, 37 FLRA 481, 484 (1990). *See also Reich v. N.Y.C. Transit Auth.*, 45 F.3d 646, 649 (2d Cir. 1995) (*N.Y.C. Transit*). Any activities that are integral and indispensable to an employee's principal activity or activities are themselves principal activities under the Act. *Alvarez*, 546 U.S. at 33 (citing *Steiner v. Mitchell*, 350 U.S. 247, 253 (1956)).

In determining whether given activities are an integral and indispensable part of employees' principal activities, "what is important is that such work is necessary to the business and is performed by the employees, primarily for the benefit of the employer, in the ordinary course of that business." *Dunlop v. City Electric Inc.*, 527 F.2d 394, 401 (5th Cir. 1976) (*Dunlop*). In addition, activities that take place between the first and last principal activities of the day, including those which would otherwise be excluded from compensation under the Act, are covered by the FLSA because they occur during the continuous workday. *Alvarez*, 546 U.S. at 29-30, 37, 40; *see also* 29 C.F.R. § 790.6(a)-(b).

The Arbitrator awarded compensation for two separate periods: the pre-screening period and the post-screening period. We address these periods separately below.

1. Pre-Screening Period

The Arbitrator found that picking up a battery at the Control Center is integral and indispensable to the officers' principal activities. Initial Award at 40. The Agency does not dispute this finding, which, as a matter of law, supports a conclusion that the picking up of the battery is a principal activity. *See Alvarez*, 546 U.S. at 33. The Arbitrator also found, and the Agency does not dispute, that re-entry into the Sally Port is the last principal activity of the day. Initial Award at 43. It is undisputed that the flipping of the accountability chit and travel between the Sally Port and duty posts occur after the pick-up of batteries at the Control Center and before re-entry into the Sally Port from the compound at the end of the day. *Id.* at 40. As these activities occur between the first and last principal activities of the day, they are part of the continuous workday. [8] *Alvarez*, 546 U.S. at 29-30.

The Agency's reliance on *Terre Haute* is misplaced because the flipping of the accountability chit and the travel in that case, unlike here, occurred before the start of the continuous workday. Further, with regard to the Agency's claim that the Arbitrator compensated travel time to all officers, regardless of whether they engage in principal activities prior to traveling, the Arbitrator found that "all of the workers pick up a charged battery" -- the first principal activity of the day. Initial Award at 10. Therefore, the Arbitrator's factual finding, which the Agency does not challenge as a nonfact, supports his determination that all officers who travel between the Sally Port and their duty posts are entitled to compensation for the flipping of the accountability chit and travel time as part of the continuous workday. *Alvarez*, 546 U.S. at 29-30, 37.

For the foregoing reasons, we deny the exceptions regarding the pre-screening period.

2. Post-Screening Period

The Agency contends that the award is deficient because the time spent passing through the security screening is not compensable under the FLSA and the Act. Courts that have addressed this issue consistently have held that time spent participating in security screening is not compensable under the FLSA. *See Bonilla*, 487 F.3d at 1345 (concluding that time spent going through airport security to report to work was not compensable under the FLSA); *Gorman*, 488 F.3d at 592-93 (holding that while security procedures including "waiting in line and passing through a radiation detector, x-ray machine, and explosive material detector" were necessary "in the sense that they were required and serve the essential purpose of security," they were not "integral" to the nuclear power station's employees' principal activities and therefore noncompensable).

8. We note that the Arbitrator identifies several activities, including the flipping of the accountability chit, as the beginning of the workday or "first principal activity." *See* Initial Award at 42-44. However, as discussed previously, the Arbitrator found that picking up a battery at the Control Center occurs prior to these other activities and is integral and indispensable to officers' principal activities. *Id.* at 10, 40. Therefore, for the purposes of the FLSA, the picking up of the battery at the Control Center is actually the officers' first principal activity and, thus, the beginning of the continuous workday.

The Union argues that the security screening in the instant case is integral and indispensable to officers' principal activities because it is: (1) conducted at a location separate from where visitor screening is conducted; (2) necessary to officers' principal work "due to the dangerous nature of the correctional environment"; and (3) performed for the benefit of the Agency because officers must "maintain a high level of professionalism" and "be prepared to respond in the event of an emergency" when at the screening site. Initial Opp'n at 17-19. However, there is no basis in the above-cited precedent for finding that these factors have any bearing on whether the screening is "integral and indispensable" to officers' principal activities. Accordingly, we find that, consistent with *Gorman* and *Bonilla*, passing through the security screening is not compensable as a principal activity, and set aside that portion of the initial award. [9]

The Arbitrator also compensated officers for time spent donning their duty belts and traveling to the Control Center after passing through the security screening because he found those activities to be part of the continuous workday. However, as we have set aside the Arbitrator's finding that the security screening is a principal activity, such time is compensable only if the donning of the duty belt is a principal activity sufficient to commence the continuous workday, or if officers engage in principal activities during their travel from the security screening area to the Control Center. *See Terre Haute*, 58 FLRA at 330.

As stated previously, activities that are integral and indispensable to an employee's principal activity or activities are themselves principal activities under the Act. *Alvarez*, 546 U.S. 21. Also as stated previously, in determining whether given activities are an integral and indispensable part of employees' principal activities, "what is important is that such work is necessary to the business and is performed by the employees, primarily for the benefit of the employer, in the ordinary course of that business." *Dunlop*, 527 F.2d at 401. Further, some courts have held that an employer-imposed requirement that donning occur at the employer's premises weighs heavily in favor of finding that the donning is a compensable activity. *See Jordan*, 542 F. Supp. 2d at 806 (citing *Ballaris*, 370 F.3d at 911). In addition, the donning of protective gear is generally compensable only if it is specialized or unique, rather than generic. *See, e.g.*, *Gorman*, 488 F.3d at 594; *N.Y.C. Transit*, 45 F.3d at 649; *Reich v. IBP, Inc.*, 38 F.3d 1123, 1126 (10th Cir. 1994).

As an initial matter, the Arbitrator neither found that the donning of the duty belt is an integral and indispensable activity, nor assessed the factors relevant to determining whether that activity is integral and indispensable. The Arbitrator found that each officer *has* a duty belt, and that because officers cannot wear these belts when passing though the security screening, they need to don their belts on the Agency's premises after passing through the security screening. Initial Award at 9. However, the Arbitrator made no findings regarding whether officers are actually required by the employer to wear the duty belt. Thus, in contrast to the precedent cited by the Union, it is unclear whether the donning of the duty belt on the premises is an activity that is required by the employer. *Cf. Jordan*, 542 F. Supp. 2d at 806 (finding that requirement that employees don required frocks on the employer's premises weighed heavily in favor of compensability); *Ballaris*, 370 F.3d at 903, 911-12 (holding that donning of uniforms at employer's premises was compensable work where employees were required to wear the uniforms); *IBP*, 339 F.3d at 898 n.2, 904 (finding that donning of required protective gear at employer's premises was a compensable activity).

Further, the Arbitrator did not address whether the duty belt, if required, must be donned immediately after passing through screening, such that travel from the screening area to the Control Center is compensable as part of the continuous workday. Moreover, if the duty belt is required, but can be donned at any point after passing through the screening, travel to the Control Center is compensable only if officers engage in principal activities during their travel. It is unclear from the

9. The dissent contends that: (1) the Arbitrator determined that officers are essentially on duty while passing through screening; and (2) it is undisputed that officers can be required to respond to emergencies while at the screening site. *See* Dissent at 11. However, the Arbitrator found only that after officers pass through screening *and* begin to collect equipment, "their focus shifts" from civilian to correctional officer. Award at 44 (emphasis added). In addition, the dissent does not explain why it would be relevant to consider whether screening is conducted at separate locations for employees and visitors (as in the instant case) or at one location for everyone (as in *Gorman*); in both cases, everyone is screened. Moreover, the fact that the employer in *Bonilla* was required to conduct employee screening is immaterial because, as *Gorman* demonstrates, even when an employer is not required to conduct screening, the act of passing through screening before engaging in principal activities is not compensable. Finally, the dissent is based solely on attempts to distinguish precedent; the dissent cites no precedent actually supporting its position.

record whether officers engage in such activities while traveling from the screening area to the Control Center. In addition, the Arbitrator did not address whether the duty belt is a type of protective gear (i.e., helmet, safety glasses, or steel-toed boots), and, if so, whether it is unique or generic. *See Gorman*, 488 F.3d at 594.

Where an arbitrator has not made sufficient factual findings for the Authority to determine whether the award is contrary to law, and those findings cannot be derived from the record, the Authority will remand the award to the parties for further action. *See, e.g., AFGE, Local 2054*, 63 FLRA 169, 172 (2009); *U.S. Dep't of Transp., Maritime Admin.*, 61 FLRA 816, 822 (2006); *NFFE, Local 1437*, 53 FLRA 1703, 1710-11 (1998). Accordingly, we remand the award to the parties for resubmission to the Arbitrator, absent settlement, to determine: (1) whether the donning of the duty belt is an activity that is integral and indispensable to officers' principal activities, including, among other things, whether the duty belt is a type of unique protective gear; (2) if so, whether officers are required to don the belt immediately after passing through screening; and (3) whether officers engage in principal activities during their travel from the security screening area to the Control Center.

B. It is premature to determine whether the initial award is contrary to 5 C.F.R. § 511.412(a)(1) in part.

The Agency alleges that the initial award is contrary to 5 C.F.R. § 511.412(a)(1) because the Arbitrator failed to consider whether the time spent in the compensated activities was de minimis. 5 C.F.R. § 511.412(a)(1) provides, in pertinent part:

> If an agency reasonably determines that a preparatory or concluding activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than [ten] minutes per workday, the agency shall credit all of the time spent in that activity, including the [ten] minutes, as hours of work.

5 C.F.R. § 551.412(a)(1).

The Authority has held that "[an] award is contrary to 5 C.F.R. § 511.412(a)(1)" where "the total time awarded by the Arbitrator . . . does not exceed [ten] minutes per workday[.]" *See Leavenworth*, 59 FLRA at 598. Here, the Arbitrator awarded no less than fifteen minutes of compensation for eligible officers.[10] *See* Initial Award at 49-50. As the total time awarded by the Arbitrator for these employees exceeds ten minutes per workday, and we have upheld the Arbitrator's remedy for the pre-screening period, we deny the exception with respect to that time period.

In addition, as stated previously, we are remanding the award with respect to the Arbitrator's remedy concerning the post-screening period. Thus, it is unclear whether, following remand, the award of compensation for this period will exceed a total of ten minutes per workday. As such, we find it premature to address the exception with regard to that time period. *See Terre Haute*, 58 FLRA at 330 (finding it premature to address cross-exceptions regarding damages under the FLSA where remand was ordered to determine whether award granted compensation for certain activities).

C. The supplemental award of post-judgment interest is contrary to law.

The Arbitrator directed the Agency to pay liquidated damages plus interest on the total amount of the award in accordance with the Back Pay Act if it failed to pay the Union in full by November 15, 2010. In *Social Security Administration, Baltimore, Maryland v. FLRA*, 201 F.3d 465, 473 (D.C. Cir. 2000), a decision concerning post-judgment interest, the court held that "liquidated damages are not pay, allowances, or differentials[,]" and that because of this, "the Back Pay Act does not authorize the [Authority] to require an agency to pay interest on liquidated damages awarded under the FLSA." Moreover, the Authority has held that "an employee may not recover the full amount of both liquidated damages and interest" under the FLSA. *U.S. Dep't of Commerce, Nat'l Oceanic & Atmospheric Admin., Office of Marine & Aviation Operations, Marine Operations Ctr., Va.*, 57 FLRA 430, 436 (2001). Accordingly, we find that the supplemental award is contrary to law.

Where the Authority is able to modify an award to bring it into compliance with applicable law, it will do so. *See, e.g., U.S. Dep't of Energy, Oak Ridge Office, Oak Ridge, Tenn.*, 64 FLRA 535, 538 (2010). As the award is deficient to the extent that it grants both post-judgment interest and liquidated damages,

10. As noted previously, there is no dispute that the award grants compensation in terms of minutes per day.

we modify it to exclude the award of post-judgment interest.[11]

VI. Decision

The Agency's exceptions are denied in part, the initial award is set aside in part, the supplemental award is modified to exclude the award of post-judgment interest, and the initial award is remanded to the parties for resubmission to the Arbitrator, absent settlement.

Member DuBester, Dissenting in Part:

Contrary to my colleagues, and in agreement with the Arbitrator, I would find that the time spent by the correctional officers passing through security screening is compensable.

It appears from the facts as found by the Arbitrator that the time spent passing through security screening is an integral part of the officers' principal activities. As the Arbitrator determined, officers are essentially on duty while going through screening. Initial Award at 44. It is undisputed that officers can be called on to respond to an emergency while at the screening site. As the Arbitrator found, *id.*, as officers pass through the metal detector, their focus shifts from being civilians to being correctional officers.

In making this judgment, I find the cases on which the majority relies distinguishable. *Gorman v. Consol. Edison Corp.*, 488 F.3d 586 (2nd Cir. 2007) (*Gorman*); *Bonilla v. Baker Concrete Constr., Inc.* 487 F.3d 1340 (11th Cir. 2007) (*Bonilla*). In both *Gorman* and *Bonilla*, employees were not engaged in doing their jobs until after they passed through security screening. Also in contrast to *Gorman* and *Bonilla*, the security screening here meets the test of *Dunlop v. City Electric Inc.*, 527 F.2d 394 (5th Cir. 1976) (*Dunlop*), cited by the majority. *Dunlop* sets forth the test for determining whether a given activity is an integral and indispensable part of employees' principal activities, namely: "that such work is necessary to the business and is performed by the employees, *primarily for the benefit of the employer, in the ordinary course of that business.*" *Id.* at 401 (emphasis added). In *Bonilla*, the screening was required by the FAA, not the employer, and was not based on the employer's discretion for its benefit. In *Gorman*, unlike here, the security measures were required for everyone entering the plant, including visitors. Here, the screening is only for officers, with the public being subject to different security procedures.

In light of my view on this issue, I would also uphold the Arbitrator's finding that officers should be compensated for time spent donning their duty belts and traveling to the control center, and would not find a remand necessary to determine whether those activities are part of the continuous workday.

11. However, we note that the actual amount of backpay and liquidated damages may change as a result of the remanded issues.