

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF THE NAVY  
NAVAL UNDERSEA WARFARE CENTER  
DIVISION  
NEWPORT, RI

And

FEDERAL UNION OF SCIENTISTS AND  
ENGINEERS  
NATIONAL ASSOCIATION OF GOVERNMENT  
EMPLOYEES LOCAL R1-144

Case No. 2023 FSIP 058

This case, filed by the Federal Union of Scientists and Engineers, National Association of Government Employees Local R1-144 (Union) pursuant to Section 7119 of the Federal Service Labor Management Relations Statute (the Statute), involves changes to hours of work. The mission of the Department of Navy, Naval Undersea Warfare Center, Division of Naval Sea Command, Newport, Rhode Island (Agency) is to conduct research and development on underwater weapon systems. There are approximately 3,500 employees at the Agency. The Union represents a bargaining unit of approximately 2,500 professional employees, consisting mostly of engineers and scientists. The parties do not have a Collective Bargaining Agreement, but rather are governed by multiple memorandums of agreement.

**BACKGROUND AND BARGAINING HISTORY**

In March 2020, the parties entered into a Memorandum of Understanding (MOU) on hours of work that established a Flexitour schedule.<sup>1</sup> Under the Flexitour schedule, employees could select, with supervisory approval, an arrival

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<sup>1</sup> OPM defines a Flexitour work schedules as:

A type of flexible work schedule in which an employee is allowed to select starting and stopping times within the flexible hours. Once selected, the hours are fixed until the agency provides an opportunity to select different starting and stopping times.

time from 0630 to 0900. Employees had core hours Monday through Friday from 0900 to 1100 and 1300 to 1500, during which employees needed to work, take leave, or use credit hours.

In late March 2020, the Agency announced a new work schedule, due to the COVID-19 pandemic. Under this new schedule, referred to by the parties as Maxiflex1.0, employees could perform work between 0500 and 2359, seven days a week.<sup>2</sup> Employees had one core hour on Thursdays from 1000 to 1100, during which employees needed to work, take leave, or use credit hours. Employees' supervisors would approve individual work schedules at least one week in advance.

Then in December 2021, the Agency notified the Union of its intent to implement a new work schedule, as the COVID-19 pandemic restrictions lessened. The Agency moved forward with implementing the new schedule, Maxiflex 2.0, in February 2022, prior to completing negotiations with the Union. Pursuant to a settlement of a Union-filed unfair labor practice charge with the FLRA's Office of the General Counsel over the Agency's implementation of Maxiflex 2.0, the parties agreed to complete negotiations over Maxiflex 2.0.

The parties began negotiations in April 2023. Because these negotiations led to an impasse, in June 2023 the parties engaged in mediation with the assistance of the Federal Mediation and Conciliation Service. That process did not lead to agreement on all of Maxiflex 2.0, so in July 2023, the Union filed a request for assistance in this matter from the Federal Service Impasses Panel (the Panel).

On September 14, 2023, the Panel voted to assert jurisdiction over this matter and ordered the parties to resolve their impasse through a mediation-arbitration with the undersigned, Panel Member Joseph Slater. The parties were advised that if they did not reach settlement in mediation, I would move the parties into arbitration mode which would lead to me issuing a binding decision to resolve the matters that remained at impasse. In accordance with the Panel's procedural determination, I conducted a virtual mediation-arbitration on October 19, 2023, with representatives of the parties.

During the mediation phase, the parties were able to voluntarily resolve an outstanding issue related to credit hour eligibility, but other issues remained at

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<sup>2</sup> OPM defines a Maxiflex work schedule as:

A type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

impasse despite attempts to resolve them. I then moved into the arbitration phase on the remaining matters. At arbitration, the parties had the opportunity to provide their last best offers (LBOs) and file briefs. Those briefs were received on November 2, 2023. I have reviewed them, and I commend the parties for the time and effort they put into drafting these helpful submissions.

In accordance with 5 U.S.C. § 7119 and 5 C.F.R. § 2471.11 of the Panel's Regulations, I must issue a final decision resolving the parties' remaining issues. I have made this decision after carefully considering the entire record, including the parties' post-hearing submissions.

### **ISSUES AT IMPASSE AND PARTIES' ARGUMENTS**

The parties have been unable to agree on three remaining aspects of employees' hours of work. First, the parties are at impasse over when employees may end their scheduled work, which the parties refer to as the "Work Bandwidth." Next, relatedly, the parties are at impasse over when employees may earn credit hours, which they refer to as the "Credit Hours Bandwidth." Finally, the parties are at impasse over the weekly core hours for employees.

#### **Issue #1: Work Bandwidth**

The Union's LBO proposes permitting employees to complete their work during a Work Bandwidth of Monday through Saturday from 0600 to 2200 hours. The Agency's LBO proposes a Work Bandwidth of Monday through Saturday from 0600 to 2000 hours.

#### **Union's Position**

The union notes (and it is not disputed) that Agency supervisors must approve work schedules for bargaining unit employees. The Union argues that employees would benefit from being able, with supervisory approval, to work until 2200 under their proposed Work Bandwidth. The Union also claims that employees have complained about not being able to work past 2000 under Maxiflex 2.0, especially after being able to work, if needed, until 2359 under Maxiflex 1.0. The Union stresses that the 2000 stopping time is especially significant for employees with minor children who can no longer work at night after their children go to sleep.

The Union also disputes the Agency's rationale of wanting to ensure consistency with other offices and components through the Agency's proposed Work Bandwidth. Specifically, the Union notes that many of the offices and components with whom the employees regularly work are in different time zones from the Agency. The Union argues that its extended Work Bandwidth better ensures that employees are able to work when there is work to do.

## **Agency's Position**

The Agency supports its proposed Work Bandwidth by arguing that, contrary to the Union's position, employees do not want more time in a day to complete their work. First, the Agency referenced a nonsupervisory focus group conducted by the Agency's Inspector General (IG). The Agency claims that no employees from the focus group requested an extended Work Bandwidth when asked what the Agency could do to improve.

The Agency next argues that the Union's proposed Work Bandwidth would disrupt work within cross-departmental teams. The Agency argues that it would be overly burdensome for supervisors to coordinate schedules for employees under the Union's proposal (*i.e.*, able to work until 2200) with those of supervisors and Agency employees from a different bargaining unit (*i.e.*, able to work until 2000). Moreover, the Agency claims that the Union has provided no evidence to support having a Work Bandwidth end at 2200. Finally, the Agency claims that its proposed Work Bandwidth best aligns with its customers' schedules.

### **Issue #2: Credit Hours Bandwidth**

Both the Agency and Union propose having their Credit Hours Bandwidths, when employees may earn credit hours, be the same as their proposed Work Bandwidths. That is, the Union's LBO proposes a Credit Hours Bandwidth of Monday through Saturday from 0600 to 2200 hours, and the Agency's LBO proposes Monday through Saturday from 0600 to 2000 hours. Both the Union and Agency cite to their positions on their proposed Work Bandwidths, which were summarized earlier, in support of their proposed Credit Hours Bandwidths.

### **Issue #3: Core Hours**

In its LBO, the Union proposes core hours from 1000 to 1100 and 1300 to 1400 on Thursdays. The Agency's LBO proposes core hours Monday through Thursday from 0930 to 1100 and 1300 to 1400.

## **Union's Position**

The Union claims that its proposed core hours would be best for employees and the Agency, as it provides the most flexibility. With fewer core hours, the Union claims that employees will have to take less leave to cover core hours when they adjust their schedules based on their work. The Union gave the example of an employee under the Agency's proposed core hours needing to take leave to cover core hours even though they worked eight hours later in the same day. Finally, the Union claims that fewer core hours would reduce the number of employees on base at one time and thus reduce the burden on limited parking and office space.

## **Agency's Position**

The Agency supported its proposal on core hours by stating that core hours are essential to its mission. First, the Agency claims that core hours are critical to ensuring knowledge transfer. The Agency cited an IG survey of the impact of the COVID-19 pandemic on employees. Specifically, the Agency provided select statements from employees regarding the lack of connection they felt during the COVID-19 pandemic, when all employees teleworked using the Maxiflex 1.0 schedule.

Additionally, the Agency argues that its customers need to know when employees will be available and working. The Agency claims that having less than their proposed ten hours of core hours each week, which is a 50% reduction from their 2020 MOU with the Union, would have a negative impact on customer support.

## **ANALYSIS AND CONCLUSION**

The Panel often tasks a party proposing to change the parties' *status quo* with providing evidence of the need for such change. The circumstances of this case are such that the hours of work *status quo* is unclear. In 2020, prior to the start of the COVID-19 pandemic, the parties negotiated an MOU establishing a Flexitour flexible work schedule. However, that MOU was only in place for a very limited time before the COVID-19 pandemic required the parties to move quickly to maximum flexibility under Maxiflex 1.0. Then, the Agency unilaterally implemented Maxiflex 2.0, which has been in place since February 2022. As such, I find neither Maxiflex 1.0 nor Maxiflex 2.0 is the definitive AWS *status quo*, and I will not place the usual amount of emphasis on either party proposing a change to the AWS. Rather, I will consider the merits of the parties' proposals as follows.<sup>3</sup>

### **Issue #1: Work Bandwidth**

The parties agree that the employees often work with Department of the Navy components and contractor facilities in different time zones, requiring those employees to work hours outside the traditional workday. The Union's proposed

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<sup>3</sup> The Union's LBO includes a proposal for a minimum workday requirement that employees must work or take leave for a minimum of two hours for each regularly scheduled workday. I am unable to find that, prior to filing a request for Panel assistance, the parties negotiated and mediated over a minimum workday requirement. Accordingly, I must decline to consider the Union's proposal as it is a new issue not at impasse. *Patent Office Professional Association v. Federal Labor Relations Authority*, 26 F.3d 1148, 1153 (D.C. Cir. 1994) (Panel lacks jurisdiction over proposals not at impasse).

Work Bandwidth is consistent with these varying schedules, and it would allow supervisors to approve employees to work two hours later than the Agency's proposal. Additionally, the Union argues, and I agree, that employees should be permitted to complete work when there is work to be done.

I found the Agency's argument for its proposed Work Bandwidth unpersuasive. Specifically, I found the Agency's claim that findings from their IG's focus group of nonsupervisory employees support their Work Bandwidth proposal to be misleading. Also, I reject the Agency's claim that employees in the focus group reported that they favored a work-life balance and did not explicitly request an expanded Work Bandwidth is evidence in support of the Agency's proposal. The Agency then shared employee sentiments that largely concern the impact of a global pandemic, which required all employees to telework, rather than just the impact of the hours of work. Further, the Union is the appropriate and certified voice of employees, and I would not consider the Agency's representation of employees' preferences, even if it had been more on-point.

The Agency also claims that cross-departmental teams and customer support necessitate their proposed Work Bandwidth. The Agency argues that the Union's proposed extended Work Bandwidth would require them to trust their direct line supervisors to make scheduling decisions. Given that supervisors have the authority to approve employees' schedules, I am not sympathetic to the Agency's concerns about its own supervisors being unable to manage schedules effectively. This is especially true in this case, where employees are willing to work later hours when the work needs to get done. Therefore, I order the parties to adopt the Union's LBO proposal for a Work Bandwidth of Monday through Saturday from 0600 to 2200 hours.

### **Issue #2: Credit Hour Bandwidth**

The parties each proposed having the Credit Hour Bandwidth mirror their proposed Work Bandwidth. I agree that the two timeframes should be the same. Therefore, I rely on the same rationale for adopting the Union's Credit Hour Bandwidth that I used above to adopt the Union's Work Bandwidth. I order the parties to adopt the Union's LBO proposal for a Credit Hour Bandwidth of Monday through Saturday from 0600 to 2200.

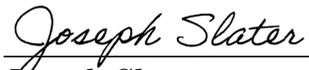
### **Issue #3: Core Hours**

I found the Agency's argument that core hours can support knowledge transfer and predictable customer support to be convincing. However, I found the Union's argument against having core hours on Mondays from 0930 to 1100 to increase employees' flexibility at the beginning of the workweek just as convincing. I also agree with the Agency that the Union's proposed core hours (*i.e.*, 1000 to 1100

and 1300 to 1400 on Thursdays only) is too limited and unsupported by the circumstances. Therefore, I order the parties to adopt the following core hours: Monday from 1300 to 1400 hours and Tuesday through Thursday from 0930 to 1100 hours and 1300 to 1400 hours.

**ORDER**

Pursuant to the authority vested in me by the Federal Service Impasses Panel under the Section 7119 of the Statute, I hereby order the parties to adopt the language outlined herein to resolve their impasse.

  
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Joseph Slater  
Arbitrator

November 16, 2023  
Washington, D.C.