

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)
)
DEPARTMENT OF THE AIR FORCE)
440th TACTICAL AIRLIFT WING)
MILWAUKEE, WISCONSIN)
)
and) Case No. 91 FSIP 107
)
LOCAL 2144, AMERICAN FEDERATION)
OF GOVERNMENT EMPLOYEES, AFL-CIO)
_____)

DECISION AND ORDER

Local 2144, 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 section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of the Air Force, 440th Tactical Airlift Wing, Milwaukee, Wisconsin (Employer).

After investigation of the request for assistance, the Panel determined that the dispute should be resolved pursuant to written submissions from the parties with the Panel to take whatever action it deemed appropriate to resolve the impasse concerning compressed work schedules (CWS). Written submissions were made pursuant to this procedure and the Panel has now considered the entire record.^{1/}

BACKGROUND

The Employer trains and provides support functions to a Military Airlift Command (MAC) reserve unit of approximately 1,200 reservists responsible for airlifting supplies, equipment, and troops for the Department of Defense. The Union

^{1/} In its initial statement of position, the Union did not argue its position, but simply stated that "all previous submissions, attachments, and all other information remain applicable." Also, it did not submit a rebuttal to the Employer's initial statement of position.

represents approximately 240 General Schedule and Wage Grade employees who work as aircraft mechanics, contract specialists, secretaries, security guards, firefighters, boiler plant operators, and supply clerks, among other occupations. These employees are covered under a local collective-bargaining agreement (CBA) which is in effect until March 23, 1993.

This dispute arose during negotiations over a CWS plan pursuant to Article 10, section 7, of the CBA.^{2/} The parties agree that with the exception of security guards, firefighters, and boiler plant operators who work 24-hour shifts, all employees would be affected by the outcome of the dispute.

ISSUE AT IMPASSE

The parties disagree over whether a 6-month test of a 4-10 CWS plan should be conducted immediately following the conclusion of a 5-4/9 experiment to which they are both amenable.^{3/}

POSITIONS OF THE PARTIES

1. The Union's Position^{4/}

The Union proposes that a 6-month test of a 5-4/9 work schedule be followed immediately by a similar test of a 4-10 schedule; both schedules would allow for (1) a flexible time of arrival between 6 and 8 a.m.; (2) a 1/2- to 1 1/2-hour lunch

^{2/} That provision reads as follows:

Reserved for flex[i]time after completion of 928
TAG service test[,] but not later than June 30,
1990.

^{3/} Under a 4-10 schedule, during a 2-week pay period, employees have the option of working 8 10-hour days with 2 days off.

^{4/} As requested by the Union in its original submission, its position on the issue is taken from its request for Panel assistance and information offered during the Panel's investigation into that request.

break; and (3) employees' choice of their day or days off.^{5/} It contends that only a test of the proposed 4-10 schedule would show with any certainty whether it is feasible for employees to work such a schedule on a permanent basis given the Employer's military support functions. In fact, indications are that a 4-10 schedule is workable given such functions. In this regard, the Union contends that a 4-10 CWS plan has been implemented successfully by the Air National Guard Unit (ANGU) under the Strategic Air Command, a co-tenant of the Employer whose employees perform similar duties.

Employees have indicated a strong preference for working a 4-10 schedule. In this regard, Union members initially refused to ratify the CBA because it did not include a 4-10 CWS plan, but did so after the parties agreed to include a provision providing for negotiations over flexible scheduling at a later date.^{6/} Although the Employer does not favor a 4-10 schedule simply because it may cause timekeeping problems, that is insufficient reason for refusing to conduct a 4-10 experiment.

2. The Employer's Position^{7/}

The Employer proposes to test, for a 6-month period, the model 5-4/9 CWS plan represented in the Federal Personnel Manual (FPM) Supplement 990-2, Book 620, Appendix B (1980)^{8/},

^{5/} Although not specifically provided for in its written proposal, the Union indicated to the Panel's representative that (1) participation in either CWS plan would be voluntary and approved by the Employer on an individual basis, and (2) employees who work 24-hour shifts would be excluded from participation.

^{6/} See n.2.

^{7/} Includes arguments offered to the Panel's representative during the Panel's initial investigation of the Union's request for assistance.

^{8/} This is not a comprehensive CWS plan; it simply defines the 5-4/9 schedule and delineates participating employees' premium pay and leave entitlements. It does not address (1) requirements for participation, and (2) scheduling of off day, among other matters frequently provided for in other negotiated CWS plans. The Employer indicated to the Panel representative who initially investigated this request for Panel assistance that (1) participation would be voluntary, and (2) all employees, except those who work 24-hour shifts, could choose to participate.

"with management [to have the] right to stop the [plan] at any time [it] determines that it is affecting the unit mission." This plan, on balance, benefits unit employees while allowing the Employer to "effectively accomplish [its] end mission [of supporting flying operations] through the judicious utilization and conservation of scarce [G]overnment resources." The Union's proposed plan, on the other hand, is incompatible with the Employer's MAC support functions as it "create[s] uncontrollable variables and leave[s] direction of the workforce at the whim of each employee."

The Employer opposes testing a 4-10 CWS plan until after the 5-4/9 CWS plan has been tested and its affects ascertained concerning, among other things, (1) employee safety and morale; (2) coordination of work among employees; (3) the cost of agency operations; (4) overtime; and (5) the interdependence of such departments as maintenance, supply, and transportation, as well as employees and reservists. Moreover, even if a 5-4/9 plan is workable, a 4-10 schedule may not be, given the Employer's military support mission. In this regard, in Department of the Air Force, Air Force Reserve, 440th Airlift Wing, Milwaukee, Wisconsin and Local 2144, American Federation of Government Employees, AFL-CIO, Case No. 83 FSIP 104 (November 22, 1983), Panel Release No. 221, (440th Airlift Wing I), an earlier case involving the same parties, the Panel reviewed a Union-proposed 4-10 CWS plan similar to the one proposed in this case, and concluded that the schedule would have an adverse impact on the Employer's mission within the meaning of the Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. sections 6120 et seq. (Act).^{9/}

^{9/} The Union's proposal in that case as set forth in the Panel's Decision and Order was as follows:

The Employer will allow employees the right to volunteer to participate in Flexitime I.A.W. Public Law 95-390 under the following:

- (1) Four 10-hour days with 1/2[-]hour lunch[;]
- (2) 9[] a.m. to 3:30 p.m. core time with 1/2[-]hour lunch;
- (3) Variable 5-day week with 1/2[-]hour lunch.

CONCLUSIONS

Having considered the evidence and arguments on this issue, we conclude that the dispute should be resolved on the basis of the Employer's proposal, modified by striking the portion thereof that would permit the Employer to terminate the 5-4/9 CWS plan without prior Panel approval. In our view, it is reasonable for the Employer first to assess what affect, if any, the 5-4/9 schedule has had on its overall operations before agreeing to test the 4-10 schedule, which would have employees away from the worksite an additional day each 2-week pay period. The Union, however, is not foreclosed from requesting to bargain over a 4-10 plan at a later date should the 5-4/9 plan prove successful.^{10/} Furthermore, we note that the Union failed to submit empirical evidence of the specific 4-10 plan implemented by ANGU and its success therewith. There also is no evidence in the record which shows that the Employer's mission requirements have changed since 1983 when, in 440th Airlift Wing I, supra, the Panel concluded that a similar 4-10 plan would adversely affect the mission. Finally, the proposal, as modified, is consistent with the Union's right to negotiate over the Employer's decision to terminate the 5-4/9 plan under 5 U.S.C. section 6131(c)(3)(A) of the Act, and the Panel's legislative mandate under 5 U.S.C. section 6131(c)(3)(B) of the Act to review that decision in order to discourage capricious determinations by management to terminate compressed work schedules.

ORDER

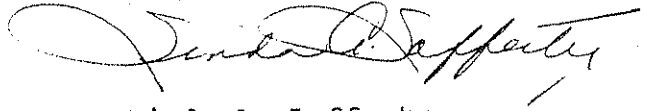
Pursuant to the authority vested in it by section 7119 of the Federal Service Labor-Management Relations Statute and because of the failure of the parties to resolve their dispute during the course of the proceedings initiated under section 2471.6(a)(2) of the Panel's regulations, the Federal Service Impasses Panel under section 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the Employer's proposal modified as follows:

^{10/} Article 32, section 4, of the parties' CBA permits either of them to "submit proposals for midterm bargaining provided the subject is not covered in the [CBA]."

Employees may participate in a 6-month experiment of the model 5-4/9 compressed work schedule plan provided for in Federal Personnel Manual Supplement 990-2, Book 620, Appendix B (1980).

By direction of the Panel.

A handwritten signature in cursive script, appearing to read "Linda A. Lafferty".

Linda A. Lafferty
Executive Director

December 23, 1991
Washington D.C.