

In the Matter of

DEPARTMENT OF VETERANS AFFAIRS  
CENTRAL TEXAS VA HEALTHCARE SYSTEM  
OLIN E. TEAGUE MEDICAL CENTER  
TEMPLE, TEXAS

and

LOCAL 2109, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 19

ARBITRATOR'S OPINION AND DECISION

The Department of Veterans Affairs, Central Texas VA Healthcare System, Olin E. Teague Medical Center, Temple, Texas (Employer) filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119 to consider a negotiation impasse between it and Local 2109, American Federation of Government Employees, AFL-CIO (Union).

After an investigation of the request, which arises from bargaining over work schedules for four dieticians, the Panel directed the parties to mediation-arbitration with the undersigned.<sup>1/</sup> Accordingly, on February 14, 2011, a mediation-arbitration proceeding was held at the Employer's facility in Temple, Texas. During the mediation phase, the parties were able to resolve their dispute concerning the continuation of a 5-4/9 compressed work schedule (CWS)<sup>2/</sup> for the home-base primary care dietician. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and post-hearing submissions.

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1/ Prior to the mediation-arbitration proceeding, one of the dieticians vacated her position, leaving only three working compressed schedules.

2/ Under a 5-4/9 CWS, during an 80-hour biweekly pay period, an employee would work eight 9-hour days, one 8-hour day, and have one regular day off (RDO).

## BACKGROUND

The Employer operates a teaching medical center that provides a full range of patient care services; the campus includes a 408-bed hospital and a 160-bed State Veterans Home. The Union represents approximately 2,350 professional and non-professional employees who hold either Title 38 or hybrid (Title 38 and Title 5) positions. The parties are covered by a master-collective-bargaining agreement (MCBA) that was scheduled to expire on March 21, 2011. At the local level, there is a supplemental agreement in effect that runs concurrently with the MCBA.

The Employer employs nine dietitians in the Food and Nutrition Service; of those, six work a regular 5/8 schedule and three have a 5-4/9 CWS. Among the three who have compressed schedules, one works in inpatient long-term care where she makes nutrition assessments for patients and records them in meal plans and, for patients requiring tube feeding, determines the formula. Another dietitian works in the outpatient clinic where she primarily performs dietary education for patients who have diabetes and other nutritional concerns; this dietitian also monitors outpatients who use tube feeding. The third dietitian who has a compressed schedule works in home-based primary care; however, the CWS for that employee no longer is in dispute.

## ISSUE AT IMPASSE

The parties disagree over whether the outpatient clinic dietitian (hereinafter outpatient dietitian) and the long-term care inpatient dietitian (hereinafter inpatient dietitian) should continue to work a 5-4/9 CWS.

## POSITIONS OF THE PARTIES

### 1. The Employer's Position

The Employer proposes that the outpatient and inpatient dietitians should abandon their compressed schedules and work a regular 8-hour day, 40-hour workweek. In support of its position, the Employer maintains that outpatients who have appointments with physicians frequently need the services of the outpatient dietitian on the same day. When the outpatient dietitian is on her RDO on Mondays, there is only one other dietitian working in the clinic.

Understaffing of the clinic on Mondays could mean that outpatients may not be able to meet with a dietician on the same day as their physician's appointment. Therefore, they may have to return to the clinic on another day when there would be two outpatient dieticians available to meet with patients. Management no longer has the staff to cover for the outpatient dietician on her RDO. If the outpatient dietician were to maintain an 8-hour work schedule, 5 days a week, the clinic could be fully-staffed Monday through Friday with two dieticians, and outpatients would not have to suffer the inconvenience of returning to the clinic on a day other than when they see their physician.

With respect to the inpatient dietician who works a CWS, a review of patient records during a 3-month period in 2010 showed that the employee was not maintaining timely documentation on her cases. Furthermore, when the dietician is on her RDO, challenging situations arise in terms of providing coverage when other dieticians are on annual leave, sick leave, military leave or authorized absence for training. When these work coverage problems arise, available staff must carry the load, particularly with emergent situations. Eliminating a schedule that has an RDO would lessen the burden on other staff members and ensure quality patient care.

## 2. The Union's Position

The Union proposes that the two dieticians should maintain their 5-4/9 CWS although, in the spirit of compromise, it is amenable to changing the scheduled RDOs to different weekdays. The Union contends that the Employer has not demonstrated a need for the employees to revert to an 8-hour schedule. In this regard, the Union disputes the Employer's contention that the compressed schedules are contributing to coverage problems. If coverage problems exist, they were created by management when it failed to hire additional staff for a newly-opened clinic. Employees should not have to lose a long-term and much enjoyed benefit because management has not filled vacancies or requested funds to hire additional dieticians to cover the new clinic.

### STATEMENT OF FINAL POSITION OF THE PARTIES

Before adjourning the hearing on this matter, I requested the parties to articulate a final statement of position for the Arbitrator. Essentially, the Employer's final position is as follows:

Management proposes to discontinue the compressed work tours of the inpatient and outpatient dietician . . . to best support the needs of providing patient care. Management supports the compressed tour of the home-based primary care dietician . . . because the work visits are self-scheduled by the dietician and not required 5 days a week.

The following summarizes the Union's final statement of position:

Management added a new clinic which was originally intended to be a pilot clinic. Management subsequently determined that the pilot would become a full-time clinic, Monday through Friday, and did not request adequate staffing. The current dispute would not exist if management had procured sufficient staffing to support the second walk-in clinic. The collective bargaining agreement allows for compressed tours and the Union would like compressed work tours for any and all staff that choose it and allow professional staff to determine the most effective way to provide appropriate coverage. The Union is asking for compressed tours to remain for the two current Clinical Dieticians.

#### CONCLUSION

Having carefully considered the evidence and arguments presented by the parties, I conclude that the Employer's position provides the more compelling argument for resolving this dispute.

The Union makes the case that at the outset, management should have supported the second walk-in clinic by assigning additional resources (i.e., registered dieticians) at the time they decided to open it on a regular basis. Management's failure to staff the new clinic appropriately is at the heart of the current dispute. Even if one of the dieticians on a compressed work tour is ultimately unable to follow through on her announced plan to enroll in a graduate program in May, management's position is that effective in May, that position will revert to a regular, Monday-Friday 40-hour workweek. Management believes that it can effectively solve its coverage problems by having both the inpatient and the outpatient dieticians work a non-compressed tour which will parallel the normal operating hours of the clinic.

A compressed schedule is a benefit that can and should be extended to employees when operational needs permit. Article

20, Section 2 establishes: 1) the opportunity to request a compressed work tour; 2) the need to obtain permission; and 3) the criteria for granting such tours based on when operational needs permit. Specifically, Article 20, Section 2.C(2)a provides in pertinent part that:

Each employee desiring to work under a CWS plan should submit a written request to their supervisor for a decision. The Employer will act on these requests as soon as possible, but in no case later than thirty (30) days after the request is made . . . .

Article 20, Section 2.E(1) further establishes the importance of meeting the "operational needs" criteria:

The parties agree that there are situations that may not readily accommodate a plan described in this section. Consideration and disposition of such situations will be made on a case-by-case basis, subject to partnership/local bargaining.

Finally, Article 20, Section 2.G(1) states that "(i)f the Department proposes to make any change to the [] CWS plan [] the Union will be notified and given an opportunity to bargain." Hence, the evolution of the current dispute.

Under the current situation, continuing the CWS for the outpatient dietician creates an operational burden for management. It requires additional staffing resources to be pulled away from other areas in order to support the staffing of the second walk-in clinic on the RDO of the outpatient dietician.

Management's decision to pilot and then continue a second walk-in clinic on a permanent basis is its decision to make unilaterally. Since budget and economy does not support hiring an additional registered dietician at this time, continuing the compressed tour for the outpatient dietician will mean that certain diabetes and endocrinology patients will have to come back a second time to follow up with the dietician as part of a physician recommended treatment. By having the only remaining registered dietician in the outpatient clinic work a standard, 40-hour workweek from Monday to Friday, the second clinic can remain open, additional patients may be accommodated on a cost-effective basis, and patients using the clinic would not have to return on a second occasion, thereby expanding the ability to provide health care services.

DECISION

The parties shall adopt the following wording to resolve their impasse:

The compressed work schedules of the inpatient dietician and the outpatient dietician will be discontinued effective 2 weeks from the date of this decision.

The compressed work schedule of the home-based dietician will continue and will not be affected by this decision.

A handwritten signature in black ink, reading "Edward F. Hartfield". The signature is written in a cursive style with a large, sweeping flourish at the end.

Edward F. Hartfield  
Arbitrator

March 24, 2011  
St. Clair Shores, Michigan