

In the Matter of

DEPARTMENT OF THE AIR FORCE  
355<sup>TH</sup> MISSION SUPPORT GROUP  
DAVIS-MONTHAN AIR FORCE BASE  
TUCSON, ARIZONA

and

LOCAL 2924, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 14 FSIP 80

### DECISION AND ORDER

Local 2924, American Federation of Government Employees, AFL-CIO, 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 Commander of the Department of the Air Force, 355<sup>th</sup> Mission Support Group (MSG), Davis-Monthan Air Force Base (AFB), Tucson, Arizona (Employer) not to implement the Union's proposed 5-4/9 compressed work schedule (CWS) for General Schedule (GS) unit employees at the Dorothy Finley (Finley) and Davis-Monthan (D-M) Child Development Centers (CDCs).

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through mediation-arbitration with the undersigned, Panel Member Barbara Franklin. The parties were informed that if a settlement were not reached during mediation, a binding decision would be issued to resolve the dispute. On October 16, 2014, a mediation-arbitration proceeding was conducted by telephone with representatives of the parties.<sup>1/</sup> Settlement efforts during the

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<sup>1/</sup> At the conclusion of the proceeding on October 16, the Employer requested to submit additional documentary evidence to support the testimony of its key witness, the current D-M CDC Director, Michelle Crawford. Over the Union's objections, I ruled that the Employer could submit a summary of scheduled and unscheduled leave taken by employees at the CDCs during various weeks and months between December 2013 and September 2014, as well as sworn

mediation phase were unsuccessful. 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' pre- and post-hearing submissions.

### BACKGROUND

The overall mission of Davis-Monthan AFB is to "deploy, employ, support, and sustain attack airpower in support of Combatant Commanders anywhere in the world at a moment's notice[;]" to "train the finest attack pilots for the Combat Air Forces[;]" and "provide every member of Team D-M with responsive, tailored, mission-focused base support." The mission of the 355<sup>th</sup> MSG is to "provide for the operation, maintenance, and security of Davis-Monthan AFB and facilities in support of assigned, attached, dispersed or en route, and alert units." The CDCs "support child care needs while [] Airmen work to accomplish the Department of Defense mission." At the time of the hearing, there were 230 children, ranging in age from six weeks to five years, at the Finley CDC and 152 at the D-M CDC.

The Union represents a unit of 1,000 Wage Grade (WG) and GS professional and non-professional employees; about 25 unit employees currently work at the CDCs as Administrative Assistants (desk clerks), Training and Curriculum Specialists (T&Cs) and Education Technicians (classroom teachers), GS-3 through -9, whose wages and benefits are paid through appropriated funds (APF).<sup>2/</sup> Only the APF Education Technicians

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statements from Ms. Crawford, the Assistant D-M CDC Director, Amanda Walker, and the Director of the Finley CDC, Elizabeth Fleming, concerning the data. The Union was given an opportunity to examine the raw data upon which the summary was based and to submit a written response to the Employer's submission. On October 29, 2014, I held a teleconference with the parties to permit the Union to cross-examine the affiants and to respond orally to the Employer's raw data. The record in this case was closed at the end of the teleconference.

<sup>2/</sup> The Union also represents a bargaining unit of non-appropriated fund (NAF) employees; approximately 54 NAF employees work in classrooms at the Finley CDC, and about 33 work in classrooms at the D-M CDC. In addition to classroom teachers who perform the same jobs as the APF

would be affected by the Union's final proposal.<sup>3</sup> At the time of the hearing in this case, it appears that there were 15 APF Education Technicians in the two CDCs, 13 of whom worked at the Finley CDC. The conditions of employment of the WG and GS unit employees are governed by a master collective bargaining agreement (MCBA) that expired in April 2014, but continues in effect by operation of law.

#### ISSUE AT IMPASSE

The issue in dispute is whether the finding on which the Employer based its determination not to implement the Union's proposed 5-4/9 CWS in the Finley and D-M CDCs is supported by evidence that the schedule is likely to cause an adverse agency impact.<sup>4/</sup>

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Education Technicians, some NAF "flex" employees serve as "openers," "breakers," and "closers" who fill in for APF employees whose schedules start later than 6:30 a.m., end before 5:30 p.m. or are on regular breaks. No NAF employee would be eligible to work a CWS under the Union's proposal.

3/ The Union's original proposal sought a CWS schedule for all APF employees. During the mediation phase of the hearing, the Union modified its proposal. This decision addresses only the modified proposal.

4/ 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).

The Union's proposed Memorandum of Understanding (MOU) would provide, among other things, the following: full-time CDC unit employees could choose a 5-4/9 CWS; employees opting to work that schedule would submit written requests to their supervisors, including their desired regular days off (RDOs), which could be on a Monday, Wednesday or a Friday<sup>5/</sup> during the pay period; supervisors would be required to make every reasonable effort to comply with an employee's request, which would be approved or disapproved in writing within 10 calendar days after receipt; employees whose requests are disapproved would be provided written explanations, with any disagreements resolved through the negotiated grievance procedure; when a holiday falls on an employee's RDO, the employee would receive a day off in lieu of the holiday on the preceding regularly scheduled workday; supervisors could temporarily change an employee's CWS to a basic 8/5 schedule when required to do so for such purposes as official travel or training, or other operational requirements; and the MOU would remain in effect for a minimum of 1 year.

#### POSITIONS OF THE PARTIES

##### 1. The Employer's Position

The Arbitrator should find that the evidence upon which the Employer bases its determination not to implement the proposed 5-4/9 CWS for APFs at the installation's CDCs establishes that the schedule "would adversely impact the [CDCs'] mission and jeopardize the welfare of [] customers by increasing the cost of Agency operations, reducing the level of service provided, increasing the stress of care providers, and weakening the relationship that caregivers establish with children and parents."<sup>6/</sup> Among other things, the CDCs are required to meet the standards of the National Association for the Education of Young Children (NAEYC), which indicate that "teaching staff develop individual relationships with children" and that "when too many

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<sup>5/</sup> The Union's original proposal required RDOs on Mondays and Fridays only; the Union added Wednesday as an RDO when it modified its proposal during the mediation phase of the proceeding.

<sup>6/</sup> The mission of the CDCs is to "develop, implement and maintain a quality child development program that . . . provides age appropriate programs that meet the physical, emotional, cognitive and social development of children six weeks to five years of age."

adults are involved in the child's care, the child does not develop a reciprocal, sustained, responsive and trusting relationship with any of them." The relationship between child and caregiver "becomes exponentially more critical" and challenging in a military environment because of the frequent absences required of parents who are serving their country. Thus, the optimal care of children is based on "consistency, quality and in continuity of care provided."<sup>7/</sup> As demonstrated below, the Union's CWS proposal would have an adverse impact on these key factors, an outcome that is "directly contrary to the core mission of the CDCs and must therefore result in a determination that a CWS should not be established."

Due to the "historically high attrition rates" of NAF employees, the CDCs struggle to maintain staffing levels sufficient for daily operations. In this regard, NAF employees can resign their positions with little or no notice and it takes an average of 6 to 8 weeks to fill behind them. Background checks for Department of Defense child care workers also have become much more stringent since 2012, resulting in considerable difficulty in obtaining employees who have current, complete, and adjudicated suitability determinations, which are required for at least one staff member in each classroom. If the Union's CWS proposal is implemented, it would introduce an additional 26 workdays per year "where APF employees will be absent and must be backfilled with NAF employees," exacerbating the CDCs' ongoing struggles to maintain staffing levels. Moreover, if a CWS results in fewer hours for NAF employees, they might decide to quit their jobs; the difficulty in finding qualified NAFs to take these positions would further undermine the quality of childcare at the centers. Because high attrition and the

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<sup>7/</sup> In support of these points, the Employer cites a number of sources, including the NAEYC Standards; "Caring for Our Children: National Health and Safety Performance Standards, Guidelines for Early Care and Education Programs," 3<sup>rd</sup> Edition (a collaborative project of the American Academy of Pediatrics, the American Public Health Association, and the National Resource Center for Health and Safety in Child Care and Early Education); Air Force Instruction (AFI) 34-248 (October 1, 1999), which sets forth the required staff-to-child ratios, based on the age of the children in each classroom, to ensure that there are an adequate number of adults to protect the health and safety of children and implement a developmental program; and "Air Force (AF) Child Development Center (CDC) Inspection Criteria" (revised as February 2014).

difficulties with background checks are factors outside the CDCs' control, "the end result will be an adverse impact on the Agency's ability to provide consistent, quality care to the children."

The testimony of Carol Cowart, the current Director of the CDC at Grand Forks AFB, supports the Employer's claims. Starting in July 2008, the Grand Forks AFB CDC implemented a 4/10 CWS with five APF classroom teachers participating. Grand Forks terminated that schedule in February 2014 because management "was having a hard time covering classrooms," even though the number of participating APF classroom teachers had dropped to three. In this regard, she testified that the CDC: experienced difficulty in getting an adequate number of qualified NAF classroom teachers to cover the staff-to-child ratios required by AFI 34-248; had to use its NAF employees "almost on a full-time basis;" and had to extend their work hours. The root issue, in her view, is that CWS is "not supportive of the continuity of care" of the children. This is because, during RDOs, the primary caregiver is not in the classroom or available to communicate consistently with parents. In conclusion, she advised that CWS is not helpful to the CDC program in terms of budget and staffing costs.

Implementation of the Union's CWS proposal also would produce "one of two unfavorable scenarios: The leave opportunities for all employees would be adversely affected or the CWS would increase the cost of Agency operations." This is because each CDC has established a baseline number of employees who can be absent on scheduled leave on any given day: at the D-M CDC that number is three and at Finley it is seven. The baseline ensures sufficient staffing to meet mission requirements while allowing a limited number of unanticipated absences due to illness or emergencies. All APF and NAF employees now have the opportunity to take leave on any day of the week they choose. If all of a center's APF employees were on a 5-4/9 CWS, however, and two employees chose RDOs on Monday and Friday, only one NAF employee could take a Monday or Friday off. This would result "in considerable strain on working relationships and morale." While management could increase the baseline numbers on RDOs to avoid limiting leave opportunities, this would require the hiring of additional staff. Assuming the Agency would be able to surmount its historical difficulties and hire more NAF employees, the annual cost in salary and training

to cover RDOs would be "approximately \$100,000."<sup>8/</sup> In later testimony, the Employer stated that hiring and training each new NAF employee costs approximately \$12,000; if the CWS necessitates the hiring of 7 new NAF employees, the cost would be approximately \$85,000. Since the CDCs are currently charging the DoD maximum allowable rate to its customers, the majority of whom are young military families with limited income, "the Agency would be unable to mitigate the increased operating costs associated with the CWS." Moreover, keeping the APF teachers in the classroom until 5:30 would not save money, since NAF employees, who are paid for a minimum of two hours, would still be necessary to close the classrooms after the APF employees leave.

The Employer's concerns about the adverse impact that RDOs would have on the accomplishment of the CDCs' mission and the cost of agency operations were substantiated during the med-arb proceeding by Ms. Crawford, the Director of the D-M CDC. Among other things, she is responsible for finding replacements for employees who call in sick or provide other justification for unscheduled absences. Her testimony was buttressed by additional data submitted on October 22. In her sworn statement and responses to questions regarding a "truly random sample" of 9 weeks of scheduled and unscheduled leave use from June 30 through August 29, 2014, she indicated that the total workforce of the D-M CDC during this time frame averaged 37 employees, including NAF employees. The average number of the total staff who called in for unscheduled leave each week during the period was 10.22, and the daily average was 2.14. When combined with the average number of staff during this time period on scheduled leave, 18.21 percent of the workforce at the D-M CDC was out each day. Sworn statements from the Assistant Director of the D-M CDC and the Director of the Finley CDC, analyzing randomly collected data from other time periods, show similar high rates of daily leave usage. In this connection, in individual weeks selected in each of the 9 months from January through September 2014, 17.28 percent of the workforce was on scheduled or unscheduled leave at the D-M CDC, and during the months of December 2013 and June 2014, 13.82 percent of the workforce was out each day on scheduled or unscheduled leave at the Finley CDC. According to the Assistant Director of the D-M CDC, the unscheduled leave figures include individuals who quit without

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<sup>8/</sup> Employer documents provided prior to the med-arb proceeding estimate that the annual cost of CWS for both CDCs combined would be \$1,686,524.25 and for the D-M CDC alone would be \$13,908.27.

notice or those who continued on extended leave. In such circumstances, providing coverage for an additional 26 RDOs per year for each APF employee on a CWS would make an already difficult situation completely untenable.

APF employees already have inherent advantages over NAFs, such as guaranteed hours, higher wages and rates of leave accumulation, and greater career progression. In addition to lowering the morale of NAF employees because of its limitations on their ability to take leave on days when APF employees have scheduled RDOs, the fact that only APF employees would be eligible to work a CWS under the Union's proposal "will aggravate the [] [historically] strained relationships" between these two groups of employees, "thereby driving down overall employee job satisfaction and morale." Any decrease in morale or increase in tensions between these employees "will certainly result in a diminished quality of care for the children" and diminish the level of services furnished to customers, both parents and children. Additionally, as the Union's modified proposal does not include desk clerks and trainers, those employees might be upset over unequal treatment among the APF employees. In support of these assertions, the Grand Forks AFB CDC Director testified that under the 4/10 CWS at that facility some of the NAF classroom teachers were jealous of the fact that APFs on the CWS had 3-day weekends, undercutting teamwork and mutual respect. Overall, employees "on either side of the coin" at Grand Forks were not happy, which is another reason that the CWS was terminated.

## 2. The Union's Position

The Panel should find that the Employer has not met its burden under the Act of demonstrating that the proposed 5-4/9 CWS is likely to cause an adverse agency impact; rather, it would not increase the cost of Agency operations, "reduce the level of service provided, increase stress of care providers, and weaken the relationship that care givers establish with children and parents." Nor would the establishment of CWS at the CDCs require the Agency to hire additional staff to cover and supervise employees "for the sole purpose of CWS," result in substantial changes to operations and disrupt the consistency and continuity of service, or "disrupt the quality of care provided or place the children in harm's way."

The Employer's argument that CWS would increase the cost of Agency operations is "speculative" because the CDCs are continuously required to hire new NAF employees regardless of



CWS. This is evidenced by the fact that management has hired 11 NAF employees "in the past few months." In addition, the CDCs have "lost money without implementation of CWS." Moreover, management increased customer fees in October 2014 to the maximum DoD allowable rate, and this was not due to CWS. Significantly, the financial report submitted by the Employer in support of its allegation "is erroneous." Not only are employees' names, grades and working hours not current, but the Agency included overtime pay and Sunday premium pay "which is not part of the CDCs' duty hours." The \$1,686,524.25 that it estimates CWS would cost is "preposterous" and the minimal information it provided contains numerous inaccuracies. Among other things, the Employer's estimate: (1) is based on assumptions regarding the work hours of APF and NAF employees that are inconsistent with the CWS the Union is proposing; (2) projects staff for all rooms and all APF positions when approximately nine rooms have been closed for a minimum of 6 months and a maximum of 2 years; and (3) adds NAF staff for no apparent reason. An accurate accounting of the financial impact of CWS reveals that its implementation at the CDCs actually would be "more cost-effective for the Agency."

As to the Employer's claim that CWS would reduce the quality of care and continuity of service, the opposite would be the case. By providing daily work hours from 7:30 a.m. until 5:30 p.m., "APF employees will be able to interact with parents at the end of the day" instead of having to relay messages through NAF employees. Moreover, the current practice, whereby children are moved to combined rooms at the end of the day when employees leave, could be eliminated since the expansion of daily work hours under CWS would permit management to maintain the required staff-to-child ratios. The practice of combining rooms "is non-conducive for children, parents and staff" and its elimination will "reduce accountability issues" and stress for the staff and children. As additional benefits of CWS, the Agency will be able to release NAF employees prior to their currently scheduled times, and APF employees will be able to assist other classrooms when their own children have left for the day. They will also have added time to accomplish other duties, such as documenting informal conferences, preparing formal conferences, and preparing formula and bottles for the infants at the D-M CDC.

The Employer's arguments regarding the impact CWS would have on the continuity of care is undercut by the testimony of Veronica Payne, an Education Technician at the D-M CDC with 10 years of experience working at both. She stated that, on a

regular basis, she often does not know exactly when she will be relieved of childcare duties throughout the workday, and that children are often moved to different classrooms, especially when sleeping. Additionally, Ms. Payne testified that she has had to add lines to Form 1930, used to list employees' entering and leaving classrooms, because of the frequency that this occurs. As to the Employer's claim that CWS would increase stress levels, in her view adding an extra hour to her workday would reduce the stress she currently feels because of the movement of children to different classrooms at the end of the day. It would also permit her to speak with parents directly about their children at the end of the school day, as they prefer, rather than having to relay information to them through NAF flex employees who currently work in the afternoons after 4:30 p.m. The Union's second witness, Paulina Cadina, an Education Technician (and Union steward), testified that it is the combining of classrooms at the end of the day that makes the job stressful for everyone. In this regard, parents get upset when children are moved and they do not know where they are. In her view, extending her workday by an hour would reduce stress levels rather than increase them, as the Employer argues.

The Employer's admitted difficulty in ensuring that enough NAF employees have security clearances so they can cover for classroom APFs at the end of the day also would be alleviated if a CWS is implemented. APFs would be in classrooms until the last child departs at 5:30 p.m. so that no employees without security clearances would be alone in a classroom with children. NAF flex employees would work the regular duty hours of APFs during their RDOs, normally 7:30 a.m. to 4:30 p.m., along with the regular morning and afternoon NAF staff. As staff-to-child ratios decrease at the end of the day, NAF flex employees could be released from their duties, thereby reducing "expenditure for the Agency." The Employer's assertion that a 9-hour duty day would exacerbate stress levels "allegedly" reported by staff members, negatively affecting the caregiver's ability to recognize health and safety hazards and protect children from harm, also "is pure speculation." To the contrary, CWS "will reduce stress levels for APFs" by allowing them to spend more time with their families, and would counteract the increased stress levels the Agency caused when it required the CDCs to remain open for business during Air Combat Command (ACC) Family Days. Additionally, APF employees would be able to schedule appointments on their RDOs, reducing the contentiousness between management and employees over the use of annual and sick leave, a subject that has resulted in the filing of "numerous grievances." RDOs would "also benefit APFs with minimum hours of

sick leave or annual leave." While "in a perfect world," continuity of care would be achieved if children have only one primary caregiver, the reality of childcare is that "teachers take vacations, become ill or have appointments to attend," so it is important to have additional teachers involved in their development "especially with military dependent children."

The Union has "several concerns" about the additional information on leave usage the Employer was permitted to submit to clarify the testimony provided by Ms. Crawford. In this connection, the sworn statements of Ms. Walker and Ms. Fleming should have been declared inadmissible because they did not provide testimony at the med-arb proceeding on October 16. The Union also had difficulty both viewing and understanding the raw data the Agency used to compile its summary of scheduled and unscheduled leave. While all of the management officials who submitted sworn statements indicated that the weeks and months upon which their summaries are based were selected "randomly," it is "disconcerting" that they included the months of June, July and December, "which are historically high" for leave use due to holidays and vacations in the Tucson school districts. In addition, the Agency added attrition, physical restrictions, and absences under the Family Medical Leave Act, the Office of Workers' Compensation Programs, and medical emergencies of the "total workforce" as scheduled leave. Such occurrences are infrequent and do not provide an accurate account of scheduled and unscheduled leave, nor does the inclusion of desk clerks, T&Cs and supervisors in the total workforce make sense because "the aforementioned are not replaced by NAF employees." Overall, the data the Employer provided "do[] not link an established CWS schedule to the use of scheduled and unscheduled leave or an adverse financial impact to the Agency."

The Employer's assertion that NAF employees are not permitted to serve as supervisor-on-duty "is false," and its statement that its decision to use classroom teachers and T&Cs to act in that capacity "is sometimes contrary to the continuity of care for the children" is an admission that "it deviates from regulations and uses 'continuity of care' when convenient." Classroom APFs assist desk clerks on a regular basis and not just "when facing mission failure," as the Employer suggests. When doing so, NAF employees replace them in the classroom. Therefore, CWS "will not impact the quality of care and continuity of service, nor will CWS have an adverse impact on CDC operations."

### CONCLUSION

Under § 6131(c)(2)(B) of the Act, the Panel is required to take final action in favor of an 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."<sup>9/</sup>

Having carefully considered the evidence and arguments presented by the parties,<sup>10/</sup> I conclude, for the reasons set forth more fully below, that the Employer has not met its burden of demonstrating that the Union's proposal for a 5-4/9 CWS for the APF Education Technicians would cause an adverse agency impact within the meaning of 5 U.S.C. § 6131(b).

The Employer repeatedly stated that its major concern with instituting a CWS is the adverse effect it would have on its ability to provide consistent, quality care to the children whom it serves. Its primary concern that having Education Technicians on a CWS would harm its ability to fulfill its mission is

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<sup>9/</sup> 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, 97<sup>th</sup> Cong., 2d Sess. at 15-16 (1982).

<sup>10/</sup> The Union has requested that I refuse to admit the statements of Ms. Walker and Ms. Fleming because they did not testify at the initial med-arb hearing. As their testimony was pertinent to the supplemental documents I allowed the Employer to provide after that date, I deny the Union's request and admit the statements as part of the official record in this case.

compelling but the arguments and documents it provided to substantiate its fears are not persuasive. In particular, it claimed that the substitution of a NAF employee on the APF employee's RDO would be confusing and frightening to the infants and young children who need the comfort and continuity of care provided by their assigned classroom teacher or caregiver and that, in some instances, it could present a threat to their security. In contrast, even taking into account the possibility that the Union introduced a Form 1930 from a day when the movement of personnel in and out of one classroom was particularly heavy, the record showed that a number of different adults care for the children every day: "openers" early in the day; "closers" at day's end and "breakers" when the primary teacher/caregiver takes a break twice a day. In addition, the leave charts supplied by the Employer show a high degree of both scheduled and unscheduled leave; although, as discussed below, those charts are confusing and not particularly useful, it can be assumed that the APF employees are among those who took large amounts of leave. Uncontroverted evidence also showed that APF employees are sometimes pulled from the classroom to fill in for absent desk clerks. In all these cases, it can be assumed that the classrooms were led by a NAF employee in the absence of the APF employee. In this regard, the record is clear that APF Education Technicians and their NAF equivalents receive the same training and do the same jobs. It follows that, although the children may be more comfortable with their regularly-assigned teachers and caregivers, the substitution of a NAF teacher/caregiver on 1 day every 2 weeks would not be an extraordinary event and would not jeopardize either the children's well-being or their safety. Moreover, the break in the continuity of care caused by one RDO every pay period is counter-balanced to some degree by the continued presence of the APF Education Technicians on the 8 days each pay period when they would be in the classrooms until the end of the CDC day. And the ability of those APF employees on a CWS to interact with the parents at the end of the day should enhance the quality of the childcare they provide by allowing them to explain matters of immediate concern to the parents and to answer questions regarding any issues that arose that day. Finally, the ability of employees on a CWS to schedule appointments for themselves and their family members on their regularly scheduled RDOs appear to provide two benefits that could improve the quality of care provided to the children: (1) by lowering the stress on employees who currently have insufficient time during the workweek to attend to personal matters, the ability to attend to such matters on their RDOs may enhance their ability to focus on the children under their care; and (2) those employees may need

to take less unscheduled leave, thereby lowering the number of times a NAF employee will be called in as a substitute.

For all these reasons, I conclude that the Employer has not met its burden of establishing that the Union's proposal would cause an adverse impact on the Agency by diminishing the level of services it furnishes to the public. In this regard, the testimony of the director of the CDC at Grand Forks AFB was not persuasive for two reasons: (1) the CWS at issue there was a 4/10, which adds an additional RDO each pay period for each employee; and (2) the ratio of NAF employees to APF employees at the D-M and Finley CDCs is far higher than at Grand Forks, which leads to a presumption that it would be easier for the Employer to find a substitute for the APF employees on their RDOs. This presumption may not in fact turn out to be correct, but it is not possible to make that finding on the record before me. In addition, I have not considered the issue of morale in coming to this conclusion, given the conflicting arguments as to whose morale would be most affected by the change in schedules. Again, only actual experience under a CWS is likely to establish such an intangible effect.

Similarly, I conclude that the Employer has not established that the CWS proposed by the Union would cause an adverse impact on the Agency because of an increase in the cost of its operations. The Employer made it clear that the only expense that is meaningful in this case is the cost of hiring, training and covering the salaries of additional NAF employees. It stated that the annual cost of salary and training for NAFs would be approximately \$100,000 per year; elsewhere, it put the cost of hiring and training at approximately \$85,000 per year for the seven employees that might be needed to replace the absent APF employees.<sup>11/</sup> Through the testimony of three of its CDC managers, the Employer submitted leave charts for randomly selected weeks during FY 2014, showing high degrees of both scheduled and unscheduled leave. As interpreted by the Employer, these charts demonstrate that, on a daily basis, between 17.28% and 18.21% of the employees in the D-M CDC are on scheduled or unscheduled leave; the Finley CDC data showed 13.82% of the employees on leave. Although I have no basis on which to doubt the veracity of this information, I find the data too confusing and incomplete to provide much help. For example, testimony showed that the D-M data included kitchen employees

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<sup>11/</sup> It is unclear how the Employer arrived at the amount of more than \$1.6 million used in its initial statement of position.

and desk clerks, who are not covered by the Union's proposal. More importantly, the data for both CDCs provide staff figures for the entire facility, which does not allow an examination of the effect of the Education Technicians' leave usage on classroom coverage. Moreover, some of the data covers periods when one would expect to see a high volume of leave - e.g., December and summer vacations. This suggests, but does not prove, that annual leave figures for the CDCs might be lower. One conclusion did stand out, however: the baseline figures for scheduled leave established for the two CDCs were exceeded on a regular basis. This undermines the Employer's argument that the addition of RDOs for a small number of APF employees will lead to an unacceptable financial burden; rather, it leads me to conclude that, to some extent at least, management could address its current and anticipated leave problems by controlling scheduled leave for all employees.

Nonetheless, I understand that the Employer has a problem attracting and retaining qualified NAF employees, who - because there is more flexibility in scheduling NAFs - can be less expensive than APFs, who must be given 40-hour assignments. I also understand that the cost-savings that the Union projected from a 9-hour CWS schedule might not materialize due to the fact that the Employer has to pay NAF employees for a minimum of 2 hours. It is simply impossible to determine now - without any documented experience with a CWS schedule for a small number of employees in this particular unit - how that schedule will affect the overall financial picture for the Employer.

Based on all the findings set forth above, I conclude that the Employer has not established that the implementation of the Union's proposal for a CWS for the Education Technicians would cause an adverse effect on its operations within the meaning of the Act.

ORDER

Pursuant to the authority vested in it by the Federal Employees Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6131(c), the Federal Service Impasses Panel under § 2472.11(b) of its regulations hereby orders the parties to return to the bargaining table and negotiate over the Union's proposed 5-4/9 CWS in the Finley and Davis-Monthan Child Development Centers.

By direction of the Panel.



Barbara B. Franklin  
Arbitrator

November 25, 2014  
Washington, D.C.