

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
PHOENIX, ARIZONA

and

LOCAL 3954, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 07 FSIP 69

DECISION AND ORDER

The Department of Justice, Federal Bureau of Prisons (FBOP), Federal Correctional Institution (FCI), Phoenix, Arizona (Employer), 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 between it and Local 3954, American Federation of Government Employees, AFL-CIO (Union), arising from the Employer's finding that the 4/10 compressed work schedule (CWS) for correctional officers (COs) on the "bus crew" in the Correctional Services Department (CSD) is causing an adverse agency impact and, therefore, should be terminated.

After investigation of the request for assistance, the Panel determined that the dispute should be resolved through an informal conference by telephone with Panel Member Mark A. Carter. The parties were advised that if no settlement were reached during the teleconference, Member Carter would notify the Panel of the status of the dispute, including the parties' positions. 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.

In accordance with the Panel's procedural determination, Member Carter convened an informal conference by telephone with the parties on June 11, 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 FCI is a medium security facility whose mission is to protect society by confining criminal offenders in the controlled environments of prisons and community-based facilities that are safe, humane, and appropriately secure. Overall, Local 3954 represents approximately 170 employees who are part of a nationwide consolidated bargaining unit of about 25,000. The parties are covered by a master collective-bargaining agreement (MCBA) that was due to expire in 2001, but remains in effect until it is replaced by a successor agreement.

The bus crew's operation is authorized and paid for by the U.S. Marshals Service. COs bid on the bus crew assignment on a quarterly basis. The bus crew consists of one supervisor and two bargaining unit employees. When the 4/10 CWS for the bus crew was implemented in 1999, the regularly scheduled round-trip included more sites and went from Monday through Wednesday/Thursday. Since September 2005, however, the bus crew normally makes a 2-day round-trip, starting early on Monday morning and ending on Tuesday afternoon, to two different FBOP sites in Arizona and California, picking up and dropping off inmates along the way. It also has a recurring assignment to pick up and drop off inmates at the Phoenix Sky Harbor International Airport (PSHIA) as needed. COs must have a commercial drivers license and receive specialized training to qualify for the assignment. According to the parties, only about 12 COs currently are qualified for, and/or regularly bid on the assignment.

ISSUE AT IMPASSE

The sole issue before the Panel is whether the finding on which the Employer has based its determination to terminate the 4/10 CWS for COs on the bus crew in the CSD is supported by evidence that the schedule is causing an adverse agency impact.^{1/}

1/ 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

POSITIONS OF THE PARTIES

1. The Employer's Position

The Panel should find that the evidence on which the Employer bases its determination to terminate the bus crew's 4/10 CWS establishes that the schedule is causing an increase in the cost of agency operations, as defined under the Act. In this regard, the 4/10 CWS was approved for the bus crew in May 1999 as a way to reduce overtime costs. The overtime was a result of longer work hours during the day for a weekly trip that usually began early Monday morning and ended on Wednesday or Thursday. After the bus crew's mission changed in September 2005, the data indicate that there has been a significant increase in costs to the agency. To accommodate the regular days off (RDO) of the two employees on the 4/10 CWS, management has had to find other staff members on Fridays to cover posts in the CSD. From September 2005 to March 2007, the FCI has spent over \$39,000 in salary, including overtime, to find replacements for the two employees on Fridays. Replacements are required to ensure the safety of the FCI, particularly in the current era of budgetary shortfalls and reduced staffing levels.

In addition to the cost of replacing the employees on their RDOs, they are now available for other work assignments on Wednesdays and Thursdays. The employees remain on their 10-hour days, however, even though the rest of the employees in the CSD work 8-hour days. After completing an 8-hour shift, "the supervisor must find a 2-hour work detail for the [employees] to finish out their 10-hour shift." This equates to 8 hours of "wasted man hours (2 officers x 2 hours x 2 days)," or \$15,769 in

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 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).

unnecessary expenditures from September 2005 to March 2007. Management can find the employees tasks to perform during these 2-hour periods, but they are frequently unoccupied, given that many assignments require more than 2 hours to complete.

While it is true that the current CWS saves up to a total of 8 hours of overtime on Mondays and Tuesdays (2 officers x 2 hours x 2 days), this is offset by the costs that the Employer has documented. Moreover, the savings attributed to the current schedule accrue to the U.S. Marshals Service, which subsidizes the cost of bus crew operations, whereas the unnecessary expenses accumulated under the CWS are taken directly from the FCI's budget. The parties discussed various alternatives to terminating the CWS up to, and during, the period of the Panel's involvement, but "none of the options presented by the Union address the concerns presented by management." Returning the employees to a standard 5/8 schedule would maximize the use of the FCI's resources by allowing the bus crew to be "utilized to its potential." For these reasons, the Panel should conclude that the Employer has met its burden of demonstrating that the 4/10 CWS is causing adverse agency impact, and order that it be terminated.

2. The Union's Position

The Panel should find that the Employer has not met its burden of proof under the Act and order that the *status quo* be maintained. The increase in costs the Employer alleges under the CWS is exaggerated because it does not take into account the savings management gains from not having to pay COs overtime on Mondays and Tuesdays. Thus, had a 5/8 schedule been in effect from September 2005 to March 2007, the Employer would have had to spend over \$40,000 in additional overtime costs. This cancels out the cost the Employer claims it incurred during the same time period to replace bus crew employees on their RDOs. In any case, "management's assertion [of] financial burden is irrelevant due to U.S. Marshals [Service] incurring all bus operations costs and man hours associated with bus operations, including overtime."

Regarding the costs the Employer alleges are associated with CWS employees working 2 extra hours on Wednesdays and Thursdays when no other bus operations are scheduled those days, there are no "wasted man hours." CWS employees work 40 hours per week, just like those on a 5/8 schedule, and "the 2 remaining hours after an 8-hour shift is management's right and duty to assign to any area as needed." In the Union's view, the Employer's "only argument" for terminating the CWS is based on its "lack of hiring

custody staff to fill required daily posts on the current custody roster that can be filled by a bus officer not on assignment to bus operations." In this regard, the FCI is currently at least 20 positions under the complement of officers it has been authorized to fill by the FBOP's Central Office. Had management "filled the depleted roster," the issue of "terminating the CWS for bus officers would be non-existent." Finally, the Employer's attempt to terminate the CWS on the bus operations is merely "a 'stepping stone' for management to terminate ALL [CWS] at FCI Phoenix."

CONCLUSIONS

Under § 6131(c)(2) 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 findings on which it is based are supported by evidence that the schedule is causing 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."^{2/}

Having carefully considered the totality of the evidence presented in this case, we conclude that the Employer has met its statutory burden by demonstrating that the CWS for COs on the bus crew is causing an increase in the cost of agency operations. Preliminarily, we note that circumstances at the FCI appear to have changed significantly in two ways since the parties' implemented the CWS in 1999: (1) the mission of the bus crew went from a 3-day per week to a 2-day per week operation, and (2) overall CO staffing levels have decreased. With respect to the

^{2/} 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).

latter, the parties agreed during the informal conference that the decrease in staffing has not been intentional but, rather, is the result of management's inability to hire and retain qualified COs. While the bus crew's RDOs could be accommodated when CO staffing levels were higher, we are persuaded that the Employer has incurred costs to fill posts on Fridays to ensure the safety of the FCI which would have been unnecessary under a 5/8 schedule. In addition, unlike the savings in overtime costs for bus crew operations, which accrue to the U.S. Marshals Service, the increase in costs caused by the CWS have a direct impact on the FCI's budget. Accordingly, we shall order that the 4/10 CWS for the bus crew be terminated.

ORDER

Pursuant to the authority vested in it by 5 U.S.C. § 6131 (c) of the Federal Employees Flexible and Compressed Work Schedules Act, the Federal Service Impasses Panel, under 5 C.F.R. § 2472.11(b) of its regulations, hereby orders that the 4/10 CWS for correctional officers on the bus crew in the Correctional Services Department be terminated.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

July 6, 2007
Washington, D.C.