

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
YAZOO CITY, MISSISSIPPI

and

LOCAL 1013, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 07 FSIP 102

DECISION AND ORDER

The Department of Justice, Federal Bureau of Prisons (FBOP), Federal Correctional Complex (FCC), Yazoo City, Mississippi (Employer) and Local 1013, American Federation of Government Employees, AFL-CIO (Union), jointly 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 the Employer's finding that implementation of the Union's proposed 4/10 compressed work schedule (CWS) for employees in its two UNICOR facilities would cause an adverse agency impact.

Following investigation of the request for assistance, the Panel determined that the case should be resolved through an informal conference by telephone with Panel Member Mark A. Carter. The parties were informed that if a settlement was not reached during the teleconference, Member Carter would notify the Panel of the status of the dispute. After considering this information, the Panel would take final action in accordance with 5 U.S.C. § 6131 and 5 C.F.R. §2472.11 of the Panel's regulations.

In accordance with the Panel's procedural determination, Member Carter convened an informal conference by telephone with the parties on August 28, 2007, but a voluntary resolution was not reached. Member Carter has reported to the Panel, which has

now considered the entire record, including the parties' pre-conference submissions.

BACKGROUND

The Employer's mission is to protect society by confining criminal offenders in the controlled environments of prisons and community-based facilities that are safe, humane, and secure. The FCC includes a medium-security institution, a low-security institution, and a minimum-security prison camp, as well as two UNICOR facilities that produce Army combat uniforms and the covers for protective vests, respectively. The Union represents approximately 450 employees who work as correctional officers, inmate systems officers, case managers, case counselors, physician assistants, accountants, facilities foremen, food service foremen, and in various support staff positions, at GS-5 through -12 and WG-5 through -9. The dispute affects approximately 18 employees in the UNICOR facilities who supervise inmate work crews.^{1/} The master collective bargaining agreement (MCBA) covering these parties expired on March 8, 2001; its terms will continue in effect until negotiations over a successor agreement are completed.

ISSUE AT IMPASSE

In accordance with § 6131(c)(2)(B) of the Act, the issue in dispute is whether the findings upon which the Employer has based its determination not to establish a 4/10 CWS in the UNICOR facilities is supported by evidence that the schedule is likely to cause an adverse agency impact.^{2/}

1/ Employees in the UNICOR facilities work a day-shift schedule, Monday through Friday from 7:30 a.m. - 4 p.m.

2/ 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

POSITIONS OF THE PARTIES

1. The Employer's Position

The Panel should find that the evidence upon which the Employer bases its determination not to implement the proposed 4/10 CWS establishes that the schedule is likely to cause an adverse agency impact as defined under the Act. In its view, the schedule would reduce the productivity of the Agency and diminish the level of services furnished to the public. Productivity would be reduced because 10-hour workdays result in 2 hours and 45 minutes per day per employee where inmates are not directly supervised. The current non-CWS, on the other hand, results in 45 minutes where employees are not directly supervising inmates. Employees use this time for traveling within the institution, exchanging work equipment, checking the security of the factories and conducting administrative work. Although the Union contends that employees could do administrative work during the additional 2 hours per day that would be provided by the 4/10 CWS, "the majority of administrative work, such as documenting inmate misconduct, documenting and rectifying quality concerns and documenting production movement in the UNICOR computer system, is best accomplished while the factory is in operation and inmates are present." Furthermore, "all of the administrative work is currently being completed to the Employer's satisfaction under the current non-CWS" and "work could not be invented for employees to do during this time."

Regarding diminished service to the public, "which includes service to the inmates," the regular days off (RDOs) required under the proposed 4/10 CWS would result in inmates having to be added to other employees' work details. Consequently, the level and quality of supervision provided to inmates would decrease and, "in the long term," inmates "would not receive the same level of job skill training to allow [them] to become law abiding citizens upon release from prison." In addition, including positions with only one employee in the CWS, *i.e.*, the Warehouse Worker Supervisor, Accountant, Sewing Machine Repair Supervisor and the Assistant Quality Assurance Specialist, "would result in inmates being placed in a non-work status, having an employee without the specialized skills supervise the

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).

inmates or having management staff supervise the inmates on the regular employee's RDO."

The Employer acknowledges that a CWS would allow employees to have additional time with family and reduce commuting expenses, so it has proposed a 5-4/9 CWS for the largest group of employees, Fabric Worker Supervisors, and Sewing Machine Repairer Mechanics. A 5-4/9 CWS would minimize the lost man-hours and reduction in supervision of inmates created under the Union's proposal, and would provide management with the flexibility to compensate for the lost man-hours by operating the factory for extended hours without the expense of paying overtime to the employees for 1 hour each day. Contrary to the Union's position, however, a 4/10 CWS would not reduce overtime costs to a significant degree. At one of the UNICOR facilities, there has been a decrease in production requirements, and no overtime since at least 2006. While there have been occasional production increases at the 2nd UNICOR facility, which has resulted in some overtime, these increases are sporadic and do not justify the need for a 4/10 CWS.

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 4/10 CWS is likely to cause an adverse agency impact. In this regard, the items produced by the UNICOR factories are "in high demand due to the ongoing hostilities in Iraq/Afghanistan/War on Terror necessitating paid mandatory overtime." Having the facilities open an extra 2 hours per day would result in an increase in production and a decrease in overtime costs. Equally significant, the proposed 4/10 CWS also would give employees the ability to complete their administrative assignments during the 10-hour workday, thereby providing closer supervision during inmate working hours. By separating the administrative duty time from inmate supervision time there would be an increase in the quality of both through the elimination of distractions. A recent incident involving the escape of an inmate from the U.S. Penitentiary at Pollock, Louisiana, who was working in that prison's UNICOR facility, illustrates that "distracted supervision is no supervision at all." Thus, contrary to the Employer's view, performing non-supervisory duties without inmates present would allow the employees to be more attentive when they are supervising inmates.

The Employer "does not identify what productivity would be lost," and has "intentionally used fictional and inflated

numbers," making its assertions "invalid." Of the 18 employees that would be eligible to work the 4/10 CWS, only 12 have expressed an interest, yet the Employer assumes that all of them would work the schedule. It also overestimates the number of employees on an RDO on any given workday, undercutting its claim that the Union's proposal would diminish the level of service provided to inmates. Currently, "inmates are not placed in a non-work status when specialized staff are not available to supervise them," but have been trained to continue their production on days that their immediate supervisors have been reassigned. In addition, "no duties need to be invented for employees and the employees have never requested the agency to invent duties." There are numerous administrative and security functions that could be performed during the additional hours where employees are not directly supervising inmates. In closing, the Union's proposal would "unleash[] the industrial capacity" of the UNICOR factories and, therefore, represents a "win-win" for all concerned parties, but especially U.S. taxpayers, who would receive "the most bang for the buck."

CONCLUSION

Under § 6131(c)(2)(B) of the Act, the Panel is required to take final action in favor of the 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."^{3/}

3/ 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, 97th Cong., 2d Sess. at 15-16 (1982).

Having carefully examined the arguments and evidence presented, we conclude that the Employer has met its burden of establishing that an adverse agency impact is likely to occur under the Union's proposal. In this regard, employees who opt to work the 4/10 schedule normally would be at the worksite for 2 additional hours per day where they would not be directly supervising inmates. While the Union argues that there are numerous administrative and security functions for employees to perform during that time, we are not persuaded that additional non-supervisory time is necessary to accomplish the mission of the Agency. As to the Union's argument that any reduction in the productivity of employees would be more than offset by increases in the production of the factories, its claim is not supported by the record. Currently, one of the two UNICOR factories is experiencing a reduction in work orders that has resulted in no overtime since at least 2006, while the fluctuating need for overtime at the other factory is insufficient to establish the benefits alleged by the Union. Accordingly, we shall order the Union to withdraw its CWS proposal.

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 Union to withdraw its 4/10 CWS proposal for employees in the UNICOR factories.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

October 11, 2007
Washington, D.C.