

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE AIR FORCE  
AIR FORCE RESERVE COMMAND  
MARCH AIR RESERVE BASE, CALIFORNIA

and

LOCAL 3854, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 07 FSIP 31

**DECISION AND ORDER**

The Department of the Air Force, Air Force Reserve Command, March Air Reserve Base, California (Employer) filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Employees Flexible and Compressed Work Schedules Act (Act), 5 U.S.C. § 6120, *et seq.*, to resolve an impasse arising from its decision to terminate a 5-4/9 compressed work schedule (CWS) for employees working in the 452 Maintenance Group (MXG) represented by Local 3854, American Federation of Government Employees, AFL-CIO (Union).

After investigation of the request for assistance, the Panel determined that the dispute should be resolved through an informal conference by telephone with Panel Member Richard B. Ainsworth. The parties were advised that if no settlement were reached during the informal conference, Member Ainsworth would report to the Panel on the status of the dispute, including the parties' final positions and his recommendations for resolving the impasse. After considering this information, the Panel would take final action in accordance with 5 U.S.C. § 6131 and 5 C.F.R. § 2472.11 of its regulations.

Pursuant to this procedural determination, Member Ainsworth conducted an informal conference by telephone with the parties on February 20, 2007. While the possibility of a settlement was explored, a settlement was not reached. The Panel has now considered the entire record, including the parties' pre-

conference submissions, and Member Ainsworth's recommendation for resolving the dispute.

### **BACKGROUND**

The mission of the 452 MXG is to support the 452d Air Mobility Wing by ensuring that the KC-135R and C-17 aircraft and equipment are safe, serviceable, and properly configured to meet mission needs. The 452 MXG includes two maintenance squadrons (the 452d Aircraft Maintenance Squadron and the 752d Maintenance Squadron), a maintenance operations squadron (452d Maintenance Operations Squadron), and a maintenance support squadron (452d Maintenance Squadron). The Union represents approximately 684 employees; 248 work in the 452 MXG.<sup>1/</sup> These employees primarily are aircraft mechanics at grades WG-10 and -11. Of the 248 employees represented by the Union in the 452 MXG, approximately 178 participate in the CWS, and 162 have their regular day off (RDO) on either Monday or Friday. The collective bargaining agreement (CBA) covering these parties was to have expired on May 4, 2005; its terms and conditions will remain in effect, however, until it is replaced by a successor agreement.

### **ISSUE AT IMPASSE**

In accordance with § 6131(c)(3)(C) of the Act, the issue in dispute is whether the finding on which the Employer has based its determination to terminate the 5-4/9 CWS in the 452 MXG at March ARB is supported by evidence that the schedule is causing an adverse agency impact.<sup>2/</sup>

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1/ According to the Employer, there currently are over 109 vacant positions within the 452 MXG.

2/ Under § 6131(b), "adverse agency impact" is defined as:

- (1) a reduction of the productivity of the agency;
- (2) a diminished level of the services furnished to the public by the agency; or
- (3) an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed work schedule).

**POSITION OF THE PARTIES**1. The Employer's Position

The CWS should be terminated because it has caused a reduction in the productivity of the agency and an increase in the cost of agency operations. In this regard, while the number of aircraft the Employer is required to maintain has increased markedly since August 2005, it currently has over 109 vacant positions. Consequently, "staffing levels in various aircraft disciplines [have been] reduced to a point that it's not possible to maintain adequate coverage" during the normal administrative workweek with a 5-4/9 CWS. Since October 2, 2005, the MXG has spent over \$147,000 on overtime and an additional \$98,140 to augment the civilian force with Air Force Reservists. Further, since January 2006: (1) the 452 MXG's "Mission Capability" rate for the C-17 ranged from 48.4 percent to 66.7 percent; (2) periodic inspections of KC-135's take 26 days to complete and there have not been any refurbishments since March 2006; (3) the "Total Not Mission Capable Maintenance" rate ranged from 15.8 percent to 43 percent; (4) the "Delayed Discrepancies" averaged 10.26 discrepancies for Fiscal Year 2006; (5) the "Aircraft Awaiting Maintenance" rate for KC-135's has ranged from 36.5 to 106.3 discrepancies since October 2005; and (6) the "Flight Schedule Effectiveness" for the KC-135R has ranged from 35.1 percent to 67.4 percent and for the C-17 ranged from 50 percent to 81.8 percent. In the Employer's view, the performance of the 452 MXG has fallen below Air Force standards with respect to the aforementioned indicators because staffing levels are diminished to an unacceptable level on employees' RDOs, mainly Mondays and Fridays.

There have been several documented instances from November 2006 through January 2007 where there has been single employee coverage on Mondays and Fridays "with the potential of no coverage during times of unscheduled leave." Either an employee has to be borrowed from another work area or the work has to be delayed until coverage is available. Borrowing an employee has negative consequences; for example, whenever a 452 MXS employee is assigned to support employees on the flight line, a minimum of 1½ hours of inspection time is lost. Termination of the CWS would put these employees' focus back on their major inspection duties and they would be able to complete their assigned tasks without interruption. Finally, the three maintenance squadrons in the 452 MXG have two shifts (day and swing). Shifts in the 452 AMXS and 452 MXS overlap 2 hours each, and shifts in the 752

AMXS overlap 1 hour 45 minutes, resulting in "unnecessary employee down time."

## 2. The Union's Position

The Panel should find that the Employer has not met its burden under the Act of demonstrating that the 5-4/9 CWS has caused an adverse agency impact. The Aircraft Maintenance Group Commander "has made it very clear" that he does not like the CWS here, and "didn't like it at his last base either." Thus, "he has attempted to use [the] current shortage of personnel as a pretext to eliminate the [CWS]." Further, the Employer's "facts and figures" are "misleading" and do not support a determination that the manpower problems the Employer experiences on Monday or Friday are worse than Tuesday through Thursday, when all employees are available for work. The Union's data show that the Employer did not include other disruptions, such as Operations (Aircrew or Air Traffic Control) issues, that could have caused delays. Regarding overtime, the Employer's numbers are imprecise and do not disclose how much of this overtime was accrued on Mondays and Fridays when most of the CWS employees are on their RDOs. Moreover, the Employer's allegation of adverse agency impact is inconsistent with the fact that the maintenance group just passed two of its largest inspections and, in one inspection, received the highest score recorded to date. Therefore, "elimination of the [CWS] would have little or no effect on [the Employer's] current problems," which are primarily the result of the Employer's failure "to attract and hire personnel."

### CONCLUSION

Under § 6131(c) (3) (C) of the Act, the Panel is required to take final action in favor of the agency head's (or delegatee's) determination to terminate a CWS if the finding on which the determination is based is supported by evidence that the schedule has caused an "adverse agency impact." As its legislative history makes clear, Panel determinations under the Act are concerned solely with whether an employer has met its statutory burden on the basis of "the totality of the evidence presented."<sup>3/</sup>

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3/ See the Senate report, which states:

This burden is not to be construed to require the application of an overly rigorous evidentiary standard since the issues will often involve

Having carefully considered the totality of the evidence presented in this case, we find that the Employer has not met its statutory burden. In our view, the record presented is insufficient to establish that employees' 5-4/9 CWS has caused the reduction in productivity or the increase in cost the Employer alleges. Among other things, it has not broken down overtime costs by workday. Thus, we are unable to conclude, consistent with its contention that RDOs are increasing overtime costs, that greater expenditures occurred on Mondays and Fridays. Additionally, while its data indicate that the 452 MXG is not meeting Air Force standards for aircraft maintenance and performance, the Employer admits that there has been an "increase in the number of aircraft and over 109 vacant positions." These factors, rather than the CWS, appear to be the primary cause for its current difficulties. There also is no specific evidence in the record that directly links the delays in aircraft maintenance to employees' CWS or their RDO's. Nor are we persuaded, without additional evidence, that the scheduling overlaps are causing an adverse agency impact. Accordingly, we shall order the Employer to rescind its decision to terminate the 5-4/9 CWS in the 452 MXG.

**ORDER**

Pursuant to the authority vested in it by the Federal Employees Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6131(c), the Federal Service Impasses Panel under § 2472.11(b) of its regulations hereby orders the Employer to rescind its determination to terminate the 5-4/9 CWS in the 452 MXG.

By direction of the Panel.

H. Joseph Schimansky  
Executive Director

February 23, 2007  
Washington, D.C.

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imprecise matters of productivity and the level of service to the public. It is expected the Panel will hear both sides of the issue and make its determination on the totality of the evidence presented. S. REP. NO. 97-365, 97<sup>th</sup> Cong., 2d Sess. At 15-16 (1982).