

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE ARMY
ARMY DENTAL ACTIVITY
FORT CARSON, COLORADO

and

LOCAL 1345, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES,
AFL-CIO

Case No. 07 FSIP 114

DECISION AND ORDER

The Department of the Army, Army Dental Activity, Fort Carson, Colorado (Employer or DENTAC) 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 its decision to terminate the 5-4/9 compressed work schedule (CWS) of bargaining unit employees in DENTAC represented by Local 1345, American Federation of Government Employees, AFL-CIO (Union).

After investigation of the request for assistance, the Panel determined that the dispute should be resolved through an informal conference, via telephone, with Panel Member Richard B. Ainsworth. The parties were advised that if no settlement were reached during the informal conference, Member Ainsworth would report to the Panel on the status of the dispute, including the parties' final positions and his recommendations for resolving the impasse. 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 its regulations.

Pursuant to the procedural determination, Member Ainsworth conducted an informal conference by telephone with the parties on November 8, 2007. While a voluntary resolution was explored, a settlement was not reached. The Panel has now considered the entire record, including the parties' pre-conference

submissions, and Member Ainsworth's recommendation for resolving the dispute.

BACKGROUND

The mission of DENTAC is to ensure dental readiness of soldiers at Fort Carson and enhanced oral wellness for all authorized beneficiaries through the delivery of quality dental care and oral health promotion. Its workforce includes General Schedule (GS), military, and contract employees. The Union represents approximately 1,600 employees in various nonprofessional positions at Fort Carson. There currently are 55 employees on CWS affected by the Employer's decision occupying such positions as dental assistant, dental therapy assistant, hygienist, lab technician, and clerk, at grades GS-3 through 7. The collective bargaining agreement (CBA) covering these employees expires on December 16, 2007.

ISSUE AT IMPASSE

In accordance with section 6131(c) (3) (A) of the Act, the issue in dispute is whether the finding on which the Employer bases its determination to terminate the 5/4-9 CWS in DENTAC is supported by evidence that the schedule has caused an adverse agency impact.^{1/}

1/ 5 U.S.C. § 6131(b) defines adverse agency impact as:

- (1) a reduction in 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 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 CWS has caused 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).

POSITIONS OF THE PARTIES

1. The Employer's Position

The 5-4/9 CWS should be terminated because it has caused a diminished level of service to DENTAC's external customers (soldiers), a reduction in productivity and, consequently, an increase in the cost of dental operations. By way of background, the Fort Carson DENTAC has prioritized the specific elements of its mission as: (1) maintaining high dental readiness of soldiers mobilizing and deploying in support of the Global War on Terrorism; and (2) optimizing oral health care of soldiers in its tenant units. To meet the increased demand for its services, in the late 1990's the Army Dental Care System moved towards a "team dentistry" approach, which is more efficient because it allows a greater number of services to be provided per patient visit. In essence, the team dentistry approach is incompatible with the continued existence of CWS at the Fort Carson DENTAC.

The military and contract personnel who work closely with unit employees to accomplish the mission are on standard work schedules. While this does not adversely affect DENTAC's ability to perform its primary mission for most of the workweek, on Fridays, when unit employees on CWS have their regular day off (RDO), there is a diminished level of service because fewer patients are seen on that day. Moreover, if CWS continues, the situation will be exacerbated given the additional requirements DENTAC is being asked to perform. In this regard, a directive from Dental Command (DENTCOM) now requires DENTAC to ensure that 65 percent of Fort Carson's soldiers are in Dental Class 1, the Army's top state of readiness. Currently, only 15 percent of soldiers are in Dental Class 1, over 60 percent are in Dental Class 2, and the vast majority of patients seen on Fridays are classified as non-deployable soldiers in Dental Classes 3 and 4. What this means is that more soldiers are scheduled for dental appointments throughout the week, including Fridays. In addition, almost 5,000 troops have been reassigned to Fort Carson from the 4th Infantry Division, and the number of troops will expand even further in the next several years due to Base Realignment and Closure (BRAC) legislation. All of these military and legislative directives create "mission impacts that demand optimal efficiency from the DENTAC," requiring the need for more personnel to provide the critical level of service to carry out its mission. The Employer estimates that it would cost over \$153,000 per year in additional salary and benefits "out of a fixed budget" to augment the shortage of employees

created by CWS to offset the increased demand for DENTAC's services.

The Employer also has compiled statistics regarding Corporate Dental Application (CDA) productivity for two distinct periods: (1) November 2005 - June 2006, when both military and civilian employees were on CWS, and (2) November 2006 - June 2007, when only civilian employees were on CWS. Its data show a 14-percent increase in productivity in Period 2 as compared to Period 1, from which it can be inferred that productivity will be greater when CWS is terminated and bargaining unit employees' work schedules are the same as those of military and contract personnel. This is because greater efficiency would occur when the work schedules for each staff component are aligned, eliminating mismatched work schedules that do not "serve the increased needs of the DENTAC." Although overall productivity increased when military personnel were taken off CWS, there is still a reduction in productivity on Fridays, when 50 percent of the civilian workforce is on its RDO, resulting in a significant decrease in patient care and monetary losses of \$177,000 per month. A reasonable assumption can be drawn that elimination of CWS for civilian employees would increase productivity thus "ending the tremendous financial loss."

Additional costs are incurred because the 55 employees currently on CWS are not used efficiently for 1 hour each day. In this connection, their primary duty of patient care is accomplished only when patients are present, yet CWS employees do not assist patients during the ½ hour before DENTAC's facilities open each day and the ½ hour after the facilities close. While "efforts have been made to find busy work for them," they are not engaged in their primary duty of assisting in providing dental care. Based on the average salary and benefits of the GS employees on CWS, "DENTAC expends on an annual basis over \$44,000 for inefficient or no productive labor for these employees." The CWS also has a negative impact on the morale of contract employees and military personnel because CWS employees are perceived to have advantages over those who are required to work standard schedules. Finally, the case for terminating CWS is further buttressed by an Army Audit Agency Report issued in September 2004 concerning dental care in the European Theater which found that CWS was "the single greatest detriment to the efficient provision of treatment." This is one of the primary reasons that all of the other DENTACs in the Great Plains Regional Dental Command already have terminated their CWSs.

2. The Union's Position

The Panel should find that the Employer has not met its burden under the Act of demonstrating that the 5-4/9 CWS in DENTAC has caused an adverse agency impact. Preliminarily, the Union and the DENTAC employees it represents have always supported DENTAC's mission and the team dentistry approach. Turning specifically to the Employer's allegation that CWS is responsible for the loss of productivity on Fridays, the data it presents is based on faulty methodology, *i.e.*, it fails to account for the number of military personnel also off on Fridays. In this regard, the Employer's policy is to schedule Mandatory Sergeant Training from 9 a.m. - 3 p.m. each Friday for the military, including military dentists. As a result, at least 6 of DENTAC's 14 dentists are either attending training or performing other administrative duties on that day. Moreover, there have been no instances where a patient has not been seen by a dentist on a Friday, and the only reason that fewer patients are seen overall is because fewer appointments are scheduled.

The Employer's claim that the current CWS is causing an adverse agency impact also is inconsistent with its argument that there has been an increase in productivity over the past year. Even with the larger number of patients, both real and projected, there has not been any adverse affect on services. This is demonstrated by the fact that the DENTAC at Fort Carson is "maintaining greater than 95-percent readiness" of deployable Class 1 and 2 soldiers and, therefore, is exceeding the required standard. With respect to the Employer's claim that CWS employees are engaged in 1 hour of "busy work" and not performing their primary patient care duties, the hour consists of 30 minutes before DENTAC's facilities are open to receive patients and 30 minutes after patients are no longer present. The duties performed by employees during this hour include infection control, sterilization, required on-line training, record keeping, data entry, and other cleaning of dental equipment. These important duties support the primary function of providing patient care, and employees have been disciplined when they have failed to follow proper procedures for dealing with sterilized equipment. Furthermore, the parties' CBA gives employees 15 minutes of preparation time at the beginning of their duty day and 15 minutes for cleanup at the end of their tour of duty.

The Army Audit Agency Report that led to the DENTAC Commander's attempt to terminate the CWS did not "address the

services offered at Fort Carson or analyze the dental activities at Fort Carson" and, therefore, should be discounted. It focused instead on contract employees overseas, and prominently mentions poor management at the control and clinic levels, which is the real reason that those employees should have a certain work schedule. Finally, while the Union believes the Employer has not met its burden of showing that the CWS has had an adverse agency impact, it is nevertheless sensitive to management's concerns about having 50 percent of its unit employees off each Friday. To address these concerns, the Union proposed during the informal conference to change the RDOs of CWS employees to Monday through Friday, which would reduce the percentage of employees on an RDO on any given day to no more than 10 percent, but the offer was rejected.

CONCLUSIONS

Under section 6131(c)(3) 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."^{2/}

Having carefully considered the totality of the evidence presented in this case, we conclude that the Employer has not demonstrated that the 5-4/9 CWS is causing a diminished level of service to its customers, a reduction in productivity or an increase in cost at the Fort Carson DENTAC. With respect to the Employer's allegation that the CWS is causing fewer patients to be seen on Fridays, in our view a more persuasive alternative

^{2/} 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 Sess. at 15-16 (1982).

explanation, given the team dentistry approach, is that fewer military dentists are available to see patients on that day for reasons that appear to be unrelated to CWS. It is also difficult to see how the CWS could be causing a reduction in productivity when the Employer's data show an overall 14-percent increase in productivity from November 2006 through June 2007 and DENTAC currently is meeting or exceeding the Army's dental readiness standards. Given the record, its argument that CWS employees are unproductive for 1 hour each day also is unconvincing. In addition, the Employer's cost figures appear to depend on its contentions regarding diminished levels of service and reductions in productivity that have not been adequately supported on the basis of evidence. Accordingly, we shall order the Employer to rescind its determination to terminate the 5-4/9 CWS at the Fort Carson DENTAC.^{3/}

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 Employer to rescind its determination to terminate the 5-4/9 CWS at the Fort Carson DENTAC.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

November 21, 2007
Washington, D.C.

^{3/} Notwithstanding the outcome in this case, we note that under the Act an employer may seek to terminate a CWS whenever the head of the agency determines that it is having an adverse agency impact. Panel decisions regarding particular CWSs, therefore, do not provide precedents for future cases, even if they involve the same schedule. Thus, our decision is without prejudice to the right of the Employer to file another case with the Panel concerning the termination of the 5-4/9 CWS at the Fort Carson DENTAC if it believes its determination is supported by evidence that the schedule has caused an adverse agency impact.