

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

UNITED STATES DEPARTMENT OF THE
ARMY
WOMACK ARMY MEDICAL CENTER
FORT BRAGG, NORTH CAROLINA

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES
LOCAL, 1770

Case No. 18 FSIP 058

DECISION AND ORDER

This request for assistance concerning the termination of existing compressed work schedules (CWS) was filed by the United States Department of the Army, Womack Army Medical Center, Fort Bragg, North Carolina (Agency or Management) on May 11, 2018, under the Federal Employees Flexible and Compressed Work Schedules Act (Act) of 1982, 5 U.S.C. § 6120, et seq. Following investigation of the request for assistance, on June 28, 2018, the Panel determined that the dispute should be resolved through a Written Submissions procedure with an opportunity for rebuttal statements. The parties timely submitted their arguments and accompanying documents. The record is closed and the Panel issues the following decision in accordance with 5 U.S.C. §6131 and 5 C.F.R. §2472.11 of its regulations.

BACKGROUND

The Agency's mission is to provide the highest quality health care, maximize the medical deployability of the military force, ensure the combat readiness of the Agency's personnel, and sustain exceptional education and training of U.S. Army Medical Department personnel. It services all branches of the military and military personnel, retirees, and family. As relevant, the Agency has an Ultrasound Department that is responsible for providing the foregoing personnel with ultrasounds.

The American Federation of Government Employees, Local 1770 (Union) represents around 3,900 bargaining unit employees. Many are in a variety of medical positions. The parties are governed by a collective bargaining agreement that expires in April 2023. It permits negotiations over CWS and, accordingly, the parties negotiated individual CWS agreements for five Ultrasound Technician bargaining-unit employees in the Agency's Ultrasound Department. The employees' schedules are broken down as follows:

- Employees Delhaye and Pederson are on a 4/10 CWS. They work Monday through Thursday from the hours of 1 p.m. to 11:30 p.m. They both have off every Friday.
- Employee Wallcoen works two 16 hour shifts - Saturday and Sunday, 6:30 a.m. to 11:00 p.m. (although the Union claims she begins at 7 a.m. and ends at 11:30 p.m.). She then works an 8 hour shift on Monday from 8 a.m. to 4:30 p.m.
- Employee Ramos also works two 16 hour shifts - Friday, 5:30 p.m. to 10 a.m. and Saturday, 6 p.m. to 10:30 a.m. Similarly, she works a single 8 hour shift from Sunday evening to Monday morning that ends sometime between 6 a.m. and 8 a.m. The parties' data was inconsistent as to this last point.
- Finally, Employee Elliot works three 13 1/3 hour shifts, Wednesday to Friday from 8:30 a.m. to 9:45 p.m. per the negotiated agreement that is in the record (the Union maintains her end time is 10:15 p.m.).

Management approached the Union about modifying the above schedules. The parties held 3 bilateral negotiation sessions in September and October of 2017. They also received Federal Mediation and Conciliation Service (FMCS) mediation on March 28, 2018, in FMCS Case No. 201811530033. The parties were released from mediation the same day. During bargaining and mediation, Management explored changing the starting and stopping times of the Ultrasound employees who are currently on CWS due to coverage and staffing reasons discussed in greater detail below, but the Union was unwilling to accept any alterations to the *status quo*. Accordingly, the Agency filed this request for Panel assistance and formally declared its intention to seek the termination of existing CWS through a statement of adverse impact. The Agency's adverse-impact statement was signed by the Base Commander. Pursuant to a memorandum issued by the Brigadier General of the U.S. Department of the Army on June 29,

2017, Base Commanders have been delegated authority to make determinations concerning alternative work schedules for civilian medical personnel.

ISSUE AT IMPASSE

In accordance with §§ 6131(c)(3)(B) and (C) of the Act, the sole issue before the Panel is whether the finding on which the Agency has based its determination to terminate CWS for all bargaining-unit employees is supported by evidence that the schedule is causing an adverse agency impact.^{1/}

POSITIONS OF THE PARTIES

1. The Agency's Position

The Agency argues that the CWS has created a host of problems for the Ultrasound Department. According to Management, each employee's schedule presents a unique series of challenges. Thus, it seeks to return all employees to a traditional 5/8 schedule. Most Ultrasound patients prefer to receive treatment weekdays between 7 a.m. and 4 p.m. This fact is buttressed by the work load figures for employee Spivey, who is on a "traditional" schedule of 8 a.m. to 4:30 p.m. Figures show that she performed 2,643 ultrasounds in a 1 year period, more than any other technician.

The schedules for Employees Delahaye and Pederson, both on a 4/10 CWS, create issues that are tied to the foregoing information. Currently, they come in Monday to Thursday at 1 p.m., but Management would like them to arrive at 3 p.m. Presently, three other non-CWS techs complete their shifts between 1:30 p.m. and 2:30 p.m. because they arrive early in the

^{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).

morning at staggered times. The 1 p.m. start times for Delahaye and Pederson were approved with the understanding that they would be able to provide coverage for the staggered departure times of the non-CWS employees. However, Management desires to alter schedules for the non-CWS employees so that they would have uniform start times of 7 a.m. With this change, it would no longer be necessary for Employees Delahaye and Pederson to arrive at 1 p.m. to address coverage gaps. Additionally, because of these staggered times, from the hours of 3:30 p.m. to 5 p.m. there is a daily overlap of 2.5 hours of non-productive time. Finally, the two employees are not on duty every Friday as a result of their respective schedules. This in turn leads to decreased appointment availability and "negative customer complaints" from patients who want Friday appointments.

Employee Elliot, on the 3/20 CWS, works a shift that results in an "excessive number of personnel" on Wednesday and Thursday evening shifts even though there is not a significant amount of work. The Agency notes, on average, there is a maximum of 3 ultrasounds administered at 7 p.m., and approximately 2 at 6 p.m., 8 p.m., and 9 p.m. With Ms. Elliot, there are 4 technicians on duty during this time, and not nearly enough work to go around. Additionally, her schedule deprives Management of the ability to schedule another employee to work on Mondays when ultrasound demand is particularly high.

Employee Ramos, who works two 16-hour shifts and one 8-hour shift, has an "unusual schedule" that creates shift gaps whenever she is not present. This gap arises because the Agency has to solicit individuals to cover the 16-hour shifts, which in turn increases Management's budget because of increased costs to on-call or overtime pay. If co-workers cannot reschedule for her, then there is no one available to take appointments during the employee's schedule.

Finally, Management is concerned with the schedule of employee Wallcoen, who also works two 16-hour shifts and one 8-hour shift. Like Employee Ramos's schedule, any absence results in Management having to scramble to fill her schedule with two other 8-hour personnel or risk losing coverage. Additionally, the 16-hour shifts lead to overworked employees, which in turn is a safety issue that creates a diminished level of customer service.

2. The Union's Position

The Union maintains that Management has not met its burden under the Act to demonstrate the existing schedules are creating an adverse impact and, therefore, should be terminated. For employees Delahaye and Pederson, the Union argues that there is only 1.5 hours in which 1 extra employee is on schedule due to these employees' 4/10 schedules. Additionally, although Management cites "budget" concerns, it provides no supporting data. Moreover, were employees to revert to a traditional 5/8 schedule, there would be at least one 30 minute period daily where 9 employees are on duty. The Agency's claim about Friday need is also overblown. Even with CWS, Management often schedules 3 or less "second shift" technicians four days a week; yet, with CWS gone, Management would schedule 3 or less such technicians every day of the week. Finally, the Union claims that Management's own data demonstrates that there is not a great need for ultrasounds on Fridays (although the Union does not elaborate).

With respect to the remaining 3 employees, the Union maintains that Management has not demonstrated that the schedule for this group of employees is creating any sort of adverse impact. It argues that Employees Ramos and Wallcoen provide exclusive weekend coverage thanks to their existing CWS shifts. Thus, their schedules are actually a benefit to the Agency. Moreover, all employees are subject to being on-call. As such, employees who have to fill in for schedules do not actually cause any increases to such pay. Indeed, the Agency failed to provide any actual financial data. Finally, the schedules have been in place for 8 years but have not caused any safety issues that the Union is aware of.

CONCLUSIONS

Under § 6131(c) (3) (C) of the Act, the Panel is required to take final action "in favor of the agency's determination to terminate [CWS] if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact." Under the plain language of the Act, the evidentiary standard is whether the agency's decision regarding CWS termination is "supported by evidence," and if so, the law requires that the Panel take action "in favor" of that determination. 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."² The plain language of 5

2 See the Senate report, which states:

U.S.C §6131,³ and prior decisions of the Panel,⁴ demonstrate that the Agency must present evidence that "particular" or specific work schedules of each unit involved in a dispute have caused an adverse impact.

As an initial matter, the Panel notes that the parties ascribe different starting and stopping times for the three non-4/10 CWS employees discussed on page 2 of this decision. However, the parties do not disagree as to the general types of schedules worked or the days that are a part of those schedules. Moreover, as discussed below, the Panel's conclusions turn on absences and costs rather than specific times. Thus, it is unnecessary to resolve the foregoing discrepancy.

Much of the Agency's argument focuses on coverage issues that it maintains are directly tied to the employees' particularized CWS shifts. For example, the Agency is concerned that the two 4/10 CWS shifts create coverage gaps on Fridays because only one employee is scheduled to work the shift of 3 p.m. to 11 p.m. Management's proposal, by contrast, would place three total employees on this shift. The Union argues that other employees are still available during some of the foregoing

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).

³ See 5 U.S.C §6131(a) ("[I]f the head of an agency finds that a particular . . . compressed schedule under this subchapter has or would have an adverse agency impact) (emphasis added);" *id.* at (C) ("The Panel shall 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." (emphasis added)).

⁴ See, e.g., *Department of the Air Force 412th Test Wing and American Federation of Government Employees, Local 1406*, Case No. 17 FSIP 077 (2017).

time period and, as such, there are no coverage issues. Even if the Union's assertion is accurate, the Union does not dispute that there are fewer employees available overall to customers because two employees are off every Friday. This in turn creates a "diminished level of services" within the meaning of the Act.

Although the Panel finds that the diminished Friday coverage provides a basis for concluding that adverse impact exists, it does not rely upon Management's concerns regarding staggered starting and stop times for non-CWS employees discussed on page 3-4 of this decision. In this regard, Management appears to be taking the position that it will eventually change schedules for non-CWS employees, and that change would eventually render existing start times for employees Delahaye and Pedersen obsolete. However, under the Act, the focus is whether a "compressed schedule . . . has . . . an adverse agency impact."⁵ (emphasis added). The Agency's line of reasoning for the foregoing argument is based on future speculation for events that may or may not happen as opposed to existing conditions. Thus, the Panel believes the argument should not serve as a basis for termination.

Employee Elliot, on the 3/20 CWS, also presents a coverage challenge because her schedule requires her to be off duty every Monday. According to the Agency, this absence means that there is less ultrasound appointment availability on those days. Thus, on this basis alone, it is appropriate to conclude that the 3/20 CWS is creating an adverse impact.

Finally, there are cost issues associated with the 16/8 shifts worked by Employees Ramos and Wallcoen. As the Agency notes, if either employee misses even one 16-hour shift, the Agency must attempt to locate 2 individuals to cover that single shift. In other words, Management has to pay additional compensation, overtime or otherwise, on top of the compensation being paid to the employee who is absent from work. The Union contends that the Agency did not provide specific data to buttress its claims. However, in this instance, it is axiomatic that a void of 16 hours would result in increased costs. The Union also maintains that there are no real cost increases because other employees are always subject to being on call on a rotational basis. But as noted, even one absence automatically requires multiple shift fulfillments. By contrast, a traditional schedule would require coverage costs for one 8-hour

⁵ 5 U.S.C §6131(a).

shift only in the event of an absence for that shift. Finally, the Union's on-call argument does not address issues related to increased overtime costs, which would have to arise when Management must solicit a traditional volunteer to address coverage issues.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under the Federal Employees Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6131(c), the Panel hereby orders the termination of the compressed work schedules for personnel in the Agency's Ultrasound Department.



Mark A. Carter
FSIP Chairman

July 31, 2018
Washington, D.C.