

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

Department of the Treasury)
Internal Revenue Service)
Memphis Service Center)
Memphis, Tennessee)

and)

Chapter 98, National Treasury)
Employees Union)

Case No. 90 FSIP 248

DECISION AND ORDER

The Department of the Treasury, Internal Revenue Service, Memphis Service Center, Memphis, Tennessee (Employer) and Chapter 98, National Treasury Employees Union (Union) filed a joint request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse.

After investigation of the request for assistance, the Panel directed the parties to attempt to resolve the impasse concerning compressed work schedules through a telephone conference with a Panel representative. The parties were advised that if no settlement were reached, the Panel's representative would report to the Panel on the status of the dispute, including the parties' final offers, and make recommendations for resolving the issues. After considering this information, the Panel would take whatever action it deemed appropriate to resolve the impasse, including the issuance of a binding decision.

Accordingly a telephone conference with the parties was held on February 20, 1991, but the parties were unable to reach a settlement.^{1/} The Panel's representative has reported to the Panel based on the record developed by the parties, and it has considered the entire record in the case.

BACKGROUND

The Employer is responsible for processing individual, partnership and corporate tax returns, issuing refunds and supplying tax information to taxpayers in Alabama, Arkansas, Louisiana, Mississippi, North Carolina, and Tennessee. The Union represents approximately 4,400 employees at the Memphis Service Center (MSC) who are part of a nationwide bargaining unit consisting of over 46,000. Bargaining-unit employees at the MSC occupy a wide range of positions such as tax examiner, transcriber, computer programmer, unit clerk, control clerk, and secretary. The parties are covered by a master collective-bargaining agreement between the Internal Revenue Service and the National Treasury Employees Union which is in effect until June 1994.

This dispute arose during negotiations to modify the parties' 1986 local Alternative Work Schedules agreement.^{2/}

^{1/} Following the telephone conference, the Union, over the Employer's objection, requested that the Panel reconsider its procedural determination and direct the parties to factfinding prior to its final determination, or direct the parties to share the costs of mediation-arbitration by a private arbitrator. Subsequently, the Panel authorized the parties to submit additional written evidence in support of the merits of their proposals. The Panel denies the Union's request to use the additional procedure of either factfinding or mediation-arbitration to resolve the impasse.

^{2/} Under that agreement, with certain exceptions, employees may work a 5-4/9 or 4-10 compressed schedule, or flexitour with credit hours.

ISSUES AT IMPASSE 3/

The parties disagree over (1) the various starting times for employees who select a compressed work schedule; (2) whether "leads"/"seniors" (i.e., a designation given to more experienced employees in a particular branch or division), unit clerks, control clerks, and employees who work in the Adjustment and Collection Branches ^{4/} should be excluded from working a compressed schedule; (3) whether employees should rebid annually on alternative work schedules; and (4) the period of time during which probationary employees should be excluded from selecting a compressed work schedule.

POSITIONS OF THE PARTIES

1. Starting Times

a. The Employer's Position

The Employer proposes that those who work a flexitour schedule with credit hours start work at either 6, 7, or 7:30

^{3/} In its statement of position to the Panel the Employer states that "[o]ne final issue raised in the conference call is the length of any agreement imposed by the Panel." The Union makes no reference to this matter in its submission. It is our understanding, based upon the report on the teleconference by the Panel's representative, that the matter was raised by the Employer as a point of clarification with the Union and was not intended as an issue to be resolved by the Panel. Therefore, we shall not address it further. Moreover, we note that the question of the length of the agreement was not before the Panel at the time it asserted jurisdiction over the dispute, nor were the parties asked to address it in their submissions to the Panel following the teleconference.

^{4/} Employees who work in the Adjustment and Collection Branches do measured work and rely on an Integrated Data Retrieval System (IDRS), an in-house computer system, that is contractually available for use between 6 and 12:30 a.m.

a.m.; employees permitted to select a 5-4/9 schedule may choose starting times for the morning shift of 6 or 7 a.m., and on the evening shift 5, 6, or 6:30 p.m.; those permitted to work a 4-10 schedule would start the day shift at 6 a.m., and those on the evening shift would have the option of selecting a starting time of 5, 6, or 6:30 p.m. Employees in the Adjustment and Collection Branches, who rely on IDRS, may begin work at 6 or 7 a.m. for the morning shift, and 3, 3:30, or 4 p.m. for the evening shift.

The Employer argues that restricting employees to these starting times would facilitate accomplishment of the mission. With fewer options from which employees may choose, supervisors and managers could monitor better when employees are tardy and those whose work is substandard. Curtailment of starting times would offer manageable core hours. Furthermore, since the Employer is proposing to exclude leads/seniors from working compressed schedules, the proposal would allow them as well as managers, to coordinate their schedules to provide coverage throughout the day, while still being able to take advantage of flexitour and credit hours. Employees who use IDRS would begin and end their shifts while the system is available for use, something that the current schedule does not allow. Moreover, establishing workhours for employees who rely on IDRS is within management's right to assign work.

b. The Union's Position

The Union proposes that regardless of the type of work schedule employees choose, starting times should commence in 1/2-hour increments between 5 and 7:30 a.m. for the morning shift, and between 3 and 6 p.m. for the evening shift. It maintains that its proposal is a reasonable compromise between the current 1/4-hour starting times and the longer intervals proposed by the Employer. Furthermore, it would afford employees the opportunity to maintain current carpool arrangements and have greater flexibility to attend to family responsibilities such as getting children to school and daycare. Should 30-minute starting-time intervals cause problems, the Union would be willing to discuss the impact of hourly starting times.

CONCLUSIONS

We find that the Union's proposal emphasizes the personal convenience of employees without addressing the Employer's objective of better managing its workforce by narrowing the starting-time choices for employees. We find the Employer's alternative to be superior. We note that under the starting-time schedule proposed by the Employer, with the exception of those who rely on the IDRS in the Adjustment and Collection Branches, employees may choose from 12 different arrival times depending upon the type of schedule they work. In our view, this should provide employees with sufficient latitude to maintain carpool and dependent care arrangements while providing the Employer with scheduling that is administratively controllable. As to those who work in the Adjustment and Collection Branches and rely on the computer system to perform their duties, limiting the starting times for evening shift employees as the Employer proposes should ensure that those on an 8-hour schedule have the IDRS available to them the entire time they are on duty.

2. Scope of Participation in Compressed Work Schedules

a. The Employer's Position

The Employer proposes that leads/seniors, unit clerks, control clerks, and employees who work in branches that use the IDRS^{5/} be excluded from working a compressed schedule.

In support of its position, the Employer maintains that since the technical skills of leads/seniors are critical to its day-to-day operations, working a compressed schedule would

^{5/} The portion of the Employer's proposal to exclude from participation in compressed scheduling employees who utilize the IDRS was belatedly raised for the first time during the telephone conference. Accordingly, the Union was unprepared to discuss the issue at that time; subsequently however, the parties were asked to address it in their statements of position to the Panel which were submitted following the conference call. Although this aspect of the issue was not before the Panel when it asserted jurisdiction, both parties now have addressed it and the Panel shall consider it on its merits.

have a negative impact upon the Employer's ability to carry out its mission. Ideally, the Employer desires a "span of control" that would place either a lead/senior or a manager in the unit at all times; a compressed schedule arrangement for leads/seniors would prevent this. Because leads/seniors are one-of-a-kind positions, they should have a 5-day workweek. Moreover, the daily presence of these more experienced employees would afford managers greater flexibility to perform other critical tasks. Even though they would be excluded from participating in compressed work schedules, leads/seniors nevertheless still would have the benefit of working a flexitour schedule and accruing credit hours; moreover, where conflicts in flexitour schedules exist between leads/seniors and unit managers, the Employer would give preference in scheduling to leads/seniors.

Due to the nature of work performed by unit and control clerks, supervisors would be hindered in planning work if these employees were allowed to select a compressed schedule; however, they too, would have the benefit of flexitour scheduling and earning credit hours. A significant amount of work would go undone during their days off under a compressed schedule. Although unit and control clerks perform routine tasks, their work is controlled systematically and other employees who are "drafted" to cover for them on their days off each pay period may encounter difficulty. Furthermore, having managers or other higher graded employees cover for clerks and perform their clerical duties would be an inefficient utilization of personnel resources.

The Employer argues with respect to employees in the Adjustment and Collection Branches, who perform "measured" work and have their evaluations based on comparisons with peer group performance, that it is unfair and counterproductive for some IDRS employees currently to have less than 8 hours of access to IDRS (*i.e.*, they begin before 6 or after 12:30 a.m.), while others have access to the system during their entire shift. Thus, in order for those employees to have maximum use of the IDRS during their selected shifts, it is necessary to exclude them from working compressed schedules to ensure that they begin and end their shifts while the system is available. This would coincide with the Employer's starting times for day shift employees of 6, 6:30, or 7 a.m., and for evening shift employees of 3, 3:30, or 4 p.m., with the last tour ending at 12:30 a.m.

b. The Union's Position

The Union proposes that leads/seniors, unit clerks, control clerks, and those who use the IDRS be given the option of working a compressed schedule inasmuch as they are bargaining-unit employees and should be extended the same privileges as other employees. As to leads/seniors, when they are off every 10th workday, employees who have questions or need assistance could confer with fellow employees or consult their supervisor which is the usual practice when leads/seniors are on leave. Those who hold the position of unit clerk should also be permitted to choose whether they wish to work a compressed schedule; since there is more than one clerk per unit, work would not go undone. Since the Employer retains the authority to approve which day a clerk may take off under a compressed schedule, it could ensure work coverage by preventing all clerks in a particular unit from taking off the same day. Furthermore, leads/seniors or other employees within the unit could be designated as back-ups. Finally, with respect to employees who use the IDRS, while their work is quantified or measured, they do not solely use the system throughout the duration of their shift. In the past, these employees have been permitted to work compressed schedules.

CONCLUSIONS

Having considered the evidence and arguments on this issue, we support that portion of the Union's proposal which would give leads/seniors, unit clerks and control clerks the option of working compressed schedules. We find, however, that employees in the Adjustment and Collection Branches who are required to use the IDRS should be excluded from working compressed schedules.

Despite the assertions of the Employer concerning the critical nature of the work performed by leads/seniors, the evidence reveals that it may be unnecessary for them to be present each workday in a biweekly pay period; they may not necessarily be "one-of-a-kind" employees in the units since some units appear to have more than one person holding a lead/senior position. As to the work performed by unit and control clerks, it does not appear to be so specialized such that during an absence caused by a compressed schedule, other employees within the unit could not share their responsibilities. Furthermore, it is unlikely that all clerks in a particular unit would be off on the same day. Finally,

the Employer's "span-of-control" argument is not supported by evidence of tardiness, abuse of privileges, or productivity decline.

Our determination to exclude from participation in compressed scheduling those who use the IDRS in the Adjustment and Collection Branches is predicated upon the potential detriment to work performance should they have such an option. Assuming a 1/2-hour lunch break is taken by employees, we note that under the starting times which we have imposed in resolving the first issue, supra, some employees who rely on IDRS would start a shift at either 3, 3:30, or 4 p.m. If they were permitted to work a 4-10 schedule, they would not be able to use the in-house computer system for the last hour to 2 hours of the shift, depending upon their starting time; should they be given the option of working a 5-4/9 schedule, those who start work at 4 p.m. would not have access to the IDRS for the last hour of their shift on 9-hour workdays. Clearly, this presents the potential for lower productivity should the option of compressed scheduling be extended to these employees. Even though, for example, working a compressed schedule on the morning shift would give employees access to the IDRS during their entire tour of duty, we have determined that they too should be excluded from participating in compressed scheduling in order to avoid any potential morale problems which might ensue should they be given more advantageous workhours.

3. Rebidding on Alternative Work Schedules

a. The Employer's Position

The Employer proposes that once a year, during a specified period, employees should submit changes to their work schedules; that is, after the Employer determines which changes for the upcoming year are needed, employees would be required "to bid on particular alternative work schedules." It equates this process to the "open season" for making changes in Federal employee health insurance plans. Doing so would allow management the flexibility to react to changes in workload and/or staffing patterns which may be needed during the upcoming year and to exclude from participation in compressed scheduling those whose work performance is poor. In this regard, the Employer anticipates that a large number of employees may take Monday or Friday off under compressed scheduling; should a study of its effect on productivity reveal that number is excessive, a change in days off may be warranted for certain employees. Additionally, the Employer contends that this provision would provide it with a "safety net"

particularly if it can demonstrate that allowing leads/seniors, unit clerks, and control clerks who work a compressed schedule is affecting productivity.

b. The Union's Position

The Union proposes to maintain the practice under the current alternative work schedules agreement; that is, to allow changes in scheduling either as they are needed or at the end of each quarter. This flexibility allows for maintenance of the current system on an on-going basis, thereby providing the parties with recourse to address problems as they arise. The Employer has failed to demonstrate how the current practice adversely affects its mission; therefore, no change is warranted.

CONCLUSIONS

On balance, we find that the Employer's proposal provides the more equitable solution to the parties' impasse over this issue. Given the variety of schedules and starting times from which employees may choose, limiting the number of times during the year when employees may request changes should give greater stability to the alternative work schedules program and afford the Employer better control of its administration. In this regard, it would prevent employees from initiating frequent changes in their work schedules which could have the potential for disrupting the Employer's ability to carry out its mission.

4. Participation of Probationary Employees in Compressed Work Schedules

a. The Employer's Position

The Employer proposes that probationary employees be prohibited from working compressed schedules until they have completed 1 year of cumulative employment. In support of its position, the Employer contends that since many probationary employees are seasonal, that is, they work during recurring periods of employment totaling less than 12 months a year, they must be retrained upon return from furlough; participation in a compressed work schedule would impair the Employer's ability to schedule training for them. Should the "senior" who is charged with on-the-job instruction also be working a compressed schedule, there may be a further complication to providing training. Training serves no benefit if employees are not available to participate. Even after receiving refresher training, employees should demonstrate their proficiency and 1

year of cumulative employment is a reasonable period of time to do so. Such a prolonged delay before these employees would be eligible to work compressed schedules also should serve to decrease reliance on leads/seniors if employees have demonstrated competence over a period of time in performance of their duties.

b. The Union's Position

The Union would allow probationary employees, regardless of their length of service, to work compressed schedules. It reasons that since probationary employees are members of the bargaining unit, they should be afforded the same privileges as other unit members. Working a compressed schedule should not create barriers to training probationary seasonal employees since "the very limited retraining" they receive usually is given during the first few days after their return from furlough. Moreover, it is unlikely that all training would occur during a probationary seasonal employee's day off under a compressed schedule. Where conflict between training and compressed schedules exist, schedules could be rearranged to accommodate training. Probationary seasonal employees who are furloughed and require refresher training upon return should be capable of grasping new concepts and techniques while working a compressed schedule.

CONCLUSIONS

Having considered the evidence and arguments, we conclude that neither party's proposal provides the best solution to the impasse over this issue. In this regard, we believe that the Union may have underestimated the amount of training time required by probationary seasonal employees upon their return from a furlough which could affect their ability to work a compressed schedule. Changes in tax laws may necessitate more than the brief, routine training for employees as the Union suggests. Upon return from furlough, some employees may be placed in new units where work is unfamiliar, requiring extensive training. Furthermore, some employees may need more training than others, especially those with longer periods of layoff. As to the Employer's proposal, while the Panel recognizes that the amount of time needed for training may justify excluding probationary employees from participating in a compressed schedule for a certain period of time, we do not believe that excluding them for the length of time proposed is warranted. Therefore, we shall order the parties to adopt a compromise solution whereby probationary employees who do not have a break in service for at least 6 continuous months shall

be permitted to work a compressed schedule. Probationary employees furloughed after the completion of 6 months of continuous employment shall upon return from furlough be permitted to establish or reestablish a compressed schedule after completion of all refresher training offered by the Employer, provided the furlough did not exceed a period of 1 year. If the furlough lasted for more than 1 year, the probationary employee again must work for a continuous 6-month period before being eligible to participate in compressed scheduling. Probationary employees who are furloughed prior to 6 months of continuous service also would have to work for 6 consecutive months before they are eligible to work a compressed schedule.

In our view, 6 months of continuous employment is a sufficient amount of time for probationary employees to demonstrate proficiency in their duties, which should result in a diminished need for close supervision and intensive training. We note that all probationary employees who work at the center are not seasonal and, therefore, the compromise wording addresses situations where probationary employees may be furloughed as well as when no furlough is contemplated.

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 instituted 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:

1. Starting Times

The parties shall adopt the Employer's proposal.

2. Scope of Participation in Compressed Schedules

The parties shall adopt the Union's proposal as modified to exclude from participation in compressed scheduling employees in the Adjustment and Collection Branches who rely on the Integrated Data Retrieval System to perform their duties.

3. Rebidding on Alternative Work Schedules

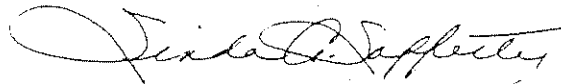
The parties shall adopt the Employer's proposal.

4. Participation of Probationary Employees in Compressed Work Schedules

The parties shall adopt the following compromise wording:

Probationary employees who have completed at least 6 months of continuous employment shall be permitted to work a compressed schedule. Probationary employees who have (1) completed at least 6 months of continuous employment and (2) been furloughed for no more than 1 year shall, upon completion of refresher training, be permitted to establish or reestablish a compressed work schedule. If, however, the furlough exceeds 1 year, the probationary employee must work for a continuous 6 months following any refresher training before being permitted to resume such a schedule.

By direction of the Panel.



Linda A. Lafferty
Executive Director

November 7, 1991
Washington, D.C.