

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

COURT SERVICES AND OFFENDER
SUPERVISION AGENCY
WASHINGTON, D.C.

and

LOCAL 727, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 07 FSIP 76

DECISION AND ORDER

Local 727, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Court Services and Offender Supervision Agency, Washington, D.C. (Employer or CSOSA).

Following an investigation of the request for assistance, the Panel determined that the dispute, which arises from the Employer's decision to require Community Supervision Officers (CSOs) to work one late night shift per pay period,^{1/} should be resolved through single written submissions. The parties were also informed that, after considering the entire record, the Panel would resolve the impasse through the issuance of a *Decision and Order* where it selects between the parties' final offers on a package basis, to the extent they otherwise appear to be legal. In accordance with the Panel's procedural determination, the parties submitted their final offers and supporting statements of position. The Panel has now considered the entire record.

^{1/} CSOs' current shifts are from 8 a.m. to 5 p.m.; the late night shift would start at 10 a.m. and end at 7 p.m.

BACKGROUND

CSOSA was created by the National Capital Revitalization and Self-Government Act of 1997. Its mission is to increase public safety, prevent crime, reduce recidivism, and support the fair administration of justice in close collaboration with the community by supervising offenders who are on probation, parole, and supervised release under the D.C. Code. The Union represents 374 bargaining-unit employees who work primarily as CSOs, at grades GS-4 through -12. The parties have been negotiating over an initial collective bargaining agreement (CBA) since November 2002.

ISSUES AT IMPASSE

The parties disagree, among other things, over: (1) the circumstances under which individual employees may be exempted from the late night shift requirement, including the length of the grace period that could be granted; (2) the implementation date for the requirement; and (3) whether they should reconvene after the requirement is implemented to discuss any problems that may have arisen.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer's final offer is as follows:

The Union accepts that [CSOs] will be assigned one late night per pay period effective at the start of the pay period immediately following the signing of this agreement by the parties or the rendering of a decision by the Federal Service Impasses Panel, subject to the process outlined below:*

LATE NIGHT PROCESS:

- CSOs may state, in writing, a preference for the late night schedule of their choice (e.g., 10 a.m. to 7 p.m., every first Wednesday of each pay period). Unless changed or disapproved by the supervisor, that choice will become the CSO's normally assigned late night schedule. If no preference is stated or approved, a late night schedule will be assigned.

- It is understood that based on each circumstance, the decision for granting exceptions and/or their duration and frequency will be determined by the supervisor, branch chief or higher level management official. With prior supervisory or managerial approval, individual employees may, with compelling justification, be given consideration for an exception including:

- o complete exception
- o less than full requirement
- o occasionally excused on a given night
- o employees occasionally trading with another CSO on a voluntary basis within the same month or other time period allowed by the supervisor
- o grace period of no more than 60 days to get affairs in order

Management will consider extending grace periods beyond 60 days for exceptional circumstances (e.g., abnormal and unforeseen situations such as caring for a terminally ill qualified family member).

Transportation, child and/or elder care, school obligations or other routine personal or family matters are generally expected to be resolved in far less time than 60 days.

Disputes under this process will be submitted to the deciding management official (Associate Director, Community Supervision Services or his/her designee) and if not resolved within 30 days may be submitted by the Union to the appropriate forum.

Once this agreement has been signed by the parties, the Union will withdraw all pending appeals and statutory information requests in relation to the late night issue.

- * Management agrees that the late night requirement will not be implemented for the Transitional Intervention for Parole Supervision and Diagnostic Teams at this time. However, Management reserves its right to revisit this decision, and except in emergency situations will provide exempted employees with no less notice than one full pay period should they become

subject to the late night requirement in the future.

Implementation of the late night work requirement is important to permit supervised offenders who work during the day to meet with their CSOs and to "create greater opportunities for unemployed offenders to actively look for jobs during the day rather than being required to expend that time traveling to and from the site where their CSO is assigned." Moreover, such a requirement "is commonplace in the area of community supervision" and, in fact, was established for Parole Officers prior to CSOSA's creation in one of its predecessor components. Management, however, recognizes and "is sensitive to work life issues," so its proposal would permit supervisors to grant individual employees exceptions to the requirement "to the extent possible and reasonable, based on a review of the circumstances."

The Union's final offer does not clearly state the process that employees would be governed by when late nights are implemented, which could result in "unnecessary confusion and potential filings which may again require third party intervention." In addition, the portion of its proposal addressing the process by which employees would trade late nights with one another "suggests that someone's judgment other than the supervisor's would be sufficient" and, therefore, is "unacceptable." The Employer's proposal, on the other hand, "clarifies that supervisory approval is required for all schedule modifications." Management also is not required to establish, or interested in establishing, a grace period of up to 6 months before knowing the specific circumstances for granting such a lengthy exception. That decision should rest with managers delegated the responsibility for the efficient operation of each team, which includes maintaining adequate staffing. Finally, the Union's wording with respect to how disputes would be handled "is not entirely clear," while the Employer's is intended to ensure that "the appropriate forum" for Union appeals under the process "does not include arbitration," which at this time "is not available to the parties."

2. The Union's Position

The following is the Union's final offer:

The Union accepts that CSOs[] will be assigned a late night once per pay period subject to the processes outlined by management (1), and with the understanding that individual employees may be given consideration for an exception for compelling justification including:

- Complete exception
- Less than full requirement
- Occasionally excused on a daily basis
- Employees trading on a voluntary basis (2)
- Grace period of up to 6 months

The Late Night policy/operational instruction will be implemented 60 days from the date this agreement is signed. Once implemented the parties agree to reconvene in 45 days to discuss any problems with implementation.

Disputes under this process/policy will be submitted to the Agency designated management official, and if not resolved within 30 days, the matter may be submitted by the Union to an appropriate forum outside the Agency.

Once this agreement has been signed by the parties, the Union will withdraw all pending appeals and statutory information requests that were issued as part of this matter. This withdrawal does not bar the Union from submitting any future statutory information requests should the Union determine it is necessary.

(1) Management agrees that the late night requirement will not be implemented for the TIPS and Diagnostic teams at this time. Management reserves its right to revisit this decision in the future.

(2) Provided the CSOs[] do not abuse the process.

The Union's proposal that the late night requirement be implemented in 60 days would give CSOs "time to make child/elder care" or education/secondary jobs/transportation arrangements. This is reasonable given that many CSOs "are young, single heads of households" who were not hired with the understanding that they would have to work a late night shift, and that the Employer has no child care assistance program in place. A 60-day transition period also is more conducive to a "family-

friendly" workplace than the Employer's proposed start date, and is consistent with guidance from the Office of Personnel Management urging agencies to adopt such policies. In a number of other areas, the Union has proposed wording developed at mediation, while the Employer has not. For example, the Employer's proposal concerning the late night process "seems to imply that employees must have prior approval to get consideration of their request as opposed to having their request granted," which "is very different" from the wording discussed during mediation.

The portion of the Union's final offer allowing employees to swap shifts as long as the process is not abused "is based on research of FLRA and FSIP rulings" that such arrangements should be adopted "provided the Agency did not suffer negative consequences." In this regard, similar systems permitting one CSO to perform the duties of another to ensure that offenders' needs are addressed are a "standard practice" in the Agency during the daytime hours, and there is no evidence to indicate that employing those same systems in the evening would be a problem. Further, nothing in the Union's proposal would require management to grant an extension for 6 months. Finally, the Employer's use of the phrase "terminally ill qualified family members" as a basis for granting an extension would "bar [] employee[s] from using the Family and Medical Leave Act" if they need to do so to address a medical condition. Therefore, this portion of its proposal "violates the Family and Medical Leave Act."

CONCLUSION

Having carefully considered the evidence and arguments presented by the parties in support of their positions regarding this matter, we are persuaded that the Employer's final offer provides the more reasonable resolution of the dispute. Overall, it is clearer than the Union's with respect to the procedure that would be followed in implementing the late night requirement, including the process by which exceptions may be granted. For this reason, it is less likely to lead to disputes between the Union and the Employer, or CSOs and their supervisors. In addition, because CSOs have known for months about management's intentions concerning the requirement, and exceptions may be granted by supervisors on a case-by-case basis, we do not believe that delaying its implementation for another 60 days is necessary. Finally, there appears to be no merit to the Union's claim that the Employer's final offer violates the Family and Medical Leave Act of 1993. In this

regard, "caring for a terminally ill qualified family member" is cited as an example of an exceptional circumstance that might warrant extending a CSO's grace period beyond 60 days, and is clearly distinguishable from the issues addressed in the FMLA. Accordingly, we shall order the adoption of the Employer's final offer to resolve the impasse.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel, under 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

The parties shall adopt the Employer's final offer.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

October 11, 2007
Washington, D.C.