

In the Matter of

DEPARTMENT OF THE AIR FORCE  
305<sup>TH</sup> AIR MOBILITY WING  
JOINT BASE MCGUIRE-DIX-LAKEHURST,  
NEW JERSEY

and

LOCAL 1778, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 12 FSIP 84

ARBITRATOR'S OPINION AND DECISION

Local 1778, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of the Air Force, 305<sup>th</sup> Air Mobility Wing, Joint Base McGuire-Dix-Lakehurst, New Jersey (Employer).

After investigation of the request for assistance, which concerns a dispute over compressed work schedules (CWS) for certain employees assigned to the Aircraft Structural Maintenance Section, also known as the Structural Repair Shop (Shop), the Panel directed the parties to mediation-arbitration with the undersigned, Panel Member Donald S. Wasserman.

Accordingly, on September 19 and 20, 2012, a mediation-arbitration proceeding was held with the parties at the Employer's facility in New Jersey. During the mediation phase, the parties were unable to resolve the issue, thereby requiring the undersigned to decide the matter in arbitration.<sup>1/</sup> In

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1/ During mediation, the parties were requested to designate a subcommittee for the purpose of attempting to develop a work schedule for the Shop that could accommodate a 4/10 CWS for employees while maintaining work coverage. A schedule was developed but the Employer chose not to rely upon it as a basis for resolving the parties' dispute because it did not provide for coverage by the more experienced employees on Mondays.

reaching this decision, I have considered the entire record in this matter, including the parties' final offers, evidence, and the testimony of witnesses.

### BACKGROUND

The Shop is charged with making structural repairs on aircraft and aerospace ground equipment. The Union represents a bargaining unit consisting of approximately 1,150 non-professional General Schedule and Wage Grade employees, which includes 12 sheet metal workers who work in the Shop and are the subject of this impasse. Also assigned to the Shop are active duty military personnel (airmen), who work as sheet metal workers, as well as four other sheet metal workers who are Air Reserve Technicians (ARTs) and part of a different squadron, the 514<sup>th</sup> Air Mobility Wing. The parties follow as past practice a collective-bargaining agreement (CBA) that was implemented in 2001.<sup>2/</sup>

The Shop operates 24-hours-a-day, 365-days-a-year. Currently, the 12 employees involved in this case work 8-hour tours of duty, Monday through Friday, on three shifts (day, swing and night); they do not rotate their shift assignments. Airmen work 8-hour tours of duty, on all three shifts, covering 7-days-a-week and holidays. The four ARTs work only the day shift on Mondays through Fridays and have had a 4/10 CWS for approximately 1 year.

### ISSUE AT IMPASSE

The parties disagree over whether the 12 employees who work for the 305<sup>th</sup> Air Mobility Wing in the Shop should be permitted to work a 4/10 CWS<sup>3/</sup> or retain their current 8-hour workdays.

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2/ Following a BRAC decision to consolidate three bases in New Jersey, the Union won an election and, on January 6, 2012, was certified by the Federal Labor Relations Authority as the exclusive representative of a newly-created bargaining unit that was formed after the base consolidation. Currently, the parties are bargaining their first CBA for the new bargaining unit and have resolved all but one issue not involved in this dispute.

3/ Under a 4/10 CWS, an employee is permitted to work 4 10-hour days and have 1 day designated as a regular day off (RDO) during each week of a biweekly pay period, for a total of 80 hours worked.

## THE PARTIES' POSITIONS

### 1. The Union's Position

The Union proposes to implement, for a 6-month trial period, a 4/10 CWS for all 12 bargaining-unit employees who work in the Shop.<sup>4/</sup> While the schedule is in effect, information would be gathered to determine its effectiveness and help the parties assess whether the CWS should be implemented permanently, modified or abandoned. Criteria for judging the effectiveness of the schedule would include the impact of a 4/10 CWS on the timeliness and responsiveness of work production, employee leave usage, overtime usage, supervisory and employee assessment of the program, and whether it may have caused a diminished level of services to the public or an increase in operational costs. The evaluation criteria would be determined by a committee consisting of one Union official and one management official and developed within 14 days following the effective date of an Agreement. All information gathered would be shared with the Union, including raw data. At the conclusion of the 6-month trial period, the parties would negotiate over the continuation of the schedule for employees, using the information developed during its implementation. The schedule would remain in place during the bargaining process. If the parties cannot reach agreement, the issue would be referred to the Federal Service Impasses Panel. Any Employer determination to terminate the pilot program would be in accordance with 5 U.S.C. § 6131 of the Federal Employees Flexible and Compressed Work Schedules Act (Act).

The Union contends that the 12 employees for whom a 4/10 CWS is proposed work side-by-side with four ARTs, who are part of a different activity, the 514<sup>th</sup> Air Mobility Wing, but have worked a 4/10 CWS for the past year. There is no reason why the other sheet metal workers in the Shop should not be permitted to work the same compressed schedule. The Employer's arguments against extending a 4/10 CWS to those in the Shop employed by the 305<sup>th</sup> Air Mobility Wing are based solely on speculation of what may happen if the schedule is implemented for more

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<sup>4/</sup> Although not stated in the Union's last best offer (LBO), during the mediation stage the Union verbally indicated to the Employer that it was not requesting that RDOs must be on a Monday or Friday, but it did state that each of the 12 affected employees would be entitled to decide whether they elect to work a 4/10 CWS or remain on their current 8-hour, 5-day-per-week schedule.

employees. Implementing a 4/10 CWS for a test period would allow the parties to develop data to better assess whether the schedule would cause operational problems and, thereby, eliminate the speculative nature of the Employer's claims.

As to management's rationale for refusing to agree to the Union's proposed schedule, one allegation is that, if the Shop has different work schedules (that is, bargaining-unit employees on a 4/10 CWS and airmen on an 8-hour tour), there would be an insufficient number of tool boxes available at the beginning of shifts. Management claims that this could reduce productivity, and also increase costs, if the Employer is forced to purchase additional tool boxes to accommodate different starting times for workers in the Shop. The Union disputes the claim, stating that frequently employees share a tool box, which demonstrates that there is no need for every employee to be individually equipped with one. Furthermore, the Employer's claim that a 4/10 CWS would increase overtime costs is based entirely on speculation. A compressed schedule should have the opposite effect and, in fact, it likely would reduce overtime because workers would remain on the clock for longer periods of time, thereby avoiding the need to call in other employees to work overtime. In any event, the amount of overtime in the last year for ARTs on a 4/10 CWS has been insignificant, totaling only 16 hours, according to management's own statistics. The Employer has total discretion to alter the work schedule of airmen, to alleviate management's concern that the less experienced airmen would be working 1-day-a-week without the mentoring of the more experienced civilian sheet metal workers, not all of whom would have the same RDO.

## 2. The Employer's Position

In earlier stages of this dispute the Employer offered to provide a 5-4/9 CWS which the Union rejected. During the mediation process the Employer formally withdrew its proposal.

At this point, the Employer proposes to retain the current 8-hour schedule for the 12 sheet metal workers. It contends that the Union lacks evidence to convince a third party that a 4/10 CWS for those employees would not severely effect operations in the Shop. Rather, the proposed schedule would seriously undermine the Employer's ability to meet mission requirements while the nation is at war and national security is paramount. Implementing a 4/10 schedule would impede the ability of the Wing to man a 24-hour operation in the Shop because it would decrease the number of the most senior and

highly-skilled personnel available, the civilian employees, to perform the work. Management, on the other hand, has produced data which illustrates the negative effects of a 4/10 CWS worked by the ARTs over the past year.<sup>5/</sup> Extending the schedule to even more employees only would compound the problems. The Employer has pulled "hard data" that demonstrates, essentially, that a 4/10 CWS would have the following adverse effects:

1. Experience. If the civilian sheet metal workers are off 1-day-a-week, they would not be available to help train and work with the junior sheet metal workers, the airmen, who are young, ranging in age generally from 18 to 22 years, and inexperienced in the trade. The quality of work would be affected without the consistent mentoring of bargaining-unit employees. Often, the airmen are not "task qualified" to do certain types of work and they need the more experienced civilian employees to assist them on projects. The civilian employees represent 25-percent of the work force in the Shop; a weekly RDO would mean that they are not available 20-percent of the work days (Monday through Friday) when military personnel also are on duty.

2. Availability. The number of airmen who work in the Shop frequently is in a state of flux. In the near future, eight airmen are scheduled to leave the Shop, for a variety of reasons, and only one airman will be coming on board. The Air Force is shrinking personnel, but not its mission. It recently increased the inspection rate of aircraft from every 90 days to every 60 days. More bodies are needed on a daily basis to perform the ever-increasing amount of work. The Union's proposal, with a weekly RDO, would result in less staff availability. A 4/10 schedule would force management to consistently realign its available personnel to meet work exigencies and ensure that a skilled workforce is on hand at all times.

3. Time. If a 4/10 CWS is implemented, management would be forced to place the military personnel on the same schedule to avoid shift overlap. When most employees are on an 8-hour schedule, there is 3.5 hours of overlap each day. That time, because it is relatively short, still could be used productively

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5/ Although management does not favor a 4/10 CWS for any employees in the Shop, it acknowledges that management of the 514<sup>th</sup> Wing is not attempting to terminate that schedule for the four ARTs. It argues that having only four sheet metal workers on a 4/10 schedule "is all that the Shop can cope with."

to check tools out and in, for roll call, and to prepare maintenance data documentation. A 4/10 CWS would result in a significant increase in the overlapping among the three shifts, amounting to 7.5 hours per day. This would cause a decrease in productivity because employees would be idle. There are 55 employees in the Shop and multiplying the effects of a 7.5 hour daily overlap would mean that the Employer would have a significant loss of productivity. There would be a cost associated with lost productive hours as well, because employees remain on the clock but are idle, having had to turn in their tool kits for the next shift to start work.

4. Tools. If two schedules are in effect, a 4/10 CWS for bargaining-unit employees and an 8-hour schedule for military personnel, the overlapping of shifts would mean that there would be an insufficient number of tool boxes for all workers at the beginning of their shifts. For example, since the day shift would work from 7 a.m. to 5 p.m., those on the swing shift, who start at 3 p.m., may not have tool boxes to start work because they still would be utilized by those on the 4/10 day shift. The Employer would have to purchase six additional tool boxes to be utilized during that 2-hour period when the employees on a 4/10 CWS are still using the boxes they checked out at the beginning of their tour. If the Employer does not purchase tool boxes for six employees on the swing shift, they "would just be waiting around until the day shift ends at 5 p.m. and those employees turn in their tool boxes."

5. Key Indicators. Currently, the Shop is able to exceed aircraft maintenance rates, which demonstrate its ability to meet mission requirements. If staff availability is reduced due to weekly RDOs, the Employer would have a reduced expectation of meeting mission requirements. This affects safety. If the more experienced civilian employees are unavailable 1 day each week, they would not be present 20-percent of the workdays when junior airmen are working on aircraft. Safety may be compromised, not only for the crew of the aircraft but also for junior airmen who may not know how to handle some workplace risks.

6. Cost. CWS increases costs. Since the ARTs went on a 4/10 schedule 1 year ago, there have been 16 hours of overtime needed, totaling \$663.20. If there is a 20-percent decrease in manning each week under a 4/10 CWS, should the schedule be implemented for more employees, there is a likelihood that overtime costs would increase as well.

OPINION

At the outset, I believe it is important to underscore that this dispute is being resolved under the Statute where the parties have a shared burden of convincing the Arbitrator of the merits of their respective positions. Had this impasse been resolved under the Act, however, the Employer would bear the burden of establishing that the schedule is likely to cause an adverse agency impact by demonstrating that it would negatively affect productivity, services to the public, or increase the cost of operations. In my view, the Employer raises arguments that amount to claims of adverse agency impact, as defined under the Act, but without having the sole burden for establishing that position. I believe this to be a failed strategy on management's part.

I note that no part of this *Opinion and Decision* is based on any confidential statements made by either party in caucuses during the mediation stage. I also note that neither the ARTs nor the 12 affected employees are scheduled to work on weekends, when only military personnel are scheduled to work in the Shop.

After careful consideration of the evidence and arguments presented by the parties, I am not persuaded that the Employer's position, which is based almost entirely on speculative claims concerning the effect of placing the employees on a 4/10 CWS, should be the basis for resolving the parties' work-hours dispute. Hard data would have been more persuasive but, without it, I believe that the Union's proposal deserves the opportunity to be tested. The pilot period proposed by the Union, which is of relatively short duration, would allow an assessment to be made concerning the impact of the schedule on agency operations as well as employee morale. It would allow the parties time to gather the hard data which I believe is necessary to make conclusions, for the long term, on the viability of a 4/10 schedule for employees. After gathering this information, the parties are free, during their subsequent negotiations, to make adjustments to the schedule, continue it as is, or terminate the it in favor of a 5/8 tour or another compressed schedule option.

Although the Union's final offer does not mention the scheduling of RDOs, I shall modify it to require -- that which the Union verbally offered -- that management may schedule RDOs spread over all 5 week days, so as not to have a higher concentration on Monday or Friday. Additionally, the Union's proposal shall be modified to provide for a test period that would require all employees to participate in a 4/10 CWS;

however, if the parties agree to make adjustments to the number of employees participating in the schedule, they are free to do so. Finally, I shall order the schedule implemented, no later than the first full pay period in January 2013, unless agreed otherwise by the parties, to allow sufficient time to plan for implementation. After 6 months of implementation, using the data obtained during that time, the parties are to meet to assess whether the 4/10 schedule should be retained on a permanent basis, terminated, or modified to address concerns that may have arisen during its implementation.<sup>6/</sup>

### DECISION

The parties shall adopt the Union's proposal to test a 4/10 CWS for employees of the 305<sup>th</sup> Air Mobility Wing who work in the Structural Repair Shop. A small joint committee of Union and Employer representatives will meet within 14 days of the date of this decision to determine the criteria that shall be used to evaluate the schedule and the information that will be gathered while it is ongoing, including but not limited to, the impact of the schedule on performance of the organization's mission (e.g. timeliness and responsiveness, productivity of the organization, employee leave usage, overtime usage, and supervisory and employee assessment of the program); whether the level of services was maintained; and whether there has been an increased cost of operations under the schedule. All data gathered will be shared by both parties to assist them in the evaluation of the impact of the schedule. At the conclusion of 6 months, the parties shall meet to negotiate, using the data and information collected, to determine whether the schedule shall be continued as is, modified, or terminated. The schedule will remain in place during the negotiation process.

The Union's proposal is modified to require that regular days off (RDOs) under the schedule be spread among all weekdays, to avoid a concentration of RDOs on either Monday or Friday. The parties may agree to reduce the number of employees who participate in a 4/10 CWS from the 12 bargaining-unit members to a smaller test group. Absent agreement, all bargaining-unit employees shall participate in the pilot program. The test period shall begin no later than the first full pay period in

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<sup>6/</sup> During the 6-month test period, if the head of the agency alleges that the schedule is causing an adverse agency impact, the Employer may seek termination of the schedule by filing a request for Panel assistance under the Act.



January 2013, absent agreement by the parties for a different implementation date.

A handwritten signature in black ink, appearing to read "Donald S. Wasserman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Donald S. Wasserman  
Arbitrator

October 9, 2012  
Washington, D.C.