

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE AIR FORCE
McCHORD AIR FORCE BASE
McCHORD AFB, WASHINGTON

and

LOCAL 1501, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 09 FSIP 16

DECISION AND ORDER

Local 1501, American Federation of Government Employees, AFL-CIO, 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 a determination by the Department of the Air Force, McChord Air Force Base, McChord AFB, Washington (Employer) not to implement the Union's proposed 4/10 compressed work schedule (CWS) for employees working in the 62nd/446th Maintenance Group (MXG).

Following an investigation of the request for assistance, the Panel determined that the case should be resolved through an informal conference by telephone with Panel Member Joseph C. Whitaker. The parties were informed that if a settlement were not reached during the teleconference, Member Whitaker would notify the Panel of the status of the dispute, including his recommendation for resolving the issue. 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.

Pursuant to the Panel's procedural determination, Member Whitaker convened an informal conference by telephone with the parties on January 28, 2009, but a voluntary resolution was not reached. The Panel has now considered the entire record, including the parties' pre-conference submissions and Member Whitaker's recommendation for resolving the dispute.

BACKGROUND

The Employer, part of the Air Mobility Command (AMC), supports the Air Force mission by maintaining C-17 airlift capabilities that provide cargo, troop, and aero medical evacuation transportation throughout the world. The AMC also plays a crucial role in providing humanitarian support at home and around the world. AMC Airmen - active duty, Air National Guard, Air Force Reserve and civilians - provide airlift and aerial refueling for all of America's armed forces. The Union represents a bargaining unit consisting of 500 employees who are mainly aircraft mechanics and technicians, WG-10 through -12. The parties are governed by the terms of a collective-bargaining agreement that is due to expire in April 2009.

ISSUE AT IMPASSE

The primary issue in dispute is whether the finding on which the Employer has based its determination not to implement the Union's proposed 4/10 CWS in the 62nd/446th MXG is supported by evidence that the schedule is likely to cause an adverse agency impact.^{1/} Under the Union's proposal, the current 5-4/9 CWS option would be completely eliminated. Instead, all bargaining-unit employees working in the 62nd/446th MXG would have

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 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).

the opportunity to work a 4/10 CWS.^{2/} The proposed 4/10 CWS would also include a core day, a 20-minute lunch period, and a trial period of 6 months after which the Employer could conduct a review to determine if it is causing 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 throughout the 62nd/446th MXG establishes that the schedule is likely to cause a reduction in the Agency's productivity. Flight-line maintenance operates in a dynamic 24/7 work environment whereby aircraft must be ready to fly when needed. Mission requirements frequently change to meet the demands of world events, and flying and maintenance schedules are highly unpredictable. Currently approximately 94 of the 187 bargaining-unit employees who would be affected by the Union's proposal work a 5-4/9 CWS. This already results in 188 days each month where employees are not at the worksite due to their regular days off (RDO) under the 5-4/9 CWS. The Union's proposal would give all bargaining-unit employees the option of working a 4/10 CWS and could result in 748 days per month where employees are not at the worksite because of their RDOs. As many aircraft maintenance tasks require several shifts to complete, and could take several days if the task is complex, it becomes critical to the mission to have employees with the proper skills available. In addition, the AMC operates under a team-concept model in which the tasks necessary for aircraft maintenance require the interaction and assistance of multiple specialized workers at various stages of an operation. Aircraft downtime and availability of aircraft parts are key variables in the process that cannot always be controlled. To compensate for these variables, management must be able to spread the available

2/ The parties have two memorandums of agreement (MOA) concerning CWS affecting bargaining-unit employees in the MXG. Under a 1991 MOA, covering employees in one squadron in the 62nd/446th MXG, employees can request a standard 5/8 schedule, or a 5-4/9 or 4/10 CWS, subject to management's right to approve or disapprove the requested schedule. Of the five branches covered by this MOA, only a few employees work a 4/10 CWS. Under a 1996 MOA which covers two additional squadrons within the 62nd/446th MXG, employees have the option of requesting either a standard 5/8 schedule or a 5-4/9 CWS.

workforce strategically by numbers and job skills to best cover the Employer's 24/7 mission. Simply put, the Union's proposed 4/10 CWS would likely result in the availability of too few employees with the necessary skills on a given day to ensure that aircraft are repaired and able to fly when needed.

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. Preliminarily, while its proposal would give all employees the option of working a 4/10 CWS, the Union estimates that approximately 70 percent would actually take advantage of the opportunity. Under its proposal, the Employer can determine what the RDO for these employees should be based on mission requirements, skill code and seniority. As to the Employer's concerns, productivity would actually increase if the Union's proposal were adopted. In 2008, over 23,000 production hours were lost because of the requirement that Active Duty personnel participate in physical training (PT). By allowing employees to work a 4/10 CWS, the gap between shifts on those PT days would be filled by civilians to a greater degree than what occurs now. Productivity would also increase with the establishment of a 20-minute lunch period because the Employer would gain an additional 40 minutes a day, or 6.3 hours per pay period, of productive activity. The Employer's argument that employees with special skills are needed is also without merit. In this regard, the Air Force mandates that employees must not only be proficient in their own career field, but also possess enough skills in other fields to assist others within the team concept. Moreover, the flight and maintenance work at McChord AFB mirrors that of Alaska Airlines, where production increased after the implementation of a 4/10 CWS. Finally, the Employer's concern about productivity is undercut by the fact that the 62nd/446th MXG continues to win Maintenance Effectiveness Awards despite a reduction in manpower.

CONCLUSION

Under § 6131(c)(2)(B) of the Act, the Panel is required to take final action in favor of an 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/}

Having carefully examined the arguments and evidence presented by the parties, 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. Unlike the current schedule, the Union's proposal would give all employees the option of working a 4/10 CWS and management could only limit participation in the event of an emergency. Even if RDOs are spread throughout the workweek, a significant number of bargaining-unit employees could be unavailable each day to perform their duties in support of the Employer's mission. Given the unpredictability of flight and maintenance schedules, the complexity of maintenance operations, and the team concept requiring employees with specialized skills to be available when needed, we are persuaded that a 4/10 CWS is incompatible with the effective performance of the Employer's mission. Accordingly, we shall order the Union to withdraw its proposal.

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).

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 62nd/446th MXG.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

February 5, 2009
Washington, D.C.