

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE NAVY
U.S. MARINE CORPS
MARINE CORPS LOGISTICS BASE
BARSTOW, CALIFORNIA

and

LOCAL 1482, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 08 FSIP 41

DECISION AND ORDER

Local 1482, American Federation of Government Employees, AFL-CIO, filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Employees Flexible and Compressed Work Schedules Act of 1982 (Act), 5 U.S.C. § 6120, *et seq.*, to resolve an impasse arising from a determination by the Department of the Navy, U.S. Marine Corps, Marine Corps Logistics Base, Barstow, California (Employer) that implementation of the Union's proposed 4/10 compressed work schedule (CWS) for employees at the Maintenance Center Barstow (MCB) would cause an adverse agency impact.

Following investigation of the request for assistance, the Panel determined that the case should be resolved through an informal conference by telephone with Panel Member Richard B. Ainsworth. The parties were informed that if a settlement was not reached during the teleconference, Member Ainsworth would notify the Panel of the status of the dispute, including his recommendations for resolving the issue. After consideration of the record, the Panel would take final action in accordance with 5 U.S.C. § 6131 and 5 C.F.R. §2472.11 of the Panel's regulations.

Pursuant to the Panel's procedural determination, Member Ainsworth convened an informal conference by telephone with the parties on May 21, 2008, but a voluntary resolution was not

reached. The Panel has now considered the entire record, including the parties' pre-conference submissions.

BACKGROUND

The Employer's mission is to provide all depot related maintenance, maintenance contact teams, and expertise for Marine Corps units in the western half of the United States, and throughout the entire Pacific Rim, as well as for forward deployed forces in Iraq, Afghanistan, Bahrain, Taiwan, and any location world-wide requiring its assistance which includes improving the equipment readiness of authorized customers through effective, efficient, and economical maintenance and business operations. The Union represents approximately 1,250 employees who work with heavy mobile equipment. The dispute affects approximately 965 employees in the MCB who currently work a 5-4/9 CWS.^{1/} The collective bargaining agreement (CBA) covering these parties is due to expire in December 2008.

ISSUE AT IMPASSE

The primary issue in dispute is whether the finding on which the Employer has based its determination not to implement the 4/10 CWS in the MCB is supported by evidence that the schedule is likely to cause an adverse agency impact.^{2/} Under the

1/ The parties currently have a 5-4/9 CWS, with almost all bargaining unit employees participating. For the first week the schedule is 6:30 a.m. - 4 p.m. Monday through Thursday, with 6:30 a.m. - 3 p.m. on Friday. For the second week the schedule is 6:30 a.m. - 4 p.m. Monday through Thursday, with Friday the regular day off (RDO) for all employees.

2/ Under 5 U.S.C. § 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).

The burden of demonstrating that the implementation of a proposed CWS is likely to cause an adverse agency impact

Union's proposed 4/10 CWS, employees would work from 6 a.m. - 4:30 p.m. with the option of either working Monday through Thursday or Tuesday through Friday. The parties would evaluate the effectiveness of the CWS within 6 months of its implementation, and any time thereafter if the Employer documents concerns with the CWS that identify an adverse agency impact.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Panel should find that the evidence upon which the Employer bases its determination not to implement the proposed 4/10 CWS establishes that the schedule is likely to cause an adverse agency impact as defined under the Act. The proposed 4/10 CWS would reduce productivity, increase operational costs and diminish the level of service furnished to the public. Productivity would be reduced because moving to a 4-day workweek would increase the Repair Cycle Time (RCT) for the equipment the LMD delivers to its customers. RCT, which is the number of days from induction to customer acceptance, is the accepted industry standard, both in the public and private sector, and is incorporated into all of the agreements between the MCB and its customers. RCT measures the Employer's performance by accurately reflecting what is happening on the shop floor with respect to a particular project. Increasing the number of days in the RCT would mean that operational units would not have the necessary equipment on time, thereby adversely affecting their ability to fight the Global War on Terrorism (GWT). Using Concerto, a software tool which tracks RCTs, the Employer estimates that, under the proposed 4/10 CWS, the RCT for the Amphibious Assault Vehicle (AAV) would increase by 8 days; for the Light Armored Vehicle, it would increase by 9 days; for the M9 Armored Combat Excavator, it would increase by 19 days; and for the M88A2 Hercules Tank Retriever, the RCT would increase by 20 days. There also is statistical and anecdotal evidence that a 4/10 CWS would increase accident rates because having more time off would make employees less alert and more prone to on-the-job injury.

falls on the employer under the Act. See 128 CONG. REC. H3999 (daily ed. July 12, 1982) (statement of Rep. Ferraro); and 128 CONG. REC. S7641 (daily ed. June 30, 1982) (statement of Sen. Stevens).

Regarding diminished service to the public, under the Union's proposal employees would have the option of choosing either Monday or Friday as their regular day off (RDO). Depot level maintenance, however, is a complex process, with an intricate pattern of induction, disassembly, maintenance, assembly, test and delivery that requires thousands of internal and external decisions and actions. Having an unknown percentage of the workforce off 2 days each week would increase Single Points of Failure (SPOF), as employees would not be available to perform their particular role in the process, and would force the MCB "into a hodgepodge of un-synchronized schedules with public and private industry customers and partners, where decision points are delayed, production schedules are dysfunctional, and customers are frustrated by lapses in communication, slowed delivery, and/or increased costs." In addition, the delays in production and delivery of services caused by these dysfunctional schedules would affect the Employer's ability to match or exceed the services provided by its competitors, impacting its viability during the coming round of Base Realignment and Closure (BRAC) evaluations.

Finally, to offset the effect on RCTs caused by the proposed 4/10 CWS, the Employer would have to assign additional overtime, thereby increasing costs. Employees would have to be called back on their RDOs to make up for lost production hours and days. In this regard, the Employer operates under a special charter, authorized by Congress, known as the Working Capital Fund (WCF), which pays for all material, labor, utilities, and other expenses incurred in its operations. Customers pay into the fund to obtain the goods and services they receive from the Employer. By law, the WCF cannot operate at a loss, so these increases in overtime costs would require the Employer to raise its rates, which would then be passed on to its customers. The hourly rate charged to customers is already increasing from \$80 an hour to \$86 an hour next year. Additional increases in the hourly rate once again would adversely affect the MCB's ability to compete with other public and private facilities, and have a negative impact on its standing during the next round of BRAC evaluations.

2. The Union's Position

The Panel should find that the Employer has not met its burden under the Act of demonstrating that the proposed 4/10 CWS is likely to cause an adverse agency impact. For one thing, Concerto is a software tool that measures days, not hours, so it does not account for the extra hour a day employees would work

under a 4/10 CWS. Thus, the Employer's estimates regarding increased RCTs for repairing its primary lines of equipment are invalid. Under the Union's proposal, employees would still work the same amount of hours on a vehicle during a 2-week pay period, regardless of whether they work 4 or 5 days per week. Contrary to the Employer's contention, its proposal would actually increase productivity by giving employees an extra day of rest, thereby relieving fatigue. In this regard, the Employer's arguments that 10-hour days would increase employee fatigue, but that 3-day weekends decrease employees' alertness, contradict each other.

The Employer's claim that overtime would increase is inconsistent with the fact that mandatory and voluntary overtime have always been part of the job at the MCB, and it is something the Employer showed no concern about until the Union proposed its 4/10 CWS. In fact, its proposal would decrease overtime when compared with the current 5-4/9 schedule. Under the current 5-4/9 CWS, during critical portions of the month, the workforce is required to work 2 hours of overtime on regularly scheduled days, 8 hours of overtime on employees' RDOs, and 8 hours of overtime on Saturdays, for a total of 42 hours of overtime during the pay period. The Union's proposed 4/10 CWS, on the other hand, would only require 1 hour of overtime on regularly scheduled days, 8 hours of overtime on employees' RDOs, and 8 hours of overtime on Saturdays, resulting in 40 hours of overtime during the pay period, for an actual decrease of 2 hours in overtime. Furthermore, it would save the Employer over \$352,000 in energy costs per year as facilities would not be needed during the times employees are not working. Finally, in response to the Employer's position that its customers would not have access to MCB personnel every Friday, two 4/10 CWS options could be considered: (1) RDOs could be equally divided between Mondays and Fridays; and (2) essential personnel could be denied the 4/10 CWS option.

CONCLUSION

Under § 6131(c)(2)(B) of the Act, the Panel is required to take final action in favor of the agency head's determination not to establish a CWS if the findings on which it is based are supported by evidence that the schedule is likely to cause an "adverse agency impact." Panel determinations under the Act are concerned solely with whether an employer has met its statutory burden. The Panel is not to apply "an overly rigorous evidentiary standard," but must determine whether an employer

has met its statutory burden on the basis of "the totality of the evidence presented."^{3/}

Having carefully examined the arguments and evidence presented by the parties, we conclude that the Employer has met its burden of establishing that an adverse agency impact is likely to occur under the Union's proposal. Unlike the current schedule, the proposed 4/10 CWS would give employees the option of choosing either a Monday or Friday RDO. Thus, at least half of the affected bargaining-unit employees would be unavailable to perform their duties in support of the GWT on one of those 2 days. Given the complexity of the MCB's maintenance operations, we are persuaded that this is incompatible with the effective performance of the Employer's mission. For example, the Employer has stated that the assembly and disassembly of the AAV requires 12 crane moves. Currently, however, the Employer has only three crane operators. In such circumstances, the risk of delays in production and the delivery of services under the Union's proposal is unacceptable. Accordingly, we shall order the Union to withdraw its 4/10 CWS proposal.

3/ See the Senate report, which states:

The agency will bear the burden in showing that such a schedule is likely to have an adverse impact. This burden is not to be construed to require the application of an overly rigorous evidentiary standard since the issues will often involve 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, 97th Cong., 2d Sess. at 15-16 (1982).

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 Union to withdraw its 4/10 CWS proposal for employees in the Maintenance Center Barstow.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

June 25, 2008
Washington, D.C.