

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE AIR FORCE
412th TEST WING

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1406

Case No. 17 FSIP 077

DECISION AND ORDER

The Department of the Air Force, 412th Test Wing, (412 TW or Agency) filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Employees Flexible and Compressed Work Schedules Act (Act), 5 U.S.C. § 6120, *et seq.*, to resolve an impasse arising from its determination to terminate the 4/10 compressed work schedule (CWS) for bargaining unit employees (BUEs) who work in the 412th Maintenance Group (MXG) and are represented by Local 1406 of the American Federation of Government Employees (Union).

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through face-to-face mediation-arbitration at Edwards Air Force Base (Edwards AFB) with the undersigned, Panel Member F. Vincent Vernuccio. The parties were advised that if no settlement was reached during mediation, I would issue a binding decision to resolve the dispute. Consistent with the Panel's procedural determination, I conducted a mediation-arbitration on September 26, 2017, with representatives of the parties. Because the mediation portion of the proceeding failed to result in a voluntary settlement, I am, in accordance with 5 U.S.C. § 6131 and 5 C.F.R. § 2472.11 of the Panel's regulations, required to issue a final decision resolving the parties' dispute. In reaching this decision, I have carefully considered the entire record, including the closing statements and documents submitted by the parties on September 29, 2017.

BACKGROUND

The mission of the Agency is to conduct on-ground and in-flight tests on new aircraft and their components, weapons and software systems to ensure that they meet operational, warfighting, combat support and/or training requirements. The MXG maintains 69 "highly modified" test aircraft assigned to the TW. Approximately 935 civilian employees and 556 military personnel - a total of 1,491 - currently work for the MXG. This number is augmented by a fluctuating number of contract employees. Of the 935 civilians, 569 are bargaining unit employees (BUEs) represented by AFGE Local 1406. The bargaining unit is predominantly filled with Aircraft Mechanics who work in Job Series 8852 at the Wage Grade 11-12 level. The MXG workforce is responsible for inspecting the test aircraft before and after each flight; scheduling and performing routine maintenance on the aircraft and making repairs to them whenever necessary. Mechanics are assigned to one of three Aircraft Maintenance (AMXS) Squadrons: 412 AMXS, 912 AMXS, and 412 MXS. The 412 AMXS maintains Fighters (e.g., F-16s, F-22s and T-38s). The 912 AMXS maintains bombers, cargo and in-flight refueling aircraft (e.g., B-1s, B-2s and B-52s). The third squadron, the 412 MXS provides "back-shop" maintenance for the other two by, for example, maintaining and/or overhauling engines; repairing on-board computer systems; building and storing missiles, bombs and other ammunition and calibrating aircraft gauges, testers and scanners. Mechanics typically work in crews of three. BUEs work Monday-Friday on one of two day shifts and are allowed to work either a 5/8, 5/4/9 or 4/10 CWS. Currently, 127 employees work 5/8 schedules; 224 are on a 5/4/9 and 228 have elected a 4/10 CWS. The parties are covered by a 3-year Master Labor Agreement (MLA) that will expire June 1, 2020. Local parties are encouraged, in Articles 33 and 34, to negotiate Local Supplemental Agreements (LSAs) to address matters that are not covered by the MLA. The parties' current LSA at Section 3 of Article 41, "Basic Workweek & Hours of Work," allows employees "to request to participate in an [alternate work schedule] AWS as defined in Title 5 USC § 6127 through § 6131." Section 6 states that "all existing types of AWS shall remain in place until changed in accordance with law, government-wide rules and regulations, and/or applicable negotiated agreements."

ISSUE AT IMPASSE

In accordance with §§ 6131(c)(3)(B) and (C) of the Act, the sole issue before me is whether the finding on which the Agency has based its determination to terminate the 4/10 CWS is supported

by evidence that the schedule is causing an adverse agency impact.^{1/}

POSITION OF THE PARTIES

1. The Agency's Position

By way of background, the Agency explains that employees have been allowed to work either a 5/4/9 or a 4/10 CWS for at least 13 years. In 2003, as the Agency was transitioning from a military operation to a High Performing Organization (HPO), it used the schedules as a "recruiting incentive" to attract highly qualified civilians. The Agency understood that civilian Aircraft Mechanics would be hard to find in the middle of the California desert that surrounds Edwards. Since the closest town, Rosamond, is 20 miles away, most employees would have a 30 to 45 minute commute each way. Therefore, it offered employees schedules that would allow them to work more hours on most days in a pay period (PP) in order to have 1 to 2 days off during the 2 weeks. It was a trade-off that worked well for both the Agency and its employees until the passage of the Budget Control Act of 2011. In 2011, the MXG had 1,945 funded positions. However, after sequestration and budget cuts took effect in 2013 due to the implementation of the Budget Control Act of 2011, the MXG's staffing authorizations fell to 1,491 - a 30% loss from which it has never recovered. On November 30, 2015, the Agency notified the Union of its intent to terminate the 4/10 CWS and offered the Union the opportunity to bargain over its implementation. On June 7, 2016, Frank B. McGowan, delegated Agency Head, issued a written determination to terminate the 4/10 CWS supported by the finding on which his determination was based.

1/ Under § 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 Agency claims that the 4/10 CWS needs to be terminated because it has caused: 1) a reduction in the Agency's productivity; 2) a diminishment in the level of service it provides to the public; and 3) an increase in its costs. The Agency acknowledges that, under the Act, it has the burden of proving that its determination to terminate the 4/10 CWS is based on a finding that "is supported by evidence that the schedule has caused an adverse agency impact."^{2/}

In this regard, Tom Becker, Chief, MXG Maintenance Analysis Branch, produced detailed reports and analysis in support of the Agency's claims and explained how these reports show adverse agency impact. Therefore, based on the totality of the evidence presented, the Agency argues that the Panel should find that the Agency has supported Mr. McGowan's determination that the 4/10 CWS has caused adverse agency impact.

As for the case of reduced productivity, the Agency argues that due to the unique and singular mission of the 412 TW - to test the weapons, software and components of new aircraft - flights from Edwards often deviate from their published flight schedules. Whereas the "effectiveness metric" for aircraft at other AF bases is 85.6%, Edwards is at 15%. The Agency concedes that the majority of deviations are due to test projects, and that only 30% of the deviations are due to maintenance. However, the Agency argues that, because of the TW's critical mission, it is important for the MXG to have the right number of mechanics with the right skill-sets available at all times to try to eliminate any preventable deviations. It explains that maintenance actions generally require crews of three mechanics and require crews from both the flight-line and back-shop to be available throughout the day to work together and support one another. Having 218 BUEs on a 4/10 CWS can make it difficult to meet the demand because the BUEs who work an hour longer than the 224 on 5/4/9's and 2 hours longer than the 127 on 5/8's, are not on the schedule one day per week in support of having a full team. In other words, crew sizes can be too small for productive maintenance work at the end of the day when first the 8's and then the 9's go home. Therefore, completion of the crucial maintenance action might have to wait until the next day, leaving the remaining crew members engage in non-productive, "non-core workload" tasks or administrative duties instead of maintaining mission-essential aircraft. This scheduling problem has had a direct impact on productivity of

^{2/} 5 U.S.C § 6131 (c) (3) (C)

the 412 AMXS unit. Within the 412 AMXS unit, it has been most acutely felt in the 416 AMU, the unit that maintains the AF's always strategically critical F-16's. The 416 AMU currently has an average manning of 66.3% most days of the week. However, if all Mechanics currently on a 4/10 CWS were transitioned to 5/4/9 schedules, the Agency argues that manning would increase to 74.2% and 100% if all employees worked a 5/8 schedule.

As for the case of reduced service, the TW provides services to a number of customers outside of the USAF. Included among them are other defense agencies, USAF Program Offices, allied nations and defense contractors. The Agency has enough aircraft to support a customer demand of 4,405 F-16 flying hours per year. However, the Agency claims that because there are 218 people with 4/10 schedules, there are 2 impacted hours per day, with 2 impacted days per pay period (PP), resulting in 22,672 man-hours of adversely impacted productivity.

Due to the current schedule, it can only ensure that its aircraft will be maintained and ready to fly 4,041 hours - 365 hours less than if its 69 aircraft were flying at full capacity. This results in management being forced to determine which customers' aircraft cannot fly. If, however, all BUEs currently on a 4/10 CWS were converted to a 5/4/9 schedule, hours lost would drop from 22,672 to 11,336. Although the Agency did not translate that number into flight hours gained for its customers, it asks the Panel to consider additional evidence it submitted with its September 29, 2017, Closing Statement. Attachment 1 "shows occasions when the MXG was unable to provide support for F-16 tail number 584." Attachment 2 details, on a monthly basis, the "aircraft, mostly F-16s [were] not available in the quantity needed."

2. The Union's Position

The Union argues that the Agency has not proven that the 4/10 CWS has been the cause of reduced Agency productivity, diminished service, or increased costs. The Union points to the testimony of Mr. McGowan and notes that when asked about production and service issues, he responded that the documents produced by Mr. Becker establish that "during the day there was a lack of coverage." The Union agrees with Mr. McGowan that there have been coverage issues. But, according to the Union, the problem is not caused by the schedule but rather by the Agency's decision to allow so many Mechanics to take the same

day off - a problem the Union is willing to work with Management on fixing. The Union explains that there are not enough bodies in some units because of vacancies the MXG has chosen not to fill, not because of the schedule. If the MXG would be willing to work with the Union on a procedure that would spread RDO's throughout the week, the Union is confident that units would be consistently staffed with the right number of employees, with the skill sets needed.

The Union argues that additional testimony of Mr. McGowan supports a conclusion that even if there are coverage/manning issues in the MXG, they do not implicate production or diminish service overall. When asked directly about these production and service issues, Mr. McGowan's response was: "the mission is getting done." In regards to service, he added that the Agency's customers have not complained because, as far as they know, there are no service issues. This is because "the base meets its mission demands" - one of which is service to its customers - and where there have been "manpower shortages," "the military in some instances has provided support." Mr. McGowan's assessment was echoed by Brigadier General Carl E. Schaefer, the Commanding Officer of the 412 TW. The Union attached a May 12, 2017 copy of the "Desert Wing" to its Closing Statement which included an article wherein the Commander announced that Inspectors from the AFMC Inspector General team had concluded a 2-year Unit Effectiveness Inspection. The TW received the highest possible rating - "Highly Effective" - in two of the four areas evaluated: "Executing the Mission" and "Improving the Unit" and the second highest - "Effective" - in the remaining two: "Managing Resources" and "Leading People." The Commander concluded "We are crushing it; wherever you are at you're crushing the mission."

As for the matter of increased costs due to the 4/10 schedule, the Union argues that the Panel should not give credit to Mr. Becker's overtime records. The Union argues the only BUEs who have been asked to volunteer for overtime are those who work in units where vacancies exist and staffing is down to one or two employees, again, arguing that the additional overtime costs can be attributed to staffing issues, not the schedule.

CONCLUSION

Under § 6131(c) (3) (C) of the Act, the Panel is required to take final action in favor of the Agency Head's (or delegatee's) determination to terminate a CWS if the finding on which the

determination is based is supported by evidence that the schedule has caused an "adverse agency impact." As its legislative history makes clear, Panel determinations under the Act are concerned solely with whether an employer has met its statutory burden on the basis of "the totality of the evidence presented."^{3/}

A past Panel decision dealing with separate shifts lamented the fact "the Act does not permit the Panel to order compromise solutions in CWS termination cases."^{4/} However, while the prior decision is non-binding, it is, nevertheless, distinguishable from this case. The current issue between the Agency and the Union deals with groups of employees in 3 distinct squadrons, with separate and distinct duties; this is not simply a question of shifts.

The Act gives power to the Panel to "take final action in favor of the agency's determination to terminate a *schedule* if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact."^{5/} [emphasis added] The singular "a schedule" does not lead to an interpretation of 'the entire schedule' for all employees in separate units (squadrons) in the same group.

Having examined the evidence presented, met with and interviewed both the Agency and the Union, I am persuaded that the Agency has met its statutory burden in part showing the 4/10 CWS has resulted in a diminished level of service to the 412th Test Wing, but also failed in part. The Agency has shown that

^{3/} See the Senate report, which states:

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 Session, at 15-16 (1982).

^{4/} *Department of the Navy, Trident Refit Facility, Kings Bay, Georgia and Local Lodge 2783, District 112, International Association of Machinists and Aerospace Workers, AFL-CIO, Case No. 1999 FSIP 60 (1999).*

^{5/} 5 U.S. Code § 6131 (c) (3) (C)

because of the 4/10 CWS, the F-16 support is at a 66.3% daily manning average and, therefore, there is a negative impact on productive hours and a diminished level of service.

Similarly, the Agency has shown that it must bring in extra personnel for Bomber support on every RDO, except major holidays, to satisfy the requisite crew size for the 67% of all tasks that require a crew of 3, resulting in increased overtime costs as a result of the 4/10 CWS. While the amount of RDO overtime is a fraction of the overall civilian pay budget, the Act only allows for consideration of "an increase in the cost of agency operations" absent "reasonable administrative cost relating to the process of establishing a flexible or compressed work schedule." In this regard, the Act does not allow consideration of a cost benefit analysis of whether the small decrease in overtime is worth the tradeoff and burden to employees of removing the 4/10 CWS. By the strict confines of the Act, the Agency has met its burden. For these reasons, the Agency has met its statutory burden for the termination of a 4/10 CWS for the 412 AMXS and 912 AMXS flight-line squadrons. The Agency has failed, however, to meet its statutory burden with regard to the 412 MXS squadron. The Agency's statistical data attempts to show 76.7% availability for personnel in the back-shop. I remain unpersuaded by the statistical analysis. As a result of this and the lack of other convincing evidence, the Agency has failed to show reduced productivity, a diminished level of service, or increased costs associated with the 4/10 CWS in back-shop support.

Therefore, because the Agency has shown sufficient evidence of adverse agency impact in some schedules but failed in others, I will not apply a one size fits all approach to the different schedules in the diverse flight-line and back-shop squadrons of the 412 AMXS, 912 AMXS, and 412 MXS. Each squadron should be considered individually on the merits of the evidence presented.

ORDER

Pursuant to the authority vested in me by the Federal Service Impasses Panel under 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 termination of the 4/10 compressed work schedule for flight-line personnel (*i.e.*, 412 AMXS and 912 AMXS squadrons). I hereby also order the Employer

to rescind its determination to terminate the 4/10 CWS for back-shop personnel (i.e., 412 MXS squadron.)

A handwritten signature in cursive script, reading "Vincent Vernuccio".

F. Vincent Vernuccio
Panel Member

October 6, 2017
Washington, D.C.