

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 53

ARBITRATOR'S OPINION AND DECISION

On February 21, 2013, Local 1237, 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 Justice, Federal Bureau of Prisons, Federal Correctional Institution (FCI), Mendota, California (FCI Mendota or Employer).

Following an investigation of the request for assistance, which concerns a dispute over the type of compressed work schedule (CWS) that should be available for certain employees in the Trust Fund Department (TFD), the Panel determined to assert jurisdiction and directed that the dispute be resolved through mediation-arbitration with the undersigned, Panel Member Barbara B. Franklin. The parties were informed that if the parties could not reach a settlement during mediation, I would issue a binding decision to resolve any open issues. Consistent with the Panel's procedural determination, on June 24, 2013, I conducted a mediation-arbitration proceeding by telephone with representatives of the parties. During the mediation phase of the proceeding, the parties were unable to resolve their dispute voluntarily. Thus, I am required to issue a final decision to resolve the dispute. In so doing, I have considered the entire record, including documents and statements of position presented by the parties prior to the hearing, modifications of their positions during the mediation phase, and the parties' final offers that were orally submitted before the close of the hearing. By agreement of the parties, the record was closed after they submitted their final offers.

BACKGROUND

The mission of the Bureau of Prisons is to protect society by confining criminal offenders in the controlled environments of prisons and community-based facilities that are safe, humane, and secure. FCI Mendota is a relatively new medium security facility that is projected to house almost 2000 male inmates. Currently, according to the Employer, its inmate population is slightly more than one-third of the authorized number. Another 128 inmates live in a minimum

security Federal Prison Camp (the camp) that is adjacent to FCI Mendota. The camp, which is also serviced by TFD employees, is currently operating at full capacity. 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 that was to expire on March 8, 2001, but its provisions remain in effect until a successor agreement is effectuated.

In the TFD, employees work in three areas: the commissaries at the FCI and the camp; the laundries at the FCI and the camp; and the warehouse. On a quarterly basis, employees may rotate posts within the TFD. All but one employee holds the position of materials handler supervisor. Another employee, who is a trust fund specialist, is not included in the parties' proposals for compressed schedules. Currently, there are 10 materials handler supervisors and one vacancy for the position, which the Employer is not now authorized to fill. All employees work a day watch schedule, Monday through Friday, including Federal holidays with the exception of Christmas and Thanksgiving. Nine of the employees work an 8-hour tour of duty from 8 a.m. to 4 p.m.; one employee in the laundry works from 6 a.m. to 2 p.m. The Employer intends to add tours of duty that start later.

At the commissaries, which sell, among other items, over-the-counter drugs, snacks, hygiene products, dish detergent and stamps to inmates, employees are responsible for handling sales, placing orders for supplies, taking inventories, stocking shelves, and counting stamps sold to inmates, who are permitted to make purchases during designated hours. Because the camp commissary is open only on Fridays, the employee assigned to that position has warehouse duties on other days, such as supervising the unloading of trucks and receiving all supplies for the commissaries into the computer system. Employees assigned to the laundries oversee the linen exchange service and the drop-off and pick-up of inmate clothing for washing. Warehouse employees are responsible for handling all deliveries to the institution and ensuring inventory accuracy. One employee assigned to the warehouse occupies the relief position and fills in for other materials handler supervisors who are temporarily absent for some reason.

ISSUES AT IMPASSE

The parties agree that some form of CWS is appropriate. When the impasse was first presented to the Panel, however, they disagreed over whether a 4/10 CWS option (Union proposal) or a 5-4/9 CWS (Employer proposal) should be permitted for materials handler supervisors in the TFD.^{1/}

^{1/} Both parties proposed work schedules under their respective CWS plans. The Employer's schedule was also accompanied by a proposed agreement containing specific details about its proposal. Among other matters, this proposed agreement specified: when employee schedules would revert to a 5/8 schedule (during weeks when employees are participating in training, when the Warden declares an emergency, when employees are placed on a performance improvement plan, during Thanksgiving and Christmas holiday weeks, and when the staffing level for the materials handler supervisor position is less than 9); how to request temporary or permanent changes in a schedule; and the

Shortly before the hearing began, the Employer notified the Union that it would agree to a 4/10 schedule for four specified materials handler supervisor positions. At the beginning of the hearing, the Employer added one more position, thereby agreeing that 50% of the TFD employees (excluding the trust fund specialist) could have the option of working that schedule.

THE PARTIES' POSITIONS

A. Compressed Work Schedule

1. The Union's Position

The Union's last offer would permit all ten materials handler supervisors in the TFD to elect a tour of duty from 6 a.m. to 4 p.m. four days a week, with Monday, Wednesday or Friday as a regular day off, to be determined with management. The Employer could review this schedule after a six-month trial period.

The Union points to 4/10 agreements successfully implemented in other FCIs covering similar employees and argues that at Mendota FCI the proposed schedule would meet all the Employer's needs and actually benefit the operations, without costing any extra money. The two additional hours a day would allow extra coverage during breakfast or when needed for the fog line post during adverse weather or to respond to emergencies. Management has a contractual right to change schedules at any time with 24-hour written notice; therefore, it could change the schedules, with appropriate notice, if it perceived a need for an additional employee in one of the areas. According to the Union's uncontested claim, the Employer has a shorter notice requirement if it needs to change the hours of the relief employee. As a result, it could more easily change that employee's day off, if needed to cover for an unexpected absence.

All ten employees have expressed an interest in having a 4/10 schedule, at least eventually. As FCI Mendota is relatively isolated and far from the employees' homes, working only four days a week would allow them to lower their commuting costs substantially. If they all worked the same hours, car and vanpooling would be easier. Employees could schedule medical and other appointments on their regular days off, rather than taking leave for such purposes. It is unlikely that employees on 4/10 schedules would request many full days of leave because each day off would use ten hours of leave.

The Union suggests that the vacant position could be filled to handle extra work and that, insofar as the Employer's position is dictated by the need to meet standards set by the American Correctional Association (ACA), FCI Mendota could request exemptions from some of those standards.

application of CWS to probationary employees. Despite some apparent agreement, the parties had not initialed or signed any of these terms.

2. The Employer's Position

The Employer's last offer would permit employees in the following positions to elect 4/10 schedules, as specified: all three of the employees assigned to the FCI commissary would have Mondays off and work a tour of duty from 11 a.m. to 9 p.m.; one of the employees assigned to the warehouse (Warehouse #2) would have Mondays off and work a tour of duty from 6 a.m. to 4 p.m.; and the employee assigned to the camp laundry would have Mondays off and work from 6 a.m. to 4 p.m.^{2/}

The Employer claims that it showed its good faith by agreeing to the Union's request for a 4/10 schedule for five employees, which would still allow it to provide essential inmate services. Extending the commissary hours into the evening, when more sales can be made to inmates, makes sense, whereas adding hours in the early morning for the entire TFD would provide no benefit to the institution because there is no inmate movement during that period. All available staff is used now when a fog line is instituted but it is unlikely that the Employer would use TFD employees during breakfast, as suggested by the Union. The usual delivery hours to the warehouse are from 9 a.m. to 3 p.m.; it is essential to have two employees in the warehouse during that period to handle the workload. There are no deliveries before 9 a.m., so earlier hours in the warehouse would not be helpful.

Placing all ten TFD employees on the Union's proposed schedule would result in days when fewer than two employees would be available to work in the FCI commissary and laundry. This could lead to riots or food and work strikes by inmates who believed they were not receiving services to which they were due, which, in turn, could jeopardize the safety and security of the institution. With regard to the laundry, FCI Mendota is unusual in that it has only a centralized laundry facility – with inadequately small machines – and no laundry facilities in the inmate housing areas. As a result, two employees are needed in the FCI laundry every day to handle the huge loads of linens and inmate clothing, which must be returned to the inmates on a tight schedule. For example, among the many standards set by the ACA that the Employer must meet are providing clean clothing three times a week and clean linen and towels once a week. In addition, the employee assigned to the warehouse who is also designated as the relief employee must be available every day to fill other positions because there is almost always someone on leave. Mendota FCI differs from other similar facilities in that it must assign one of the TFD positions to the camp laundry, which does not have laundry machines in the housing areas as do most other camps. Finally, due to the specialized nature of TFD jobs, the Employer cannot move employees from other departments into these positions, as it might do in the Correctional Systems Department (CSD).^{3/} It also is prohibited from filling the vacant position in the TFD.

^{2/} The Employer's proposed schedule also staggers the tours of duty for the two FCI laundry positions that would not be on a compressed schedule, starting one position at 6 a.m. and the other at 11 a.m.

^{3/} In another case presented to the Panel recently, the parties agreed to a compressed work schedule for the CSD.

The Employer emphasized throughout that, as FCI Mendota is currently well below its projected inmate population, it is difficult to determine how the three areas serviced by the TFD will operate when it reaches a full complement of inmates.

B. Side Agreement

During the mediation session, the parties did not discuss any of the various details that are set forth in the Employer's proposed agreement regarding how a CWS would operate. When it became clear that there would not be a mediated resolution of the number of employees to be covered by a CWS, the parties examined the other provisions proposed by the Employer and reached agreement on nine of them. They also agreed on substitute language for one other proposed provision. They did not, however, sign off on any of these agreed terms. Accordingly, I will impose the agreed-upon terms in my Decision and Order.

DISCUSSION

Having considered the parties' proposals and position statements, I am persuaded that the impasse should be resolved according to the Employer's proposal.

The Employer's last-minute shift to a 4/10 schedule for some employees showed flexibility, although I fail to understand why this could not have been achieved much earlier in the parties' negotiations, especially given the Employer's thoughtful rationale supporting its new proposal to allow the three commissary employees to elect a CWS by closing the FCI commissary on Mondays and extending the shopping hours into the evening on the other weekdays.

First, I find that the Employer's reasons for excluding the two FCI laundry positions are reasonable. Under ACA standards, which the Employer is required to meet, the laundry must provide clean clothing three times a week and clean towels and linens once a week. I am persuaded by the Employer's arguments that, due to the inadequate equipment provided at FCI Mendota, it would be impossible to meet those schedules on days when employees on a CWS would be absent. This suggests that if larger machines are provided in the future, the Union might wish to request a CWS for the laundry positions at that time. The Union argues that the Employer can request exemptions from ACA standards. Given the importance of providing clean clothing, linens and towels to inmates on a regular schedule, however, I will not require the Employer to request such a waiver. Although the Union points to agreements in other FCIs to provide CWS for laundry positions, I find it significant that, according to the Employer's uncontested claims, none of those facilities have only centralized laundry operations.

A critical factor in my decision is the uncertainty about future needs caused by the fact that FCI Mendota (but not the camp) is nowhere near its expected inmate population. In such circumstances, it is reasonable for the Employer to proceed more slowly in allowing both of the employees in the FCI laundry to be absent one day a week. I find it significant that the Employer is willing to permit a CWS for the laundry position in the camp, which has its full complement of inmates and where both the current and future needs are clear. An agreement – negotiated or imposed – should have a reasonable likelihood of meeting the parties' needs in the long term. It

would not benefit either party to impose a schedule that could not work after an influx of more than 1000 additional inmates. Accordingly, I will exclude the FCI laundry positions from the CWS.

Next, I find the Employer's rationale for excluding the relief position assigned to the warehouse to be both reasonable and persuasive. According to the Employer, someone is on leave approximately 40 weeks a year, necessitating the redeployment of the employee assigned to the relief warehouse position. The Union claims that the Employer has a contractual right to require that employee to work on the employee's RDO, if needed to fill a temporary vacancy. However, the Employer can do so only with written advance notice, which – although shorter than the notice required for changes to other schedules – could not be provided in instances where the Employer has no advance notice of the impending absence. This could cause enormous problems in such a small workforce, where there are no other employees available and trained to fill the temporary vacancy. Therefore, I will exclude the relief position from the CWS.

Finally, with regard to the camp commissary position, the Employer argued that the employee filling this position also works in the warehouse four days a week and receives and enters into the computer system all deliveries intended for the camp commissary; accordingly, as deliveries are made daily, that employee cannot be absent one day a week. Because the camp commissary is open on Fridays, when presumably the employee filling that position cannot meet warehouse deliveries, I find this argument to be less persuasive than those made on behalf of excluding the laundry and relief positions. In the absence of any specific arguments by the Union countering the Employer's position, however, and relying again on the uncertainties posed by the expected future influx of inmates, I will also exclude the camp commissary position from the CWS.

DECISION & ORDER

In reaching this decision, I have considered the entire record in this matter, including the parties' final statements of position. Pursuant to the authority vested in me by the Federal Service Impasses Panel under the Federal Labor Management Relations Statute, 5 U.S.C. § 7119, I hereby order the parties to resolve their dispute in this matter as follows:

The parties shall adopt the Employer's last offer to resolve the impasse over which positions will be covered by a compressed work schedule. This will permit employees in the following positions to elect a compressed schedule of four 10-hour work days: the three positions assigned to the FCI commissary; the position assigned to the camp laundry; and the warehouse 2 position.

In addition, the parties shall adopt the following provisions to control the operations of the compressed work schedule at Mendota FCI:

- 1) Newly hired BOP employees will be excluded until they complete their one-year probationary period.

2) The Employer may change the schedule of any employee placed in training status scheduled for up to one work week, or during Annual Refresher Training (ART). Ordinarily, an employee placed in a training status for up to one work week, or during ART, will revert to a standard 5/8 work week. Changes in the employee's schedule will be in accordance with the Master Agreement.

3) When the employee is on official government travel or off-site training for more than one day, the employee's schedule will revert to a 5/8 work week. The hours of work on the 5/8 work week will be in conjunction with the scheduled travel or training. If the training is more than one day, the employees may request their choice of hours of work preferences for the non-travel/training days from the immediate supervisor.

4) The CWS is a fixed schedule. As such, any changes to the CWS must be requested in writing to the immediate supervisor. This includes any staff requests to work a 5/8 work week. Requests to be reinstated to the CWS must be made in writing to the immediate supervisor.

5) This agreement is in accordance with 5 U.S.C. and the OPM Handbook for Alternative Work Schedules. This agreement is in no way meant to remove any rights of the employee or employer as listed in 5 U.S.C. or the OPM Handbook for Alternative Work Schedules.

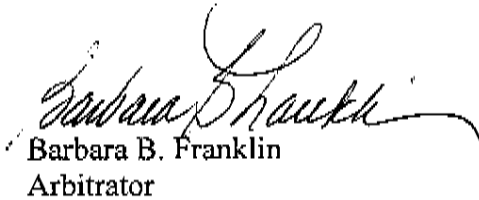
6) Staff wishing to be removed (opt out) from the CWS must request such in writing to the immediate supervisor. Once approved, this change may occur as early as the next week, but no later than the next month. Staff opting-out will not be allowed to opt back in until the time of the next quarterly rotation.

7) During emergency situations to include furloughs, as determined by the CEO, management reserves the right to temporarily revert staff to the 5/8 work week in the Trust Fund Department. In the event of staff shortages, which include unscheduled annual leave, sick leave, temporary assignments of duty (TAD) of four days or more, management reserves the right to revert staff to a 5/8 work week in the affected area.

8) Employees may be temporarily removed from the CWS if they are experiencing performance problems and have been issued a Performance Improvement Plan (PIP) letter. The removal will be at the discretion of the immediate supervisor, and may last for the duration of the PIP. The employee must be placed on a 5/8 work week schedule.

9) Work Schedules will revert to a standard 5/8 work week during the holiday weeks of Christmas and Thanksgiving.

10) Compressed work schedules cannot be implemented until the staffing levels in Trust Fund/Inmate Services are 9 Materials Handler Supervisors or more. At any time the staffing levels drop below 9 Materials Handler Supervisors the CWS will convert back to a 5/8 work week.



Barbara B. Franklin
Arbitrator

July 20, 2013
Washington, D.C.