

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF VETERANS AFFAIRS  
DECATUR, GEORGIA

and

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2278

Case No. 17 FSIP 049

DECISION AND ORDER

This case, filed by the American Federation of Government Employees, Local 2778 (AFGE or Union) on March 29, 2017, under the Federal Employees Flexible and Compressed Work Schedules Act (Act) of 1982, 5 U.S.C. § 6120, et seq. concerns the Department of Veterans Affairs, Decatur, Georgia, (VA or Agency) seeking to terminate the compressed work schedules (CWS) of some bargaining unit employees.

The Agency provides medical services for Veterans in the state of Georgia at a primary medical center as well as thirteen associated community-based outpatient clinics (CBOCs). The parties operate under a 2011 national agreement between the United States Department of Veterans Affairs and the American Federation of Government Employees. There are approximately 2,500 employees in the bargaining unit, ranging from WG-2 to GS-13. The bargaining unit consists of various positions from Nurses to Housekeepers to Information Technology (IT) employees. The termination of the CWS impacts eleven IT employees who work for the Office of Information Technology (OIT). These employees provide IT technical and networking services for the medical center and the thirteen CBOCs. The IT employees on the CWS currently work a 9-4/5 schedule.<sup>1</sup>

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<sup>1</sup> Under a 4/5-9 schedule, employees work eight, nine-hour days and one eight-hour day with one regular day off during each pay period.

In February 2017, the Agency informed certain IT bargaining unit employees that it was terminating their CWS on April 3, 2017. The Union requested to bargain, and the Agency initially complied. However, before the deadline for the Union to submit a response, the Agency indicated that it was proceeding with implementation. As a result, the Union filed an unfair labor practice (ULP) charge with the Federal Labor Relations Authority (FLRA) against the Agency. The parties settled the ULP charge with an agreement to return to bargaining.

After the parties were unable to reach a resolution through negotiations, the Union requested assistance from the Panel. The Agency submitted a declaration of adverse agency impact, and the Panel asserted jurisdiction on May 10, 2017, over this case under the Act. This case was put into abeyance on May 18, 2017, pending the appointment of a new Panel prior to a resolution. While the case was in abeyance, the Agency again indicated to bargaining unit employees that it was going to implement the termination of the CWS. In response, the Union filed a series of ULP charges with the FLRA against the Agency. The Agency has not yet terminated the CWS.

Although the Panel initially asserted jurisdiction over this case, in light of additional information and submissions by the Agency, the Panel has reevaluated its jurisdiction over this matter.<sup>2</sup>

### ISSUE

The sole issue to be addressed by the Panel is:

Whether the Panel can retain jurisdiction because an appropriate Agency official had the proper delegation of authority under the Act to make a declaration of adverse agency impact.<sup>3</sup>

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<sup>2</sup> Cf. *U.S. Small Bus. Admin.*, Wash. D.C., 51 FLRA 413, 423 n.9 (1995) ("[T]he Authority may question, sua sponte, whether it has subject matter jurisdiction to consider the merits of a dispute.").

<sup>3</sup> 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).

## POSITIONS OF THE PARTIES

### 1. The Agency's Position

The Agency submitted a declaration of adverse agency impact issued and endorsed by the OIT Network Chief Information Officer (CIO) and the OIT Region 3 Director. The Agency did not initially include any information indicating that the Secretary of the VA had delegated his authority under the Act to either of these two positions. When provided an example of such a delegation given to Veterans Health Administration (VHA) Directors over employees under their jurisdiction, the Agency responded with the assertion that the OIT Network CIO position is equivalent to a VHA Director. When pressed to support this claim, the Agency provided an organization chart for OIT. The Agency did not provide any further support for a delegation of authority under the Act.

### 2. The Union's Position

The Union did not offer any arguments or evidence concerning any delegation to the OIT Network CIO of authority under the Act.

## CONCLUSION

Under § 6131(a) of the Act, the Agency must provide a declaration by the Head of the VA of an adverse agency impact caused by a CWS if it seeks to terminate that CWS. Furthermore, Panel Regulations concerning the Act state that a request for assistance from the Panel under the Act must contain "[a] copy of the agency's written determination and the finding on which the determination is based, including, in a case where the finding is made by a duly authorized delegatee, evidence of a specific delegation of authority to make such a finding."<sup>4</sup> Without a specific delegation, the Panel cannot assert jurisdiction over a request for assistance on a CWS matter or resolve the merits of any declaration of adverse agency impact.

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The Act requires the head of an agency or his designee to make the determination that the CWS has had, or would have, an adverse agency impact. The burden of demonstrating that a proposed CWS has had, or would have, an adverse agency impact falls on the employer under the Act.

<sup>4</sup> 5 C.F.R. § 2472.4(a)(6).


In the instant case, the Agency has failed to provide such evidence of a delegation. The Agency provided an adverse agency statement issued and endorsed by the OIT Network CIO and the OIT Region 3 Director, but did not provide any information indicating a delegation of authority under the Act to either of these positions. When presented with evidence that the Department of Veterans Affairs had made such a delegation to VHA Directors, the Agency presented an unsupported statement that the VHA Director is equivalent to the OIT Network CIO. The Agency also provided an organizational chart of its IT department. Like its cursory statement regarding equivalence to a VHA Director, the chart fails to establish that the CIO has delegated authority to make decisions concerning CWS. The Panel is not satisfied by either piece of evidence.

Absent evidence that properly demonstrates a proper delegation, such as the VHA delegation referenced infra., the Panel cannot maintain jurisdiction or hear the merits of the Agency's declaration of adverse agency impact. Were the Agency to present a proper delegation under the Act, the Panel would then consider the merits of any adverse agency impact statement. However, without a proper delegation, the Panel does not have jurisdiction to consider this matter under the Act.

**ORDER**

Due to lack of jurisdiction under the Federal Employees Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6131(a), the Federal Service Impasses Panel hereby rescinds jurisdiction over this matter and dismisses this case.

By direction of the Panel.

  
Mark Anthony Carter  
Chairman

September 6, 2017  
Washington, D.C.