In the Matter of

DEPARTMENT OF DEFENSE
DEFENSE LOGISTICS AGENCY
OKLAHOMA CITY
TINKER AIR FORCE BASE, OKLAHOMA

and

LOCAL 916, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 10 FSIP 84

ARBITRATOR'S OPINION AND DECISION

The Department of Defense, Defense Logistics Agency, Oklahoma City (DLA-OC), Tinker Air Force Base (AFB), Oklahoma (Employer) and Local 916, American Federation of Government Employees, AFL-CIO (Union), jointly 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 Employer not to implement the Union's proposed 4/10 compressed work schedule (for certain DLA-OC bargaining unit employees.

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through mediation-arbitration with the undersigned, Panel Chair Mary E. Jacksteit. The parties were informed that if a settlement were not reached during mediation, a binding decision would be issued to resolve the dispute. Accordingly, on March 15, 2011, I conducted a mediation-arbitration proceeding at Tinker AFB. Settlement efforts during the mediation phase were unsuccessful. Thus, I am required to issue a final decision resolving the parties' dispute in accordance with 5 U.S.C. § 6131 and 5 C.F.R. §2472.11 of the Panel's regulations. In reaching this decision, I have considered the entire record, including the parties' pre-hearing submissions.

BACKGROUND

The Defense Logistics Agency (DLA) is the largest combat support agency within the Department of Defense. Its primary mission is to provide supplies and services to America's military forces (Army, Navy, Air Force and Marines) worldwide. At Tinker

AFB, DLA-OC provides direct support to the Air Force's 76th Maintenance Wing. Among other things, this support includes supplying equipment and parts necessary for maintaining and overhauling the Air Force's B-1 and B-2 bombers and multi-purpose C/KC-135 aircraft. Currently, these aircraft are being used to support the U.S. military posture in Afghanistan and Iraq, and DLA-OC employees order equipment, tools, materials and parts and supply them to civilian Air Force mechanics who then service, repair and return the aircraft to Air Force pilots to be used in Service-related missions. The Union represents approximately 747 employees who are employed in a variety of logistical positions. Although some are Wage Grade, most are General Schedule employees who work in one of two large divisions: DLA Aviation[1/] and DLA Distribution. A total of 354 DLA Aviation employees work either in one of two areas: Supply, Storage and Distribution (SS&D) or Depot-Level Repairables (DLR). Another 368 employees work in DLA Distribution. The parties are following the terms and conditions of their 3-year national collective bargaining agreement (CBA) that expired on March 1, 2007, until they complete negotiations over a successor CBA.

ISSUE AT IMPASSE

The issue in dispute is whether the Employer has met its burden of establishing that implementation of the Union's proposed 4/10 Compressed Work Schedule (CWS) for DLA Aviation and DLA Distribution (DLA) employees is likely to cause an adverse agency impact.[2/]

1/ The Union also represents approximately 25 employees who work in two additional DLA Aviation sections: DLA Disposition Services and DLA Document Services. These employees are not part of the dispute herein.

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 parties reached impasse on the Union's 4/10 CWS proposal with these central elements:

- Up to 50 percent of the DLA Aviation and Distribution bargaining unit employees would be allowed, on a voluntary basis, to work a 4/10 CWS. If more than 50 percent were deemed eligible, selection would be based on Service Computation Date (SCD) or other mutually agreed upon non-discriminatory method.

- Employees wanting a 4/10 CWS would submit a written request; any disapprovals would be in writing, and include the reasons for the denial. Disagreements would be resolved through the parties' negotiated grievance procedure.

- Employees approved for a 4/10 CWS would submit a written request identifying their desired regular day off (RDO). All 5 days of the regular work week would be available as RDOs. Forty percent of those with a CWS would be allowed to take a Monday RDO, and 40 percent would be allowed to take a Friday RDO. The remaining RDOs would be spread among the other 3 days of the workweek (Tuesday, Wednesday and Thursday) to balance workload.

- Supervisors could temporarily pull employees off of their 4/10 CWS or otherwise exclude them from CWS participation for short periods of time to work on special projects, engage in training activities, or be involved in other activities for which they would receive official time (e.g., to attend judicial or quasi-judicial proceedings as a witness or juror).

- Supervisors would also have the authority to decide the appropriate work schedule employees would follow during business travel and while on Temporary Duty Assignments.

- Employees subject to disciplinary actions would be placed on a normal 8-hour work day while serving a suspension,

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

and supervisors would be able to take an employee off of his/her 4/10 CWS while on a performance improvement plan.

- Employees would be encouraged to schedule doctor, dental and other routine non-emergency medical appointments on their RDOs.

- When a holiday falls on an employee's RDO, the employee would receive a day off in lieu of the holiday on either the workday immediately preceding or succeeding the RDO and/or other non-work (weekend) day.

- The CWS schedule would remain in effect for a period of 3 years in the absence of a claim of adverse agency impact.

1. THE EMPLOYER'S CASE

The Arbitrator should find that the evidence upon which the Employer bases its determination not to implement the proposed 4/10 CWS in DLA establishes that the schedule is likely to cause adverse agency impact under all three of the Act's criteria. The central factor to be considered is that the work of DLA and Air Force civilian employees is so closely integrated that bargaining unit employees are "intrinsically embedded in the production process" that directly supports active military operations in Afghanistan and Iraq. Adoption of a 4/10 CWS for these bargaining unit employees, except in a few circumstances,[3/] would cause all three effects constituting adverse agency impact under the Act: decreased DLA productivity, a diminished level of service and increased cost of agency operations. The cumulative effect would weaken the "supply chain to the warfighter[s] in Iraq and Afghanistan."

Civilian Air Force employees at Tinker[4/] work a fixed Monday through Friday, 8 hours a day, work schedule. Given that DLA personnel "are aligned with Air Force personnel, working side-by-side . . . to provide contemporaneous services" and "forecasting

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3/ The unit of office-based procurement staff of 55 does not present the same circumstances as the rest of the bargaining unit. And 23 employees in Distribution are essentially "grandfathered" in from an CWS agreement reached years ago.

4/ This contrasts with Hill Air Force Base where the Air Force civilians and DLA employees work the same compressed work schedule.

and item-demand planning for the warfighter," DLA employees need to work a schedule matching the Air Force personnel they are supporting.

Most DLA Aviation employees work in small supply "depots" located throughout the maintenance facilities, with each "supply depot" having between 1 and 30 employees who supply, (through a walk up window), the Air Force civilian personnel carrying out aircraft and parts repair/refurbishing in the immediate vicinity of the depot. The supplies maintained in each depot match the work being done in that area. DLA staff in the depot is responsible for supplying nearby Air Force employees on a real-time, as-needed basis.

The DLA Distribution function is primarily based in a separate building where parts and supplies are received, ordered, sorted and distributed to the Aviation depots, or ordered and shipped to other military "customers." DLA Distribution provides the necessary parts/supplies for the Aviation supply depots, getting the right materials to the appropriate location where they are needed for the specific work being done there. In at least one area at Tinker, as described by a witness, the Distribution staff work on the floor where Air Force personnel are repairing parts, preparing deliveries of repaired parts as soon as they are ready. One part is shipped every 2 minutes.

The nature of maintenance and repair work, while always unpredictable, is particularly so where as here the Air Force engines, parts and planes being repaired are in direct support of active war efforts. Unlike the typical buyer-supplier relationship where the customer can predict monthly supply needs, "[t]he Air Force customer does not make a monthly order with DLA that can be filled in a given amount of hours worked per week. Rather, the changing, daily needs of the Air Force customer dictate *on an individual* basis, the daily service to be supplied by DLA." Many work orders come to Tinker DLA directly from the Air Force. As a result there has been frequent need for both Air Force and DLA employees to work overtime to keep pace with maintenance, production and repair demands. In some areas, double and triple shifts are used when high work demands require it.

Given these circumstances any argument that productivity is not diminished, since 40 hours of work can be accomplished in a 10 rather than 8-hour workday and in 4 rather than 5 days, is misplaced. If DLA allowed its employees to work different hours and days than the Air Force mechanics they supply, "decreas[ing] our availability to our customer on a daily basis", it would no

longer be meeting its obligation to our customer who needs and has the right to expect "immediate, often same-day service."

Data offered to the Arbitrator supports the Employer's position. The data shows that DLA typically processes an average of 477 MICAP (mission incapable awaiting parts) requisitions per month and issues 37,500 parts to the customer every month. The MICAP numbers represent the amount of "critically-needed parts requested by the customer mechanics and without which an aircraft or engine will not be fully-mission capable." That means that Air Force mechanics monthly need 37,500 parts from DLA in order to keep up with routine aircraft and engine maintenance. DLA cannot sustain this volume of work; half of its employees are off one day a week and work different hours from those of their Air Force customers on the remaining four.

Staffing levels in Aviation are monitored on an ongoing basis to insure that staff matches the workload across the activity. This is done by tracking the number of transactions that take place in each work area. On a monthly basis adjustments are made in the number of employees within particular depots if the numbers show too many staff in one place and/or too few in another. The added days off due to adoption of a CWS would undermine this effort to match staffing with workload.

A CWS will also be costly because to assure adequate coverage the Employer would have to hire additional personnel to ensure adequate manpower and its current level of service on days when CWS employees were off. This is because any delays in DLA supplies and parts getting to their customers because of insufficient staffing would result in delays in repairs being completed, and that in turn would "reduce[s] the number of aircraft and engines available for warfighting operations." That outcome has to be avoided.

Overtime costs would also likely increase if DLA employees worked a 4/10 CWS. If half of the 747 bargaining unit, or approximately 374 employees, were off 1 day a week, there would be approximately 1,496 days per month that employees would not be at work because of their RDOs. In addition, within Distribution there are employees with specialized skills and qualifications (e.g., extra high security clearances, hazardous material handling training) who have to be called in if not present when their skill/status is required during hours when they are not working. RDOs under a 4/10 schedule would increase the occasions when this would occur and overtime would have to be paid. Cross

training of employees to extend these special skills has only just started.

The increased need for overtime would be created at the same time that the Employer is under directives to significantly reduce the use of overtime. In the last few years DLA has been required to cut overtime by significant percentages and further reductions have been set for the coming years. One Air Force officer described having his overtime rate at 22% cut to 13% with pressure to take it down much further even though work demands remain high.

The Employer points to its experience with a 4/10 CWS in the DLA Distribution area to support its position that the Union's proposal is inappropriate. About 10 years ago a CWS schedule was negotiated for certain Distribution employees and originally as many as 100[5/] worked the schedule. In subsequent years, in order to compete under Executive Order A-76 the Distribution activity reduced its workforce by 40 percent without an accompanying reduction in workload. This challenge was successfully met through increased use of technology and other efficiencies, using more overtime, and the Employer believes, eliminating the 4/10 schedule by attrition as employees working these hours left or retired. Currently the number on CWS is 23. To increase the number of Distribution employees on a 4/10 schedule would not allow Distribution to maintain its ability to meet performance demands especially since, at the same time, it is being required to decrease overtime. An additional pressure is that since 2008 when there was a misdirected shipment of highly sensitive material, DLA Distribution handling procedures have become much more rigorous due to the requirement to inspect everything coming in and going out of the facility (even sealed cartons from manufacturers.)

The Employer stresses that if DLA at Tinker AFB resembled David-Monthan Air Force Base,[6/] a 4/10 CWS would potentially be feasible. But here, "the very configuration of the supplier/customer relationship is designed so that customer demand is met by reliable, contemporaneous supply", so that implementation of CWS will delay and diminish productivity and

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5/ No one had the exact number of employees originally participating but all agree that it was significantly higher than now.

6/ The location of the dispute over a CSW addressed in 10 FSIP 94.

decrease service to the customer which potentially translates to imperiling warfighters in Afghanistan and Iraq "who should not have to wait [for needed weaponry and material], due to the inappropriate use of AWS."

2. THE UNION'S CASE

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.

Since the time the parties began bargaining over implementation of a 4/10 CWS the Union has steadfastly attempted to persuade the Employer to produce the "data" upon which it bases its adamant position[7/] that implementation of a CWS requested by the Union would adversely impact its mission. The Union believes that this supportive data is still absent. The only thing offered is speculation and worst case scenarios.

In this connection, the Employer's arguments are based on a scenario that if 50 percent of the bargaining unit is permitted to work a 4/10 CWS, every one of the 374 represented by that percentage will elect to do so. The survey conducted by the parties jointly in February 2009, however, does not support that assumption. At that time, there were 719 DLA bargaining unit employees. Of that number, only 417 - or less than half of the unit employees - responded to the survey. Of that 417, only 200 employees covered by this dispute (DLA Aviation and DLA Distribution) opted for a 4/10 CWS - roughly 27 percent of the unit. While it is true that there are now 747 bargaining unit employees, the percentage of those choosing to work a 4/10 CWS would still be significantly less than the 50 percent contained in the Union's proposal.

The Union has made clear that if a 4/10 CWS were authorized, it would implement the schedule as it has other alternative work schedules (AWS) at Tinker AFB, by working with managers to identify the positions for which a CWS is workable, and those for which it is not. The Union acknowledges that a 4/10 CWS is not appropriate for all positions in the bargaining unit and points to the history of the union negotiating AWS schedules for DLA Distribution employees by working with management to decide which

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7/ The Employer has never submitted a counterproposal but has consistently maintained that any 4/10 AWS will create an adverse agency impact.

employees would be allowed to work 5-4/9, 4/10 and flextime schedules and which would be required to stay on a fixed tours.

The Union's last formal proposal demonstrates the Union's effort to meet the Employer's concerns. CWS can be denied for appropriate reasons, and temporarily suspended when special projects and other needs require it. Responding to the Employer's concern about all CWS participants having the same RDO, the Union proposal spreads RDOs across all days of the week to provide adequate coverage.

The Union's position, in a nutshell, is that without any real data supporting its claim that it will not work, and no test results showing that it did not work, the Employer's finding of adverse agency impact is not based on "evidence" as required by the Act but rather on "speculation and dire predictions." It also ignores the demonstrated intention of the Union to accommodate legitimate concerns and needs of the mission.

CONCLUSION

Under § 6131(c)(2)(B) of the Act, the Panel is required to rule in favor of an 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."[8/]

8/ 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).

The Agency established that there are serious matters at stake in insuring DLA's ability to provide and maintain the level of service required by the Air Force - a high level of responsiveness to keep maintenance and repairs on schedule to avoid disrupting the supply chain to active military operations. Delay can be a matter of life and death.

The Agency also supported its characterization of how DLA employees work with Air Force civilians at Tinker: they provide direct, hands-on service, quick turn-around, and responsiveness to unpredictable work demands. The Union did not challenge any of these depictions.

What the Agency has not done, however, is support its central position. The DLA has in effect turned an assumption into a definition: full customer support to the Air Force ***means*** *completely corresponding work hours* by everyone involved in directly supplying the Air Force personnel. From there it can only follow that the schedule differences created by any additional employees working a CWS automatically constitute adverse agency impact.[9/] So, even as the Union altered its proposal from covering all employees to half of them, projected that a few percentage would want a 4/10 schedule, added RDOs and conceded that not every area and job is suitable for 4/10, the Agency has maintained its firm opposition to negotiating over a CWS.

The Employer's assertions, conclusions and worries are not supported by predictive *evidence*. As serious as its worries may be, the Act requires evidence. If Congress had intended to allow agencies to avoid trying alternative work schedules on the basis of worries and untested assumptions about impact it would not have required evidence.

In the absence of evidence we are left in the realm of speculation. For instance, projecting from the response rate of the employee survey, one might estimate that 100 employees in the bargaining unit will seek a 4/10 schedule which, spread over 5 RDOs, means 20 people off per day. Is that equivalent to the impact of the much larger projected absences assumed by the Employer arguments? What happens when 20 extra people are off for other reasons? Is there a minimal attendance level overall or in particular work places that have been determined critical

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9/ The one group where the Employer has said a 4/10 CWS is feasible is in Aviation Procurement Operations where 55 unit employees work in an office environment.

for operations? The Employer measures transactions to determine staffing levels but did not translate this into a useful concept for understanding the impact of possible CWS configurations. And how can the impact of reducing AWS in Distribution be assessed when many other factors were in play, and we were only offered an opinion that it helped increase productivity but no specific account or examples of what difference it made?

One thing that did come through the Employer's case is that adjustments are a way of life in this workplace. As work demands ebb and flow, and projects shift around, schedules are dropped and added and people are moved to follow the work. That does not suggest an incapacity to accommodate variation or to respond to exigent circumstances.

Returning to our issue, the question is whether or not there is evidence showing that adverse agency impact is likely enough to bar *negotiations* over a CWS plan. By definition negotiation involves give and take between Union and management, and looking at how to address the concrete, real life situations and concerns presented by the specific workplace, of which a number of very important ones were raised by the Employer in this proceeding. This negotiation will take place against the backdrop of the Act's provision allowing an Employer to end an AWS at any time that it has evidence of adverse impact. An Employer's ability to terminate an alternative work schedule that has created demonstrable damage is a natural disincentive to the Union pressing for the adoption of plans that are inherently unwise or unworkable. It encourages common sense by all parties. The seemingly toughest scenarios presented by the Employer - the two Distribution employees needed at all times to ship parts, the hazardous material handlers, the plane or part that has to return to the war zone in record time - these may be the very situations where the parties agree CWS is inappropriate, either in the short term or long term. They do not prove the Employer's blanket position.

For the above reasons, I find that the Employer has failed to establish, through evidence, that the Union's proposal is likely to cause an adverse agency impact.

DECISION

Pursuant to the authority vested in me by the Federal Service Impasses Panel under the Federal Employees Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6131(c), and § 2472.11(b) of its regulations, I hereby order the Employer to

negotiate over the Union's proposed 4/10 CWS for DLA Aviation and DLA Distribution employees.

Mary E. Jacksteit
Arbitrator

April 27, 2011
Takoma Park, Maryland