

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

DEPARTMENT OF HEALTH AND)	
HUMAN SERVICES)	
PUBLIC HEALTH SERVICE)	
OFFICE OF THE SURGEON GENERAL)	
COMPENSATION BRANCH)	
ROCKVILLE, MARYLAND)	
)	
and)	Case Nos. 92 FSIP 124 and
)	92 FSIP 143
)	
LOCAL 41, AMERICAN FEDERATION)	
OF GOVERNMENT EMPLOYEES, AFL-CIO)	

DECISION AND ORDER

Local 41, American Federation of Government Employees, AFL-CIO (Union) and Department of Health and Human Services, Public Health Service, Office of the Surgeon General, Compensation Branch, Rockville, Maryland (Employer or PHS) filed requests for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Employees Flexible and Compressed Work Schedules Act (Act), 5 U.S.C. § 6120 et seq., arising from the determination by the head of the agency under section 6131(a)(2) of the Act to terminate a compressed work schedule.

Following investigation of the requests for assistance, the Panel consolidated the cases and directed the parties to participate in an informal conference with Staff Associate Ellen J. Kolansky for the purpose of resolving the disputes, with the Panel to take final action on the matter in accordance with section 6131(c)(3)(C) of the Act^{1/} and section 2472.12 of the Panel's regulations. The parties were advised that if no settlement were reached, Mrs. Kolansky would notify the Panel of the status of the dispute, including the parties' final offers and her recommendations for resolving the matter. Accordingly, Mrs. Kolansky met with the parties on May 28, 1992. Since the dispute was not resolved during the conference, the parties were permitted

^{1/} The standard to be applied by the Panel under § 6131(c)(3)(C) is: "The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact."

to submit a statement of position, and the Panel has now considered the entire record.

BACKGROUND

PHS is a uniformed service consisting of physicians, pharmacists, nurses, and other medical personnel involved in health care; there are approximately 10,000 active and retired PHS Commissioned Officers. The Union represents approximately 600 bargaining-unit employees. The dispute, however, involves 11 pay technicians at grades GS-7 through -9 in the Commissioned Corps Compensation Branch, Office of the Assistant Secretary for Health (OASH), within the Office of the Surgeon General, who handle the pay records of active duty and retired Commissioned Officers in the PHS. The parties' master collective-bargaining agreement was scheduled to expire on July 26, 1987; however, the agreement has been renewed twice for 3-year periods.

Commissioned Officers' pay, like military pay, is made up of base salary plus special pay and allowances, and is adjusted for tax withholding, etc. It is an exception system; Officers continue to be paid at a certain rate unless technicians enter corrections. Since January 1990, 99 percent of the work has been computerized. The telephone is used extensively both by technicians collecting information from Officers for adjustments and certifications, and by the Officers seeking information or reporting changes and errors. Over- or underpayments can be inconvenient for these payees. Five technicians work in the active duty pay section; each is assigned to 20 percent of the approximately 6,800 Commissioned Officers on active duty. They also recertify the variable housing allowance costs.^{2/} Four technicians work in the special pay section dealing with bonuses, retention pay, etc. A key employee, called a verifier, checks all audits performed during a given month for accuracy. The secretary is the eleventh bargaining-unit employee. During a single year, employees audit the pay records of over 5,000 Commissioned Officers; each audit takes approximately 2 1/2 hours to perform.

On May 7, 1990, the Employer implemented a 5-4/9 compressed work schedule (CWS) option for bargaining-unit employees in OASH. Requests for such schedules from all 11 employees in the Commissioned Corps Compensation Branch were granted including a Monday or Friday day off (the option originally offered by the supervisor), and arrival times of 6:30, 7, or 7:30 a.m. The underlying CWS agreement negotiated between PHS and the Union was never formally signed by the parties or reviewed by the head of the agency because the Union's leadership "changed."

^{2/} In accordance with a recent change in the law, these certifications will need to be conducted annually.

ISSUE AT IMPASSE

The sole question before the Panel is whether the finding on which the agency head has based its determination to terminate the 5-4/9 compressed work schedule for 11 employees in the office of compensation is supported by evidence that the schedule is having an adverse agency impact.^{3/}

1. The Employer's Position

The Employer asserts that the 5-4/9 compressed work schedule for the 11 employees is having an adverse impact on the agency, and, therefore, should be terminated. In support of this position, it calculates that productivity has declined by 10.6 percent despite increased staffing and computer access that eliminated the time consuming search for records stored on microfiche. Furthermore, employees are no longer cooperating with each other by taking calls for co-workers away on off days. As a result, while it does not give an exact number, it has received complaints from clients about difficulties in reaching pay technicians. Although office hours are from 8:30 a.m. to 5 p.m., employees arrive mainly between 7 and 7:30 a.m. and leave between 4 and 4:30 p.m., causing inadequate coverage between 30 and 60 minutes at the end of the day. Coverage difficulties are exacerbated by the misalignment of hours actually worked, computer availability (generally, no earlier than 7:30 a.m., a full hour after half of the employees arrive), absences stemming from off days, and the fact that clients call from different time zones (i.e., the West Coast, Alaska, and Hawaii). Moreover, it is the only office in OASH with 100-percent employee participation in the 5-4/9 schedule. The Employer has not removed any employee from the schedule. It believes that since the parties' agreement on compressed work schedules was never executed, such action could subject it to grievances or unfair labor practice charges. Finally, under the schedule, anticipated improvements in employees' morale and reduction in sick leave usage were not attained.

^{3/} Section 6131(b) of the Act defines "adverse agency impact" as--

- (1) a reduction of the productivity of the agency;
- (2) a diminished level of 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 schedule).

2. The Union's Position

The Union proposes:

Continue the compressed alternative work schedules, utilizing the 5-4/9 schedule with a regularly scheduled day off each pay period. Management will determine who will receive what off day. The off day will remain constant. Employees may voluntarily swap their off day subject to the approval of management. The one 8-hour workday per pay period shall be determined and controlled in the same manner as the off day; the office hours of operation shall be from 7:30 a.m. to 5 p.m. daily.

One manager and one employee (selected by peers) shall monitor and evaluate this program on a quarterly basis, and make their findings and recommendations known to all concerned.

It argues that employees' hours and off days should be adjusted to cure current deficiencies in work flow, productivity, and coverage rather than taking the drastic step of terminating the schedule for everyone in the office. Since the schedule worked well in its first year and employees benefit from such schedules, the more moderate steps it offers would be more appropriate than wholesale termination. While the Employer states that clients have complained about not being able to reach technicians by phone, such claims are vague as to the number of complaints received, who made them, and which employee was absent. Furthermore, problems in the office stem more from poor management than from the 5-4/9 schedule. For example, the Employer has failed to deal with the one employee who refuses to take others' calls, and has not trained a replacement for the verifier who continues on the schedule, and is about to go on maternity leave. As to staffing levels, the Employer has added several employees over the past few years, and its request for five additional employees indicates that a larger staff may be required to deal with expected increases in the workload. In addition, employees' records, although possibly incomplete, indicate that the number of transactions they perform per month have risen every year between 1990 and 1992. Other records kept by employees show that overtime was assigned both before and after the implementation of the compressed work schedule. Amounts used declined somewhat after the schedule went into effect, challenging the accuracy of the Employer's claims that overtime was not used before implementation of the schedule and that no savings in overtime costs resulted under the schedule. Finally, since clients on the West Coast and beyond know the office's hours of operations, they could place their calls early enough to ensure that they reach a pay technician.

CONCLUSIONS

The issue arises under the Federal Employees Flexible and Compressed Work Schedules Act (Act), 5 U.S.C. § 6120 et seq. Section 6131(c)(3)(C) of the Act requires us to take final action in favor of the head of the agency's determination to terminate an existing compressed work schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact. The adverse impact may occur in any one of three ways: either, reduced productivity; diminished service to the public; or increased costs. The Act's legislative history makes it clear that the agency bears the burden of proof with respect to showing adverse impact.^{4/}

Having considered the record before us, we find that the Employer convincingly supports its assertion that the 5-4/9 compressed work schedule used by all bargaining-unit employees in the Commissioned Corps Compensation Branch has resulted in a diminished level of service to the public by the agency. In this regard, receipt of clients' complaints regarding the unavailability of pay technicians to take their phone calls indicates that they are not being well served. Evidence from both parties that there have been refusals to take an absent employee's calls during biweekly off days confirms such problems even though the parties disagree about the extent to which employees are not cooperating. Undoubtedly, cooperative efforts among employees working on a compressed work schedule is a keystone to the success of the schedule, particularly where, as here, an office's workload is great, and may be increasing.

Evidence also indicates that the schedule has delayed follow-up phone calls to confirm or correct information relating to pay and allowances. Such delays increase the times an account must be audited, and have led to backlogs in dealing with complicated accounts. Slowness in working through the backlogs has delayed by months, and even years, payments due to Commissioned Officers (amounts have ranged up to \$2,800) or owed to the Government (amounts have ranged up to \$300). We believe that a return to regular hours (8:30 a.m. to 5 p.m.), with employees present each day during the pay period, would enhance employees' ability to pursue follow-up information so that account corrections can be made in a timely fashion, and also improve their responses to clients' calls.

For the above reasons, we conclude that the Employer has met its statutory burden of demonstrating that the compressed schedule

^{4/} See 128 CONG. REC. H 3999 (daily ed. July 12, 1982) (remarks of Rep. Ferraro); and 128 CONG. REC. S 7641 (daily ed. June 30, 1982) (remarks of Sen. Stevens), and supra, note 1.

for employees in the Commissioned Corps Compensation Branch is having an adverse agency impact.

ORDER

Pursuant to the authority vested in it by the Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. § 6131 (c)(3)(C), the Federal Service Impasses Panel, under § 2472.12(a)(2) of its regulations, hereby takes final action in favor of the Employer's position and orders the termination of the 5-4/9 compressed work schedule for 11 employees in the Commissioned Corps Compensation Branch.

By direction of the Panel.



Linda A. Lafferty
Executive Director

June 29, 1992
Washington, D.C.