

In the Matter of

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
MENDOTA, CALIFORNIA

and

LOCAL 1237, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 13 FSIP 11

ARBITRATOR'S OPINION AND DECISION

Local 1237, American Federation of Government Employees, AFL-CIO (Union), 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 Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution (FCI), Mendota, California (Employer), that implementation of the Union's proposed 4/10 compressed work schedule (CWS) for vocational trainers in the Educational Department would cause an adverse agency impact.

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through mediation-arbitration by telephone with the undersigned, Panel Member Edward F. Hartfield. The parties were informed that if a settlement were not reached during mediation, I would issue a binding decision to resolve the dispute. Consistent with the Panel's procedural determination, on February 20, 2013, I conducted a mediation-arbitration proceeding with representatives of the parties. During the mediation phase, the parties were unable to settle the matter voluntarily. 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' positions presented during the hearing, and their post-hearing briefs.

BACKGROUND

The FCI in Mendota is a medium security FCI which currently houses 512 male inmates.^{1/} The local Union represents approximately 200 bargaining-unit employees who are part of a nationwide consolidated unit. The parties are covered by a master collective bargaining agreement (MCBA) that was to expire on March 8, 2001; its provisions will remain in effect until a successor agreement is effectuated. At the local level, the parties recently completed negotiations over a local supplemental agreement (LSA). None of the provisions in the LSA pertain to employee work hours.

ISSUE AT IMPASSE

The sole issue before me is whether the finding on which the Employer has based its determination not to implement a 4/10 CWS for vocational training (VT) instructors in the Education Department is supported by evidence that the schedule is likely to cause an adverse agency impact.^{2/} Essentially, the Union proposes to allow the VT instructors the option of working a 4/10 CWS which would include 1 regular day off (RDO) each week.

1/ The Employer anticipates that the institution, which has been open for about 2 years, eventually will house 1,700 inmates.

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 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).

PARTIES' POSITIONS1. The Employer's Position

The Employer contends that the Union's proposed 4/10 CWS for VT instructors is likely to cause an adverse agency impact because it would reduce the number of inmate program completions each year. Should employees work only 4 days a week, the effect would be to extend the time it would take an inmate to complete a program. This means that there would be fewer programs offered each year and fewer inmates who would complete them. Thus, the longer duration of a program would decrease the efficiency of the educational curriculums offered to inmates.

Of the five vocational training program areas—recycling, automotive, warehousing, computers, and building and trades, only two are being taught by VT instructors.^{3/} Under the current 8-hour-day schedule, 5-days-a-week (5/8 schedule), for example, the afternoon recycling class lasts for 2-hours-a-day, for a total of 10-hours a week. If VT instructors work 4 instead of 5-days-a-week, it would take inmates longer to complete the curriculum and, as a result, there would be fewer opportunities for management to offer courses each year. It is in the public interest to have inmates trained for employment when they leave the institution and a reduction of the number of courses offered to inmates over a certain period of time would diminish services provided by the Education Department to the public.

Furthermore, a 4/10 CWS is likely to increase inmate idleness. In this regard, if VT instructors have an RDO 1-day-each-week, inmates would be idle on that day. There are no other employees available to cover course work for the specialty courses which VT instructors teach and there are no guarantees that there would be work available for inmates in their work units where, otherwise, they might go in the absence of having class on a particular day. Idle inmates reduce safety and security within the institution and, thereby, service to the public also would be diminished.

^{3/} Currently, only three of the five VT instructor positions are filled. Because of the vacancies and budget restrictions, programs have been limited to those involving recycling and warehousing. Of the three encumbered positions, two instructors teach two classes a day and one VT instructor teaches one class a day.

2. The Union's Position

The Union maintains that the Arbitrator 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 because the Employer lacks evidence to support its claim of adverse agency impact. The Union denies that the time for completing course work would have to be extended and fewer courses offered, because VT instructors would be available 2 additional hours each workday to provide instruction to inmates. Furthermore, the charts (see attachment) submitted by the Employer to support its claim that fewer programs could be offered and completed each year under a 4/10 schedule do not accurately reflect the number of hours VT instructors actually teach each day and, therefore, the evidence is unreliable.

Under a 4/10 CWS, which would extend workday, inmates would have the opportunity to remain in class for longer periods of time and, in doing so eliminate the allegations of inmate idleness which the Employer claims would be a direct result of a 4/10 schedule. The Union contends that all of the problems associated with inmate idleness should not fall on Education Department employees. Management could return inmates to their assigned jobs, which they typically work 7-hours-a-day, send inmates to the Recreation Department, or make available other adult education classes, rather than allow them to remain idle. The Employer has agreed to permit employees in the Facilities Department, Religious Services Department and the Unit Management Teams to work a 4/10 CWS and there is no reason why the same arrangement should not be made for VT instructors. Furthermore, other institutions permit 4/10 schedules for their VT instructors, which demonstrates that the schedule is "workable."

CONCLUSION

Under § 6131(c)(2)(B) of the Act, the Panel is required to take final action in favor of the 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."^{4/}

Having carefully considered the totality of the evidence presented in this case, I find that the Employer has not met its burden of establishing that an adverse agency impact is likely to occur if the Union's proposed CWS is implemented. The essence of the Agency's position is that implementation of the Union's proposed 4/10 CWS schedule will result in a total decrease in the number of vocational programs that can be completed by inmates. In support of its position, the Agency submitted mathematical comparisons attempting to show the impact of the proposed 4/10 CWS schedule on the Agency's number of completions per year.

While the Agency's submission of data to justify an adverse agency impact is sincere, well-intended, and to be commended, a close analysis of the data does not support a finding of an adverse agency impact. In fact, the opposite is true.

The attached charts represent a direct comparison taken from the data submitted by the parties which reflects the current 5/8 work schedule for teaching and class preparation time for VT instructors who provide instruction in recycling and warehousing, with the Union's proposed 4/10 CWS.^{5/} I have limited

4/ 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).

5/ The Employer included, in its post-hearing submission, calculation charts purporting to show the teaching and class preparation times for employees under a 5/8 schedule. Inasmuch as these charts do not reflect the actual teaching and preparation times that have been in effect, I have determined not to use those charts in a direct comparison with the Union's proposed 4/10 CWS. In this regard, I have

the comparison to the recycling and warehousing programs because those are the only two that are being taught at present. The comparison of the class times under the current 5/8 teaching schedule, which has been in effect for the past 1½ years, with those proposed by the Union under a 4/10 schedule, shows that the current schedule yields a total number of completions per year of 4.5 programs for both the morning and afternoon recycling classes, and 3.5 completions per year for both the morning and afternoon warehousing classes. By contrast, the results under the Union's proposed 4/10 CWS schedule produces a result of 5.5 completed recycling programs per year and 4.5 programs completed per year for the warehousing subject. Furthermore, the comparison of preparation time under the current 5/8 schedule with preparation time under the proposed 4/10 schedule shows that the time would remain the same.

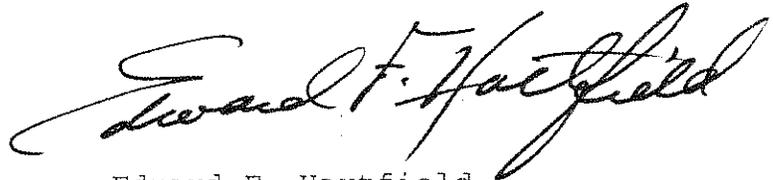
Clearly, in the face of this data, the Agency cannot claim that the number of completed programs would be reduced under the Union's proposal and, therefore, it is unable to substantiate a claim of adverse agency impact.

Finally, during the course of the mediation-arbitration proceeding, the Employer expressed an interest in implementing a work schedule that would expand the number of teaching hours each day for VT instructors. The Union's proposed schedule appears to further that objective because it would expand from 4 hours, to 6-hours-a-day, the number of teaching hours for VT instructors.

chosen to rely on the teaching schedule that has been in effect for the past 1.5 years rather than charts of schedules that have not been in effect.

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 4/10 CWS proposal for VT instructors in the Education Services Department.

A handwritten signature in cursive script, reading "Edward F. Hartfield". The signature is written in black ink and is positioned above the typed name and title.

Edward F. Hartfield
Arbitrator

March 29, 2013
St. Clair Shores, Michigan

Schedule Calculations for 5: 8's Monday Friday 7am-3pm
 Management's proposed schedule
 Agreed time for part 1 1/2 of an 8:20-10:20

Program	Hours/completion	Months	Days/week	Hours/day	Hours/week	Hours/month	Prep Time/week	Before Class	Inmate Lunch	After Class	Total	Completion per year*
Morning Class 8:20am - 10:20 am	100	2.5	5	2	10	40	30 min	12:20pm	3pm	30 min	240 min	5.5
Recycling VT	120	3.0	5	2	10	40	30 min	12:20pm	3pm	30 min	240 min	5.5
Warehousing VT	120	3.0	5	2	10	40	30 min	12:20pm	3pm	30 min	240 min	5.5
Afternoon Class 12:20pm-2:20pm	100	2.5	5	2	10	40	30 min	12:20pm	3pm	30 min	240 min	5.5
Recycling VT	120	3.0	5	2	10	40	30 min	12:20pm	3pm	30 min	240 min	5.5
Warehousing VT	120	3.0	5	2	10	40	30 min	12:20pm	3pm	30 min	240 min	5.5

Total Class Time per class/Month 40 Approximate Class Size 11
 *Approximate class completions/year
 *Number of inmates completing program per year

Schedule Calculations for 4, 10's Monday Thursday 6am-4pm
 Union's preferred schedule

Program	Hours/completion	Months	Days/week	Hours/day	Hours/week	Hours/month	Prep Time/week	Before Class	Inmate Lunch	After Class	Total	Completion per year*
Morning Class 7:15am-10:20am	100	2.083	4	3	12	48	40 min	12:20pm	3:20pm	4pm	240 min	5.5
Recycling VT	120	2.5	4	3	12	48	40 min	12:20pm	3:20pm	4pm	240 min	4.5
Warehousing VT	120	2.5	4	3	12	48	40 min	12:20pm	3:20pm	4pm	240 min	4.5
Afternoon Class 12:20pm-2:20pm	100	2.083	4	3	12	48	40 min	12:20pm	3:20pm	4pm	240 min	5.5
Recycling VT	120	2.5	4	3	12	48	40 min	12:20pm	3:20pm	4pm	240 min	4.5
Warehousing VT	120	2.5	4	3	12	48	40 min	12:20pm	3:20pm	4pm	240 min	4.5

Total Class Time per class/Month: 48 Approximate Class Size: 11
 *Approximate class completions/year 220
 *Number of inmates completing the program each year