

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
HERLONG, CALIFORNIA

and

LOCAL 1217, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 06 FSIP 89

DECISION AND ORDER

Local 1217, American Federation of Government Employees, AFL-CIO (Union), 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 decision by the Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Herlong, California (Employer), not to establish a 4/10 compressed work schedule (CWS) for employees in the Facilities Services Department as proposed by the Union.

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 Richard B. Ainsworth, to be preceded by written submissions from the parties. The parties were advised that if no settlement were reached during the informal conference, Member Ainsworth would notify the Panel of the status of the dispute, including the parties' final positions and his recommendation for resolving the matter. After considering this information, the Panel would take final action pursuant to 5 U.S.C. § 6131 and 5 C.F.R. § 2472.11 of its regulations.

In accordance with the Panel's procedural determination, Member Ainsworth conducted an informal conference by telephone with the parties on November 1, 2006, following receipt of their

written submissions. During the course of the teleconference, the parties discussed various alternatives but a voluntary resolution was not reached. Member Ainsworth 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 facilities that are safe, humane, and secure. The Employer operates a relatively new medium-security institution and a minimum-security camp. The Union represents a bargaining unit consisting of approximately 250 employees, although that number is expected to rise once the Employer completes its hiring process. The parties are covered by a collective bargaining agreement (MCBA) that was due to expire in 2001, but remains in effect until replaced by a successor agreement. The dispute affects approximately 21 employees in the Facilities Services Department who supervise work crews, consisting of 12 to 15 inmates, that attend to maintenance matters, including plumbing, painting, electrical and carpentry, at the Employer's complex.

ISSUE AT IMPASSE

In accordance with § 6131(c)(2)(B) of the Act, the issue in dispute is whether the findings on which the Employer bases its determination not to establish the 4/10 CWS program proposed by the Union is supported by evidence that the schedule is likely to cause 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 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.

POSITIONS OF THE PARTIES1. The Union's Position

The Union proposes to establish, for a 90-day trial period, a 4/10 CWS for employees in the Facilities Services Department. Under this proposal, the incumbents of 14 positions would be permitted to work from 6 a.m. to 4 p.m., without a duty-free lunch, 4 days a week; the regular day off (RDO) each week would be assigned as follows: three employees off each Monday, Tuesday, Wednesday, and Thursday, and two off on Friday. The Employer has failed to meet its statutory burden of proof of establishing that the proposed schedule would cause an adverse agency impact. In support of its position, the Union maintains that its revised proposal more evenly distributes RDOs throughout the workweek with no more than three employees off on any given day. This should help alleviate the "coverage" problems perceived by the Employer. If management alters the work schedule for inmates to require them to work 8 hours, 15 minutes daily, as the Union suggests, employees would have additional inmate hours each day to complete work orders, thereby enhancing productivity. During negotiations the Employer stated a willingness to alter the work schedule for inmates to allow employees to work a 5-4/9 CWS; management has not identified why a similar accommodation cannot be made for employees under a 4/10 CWS.

The longer workday for employees under a 4/10 CWS would expand the time staff is available on-site to respond to emergencies. Starting work at 6 a.m. would allow more employees to be in the workplace during a time when inmates are being released from their cells. The proposed schedule, which would allow 14 of the 21 employees in the Facilities Services Department to start at 6 a.m., staggers the starting times for employees and, therefore, likely would reduce the waiting time to sign out equipment which now occurs because most employees start work at 7 a.m. In this regard, 4/10 CWSs are commonplace within the Bureau of Prisons because it saves the Government money and enhances productivity while improving employee morale. With respect to the latter, part of the interest in a 4/10 CWS stems from a desire to minimize commuting costs as employees typically travel from 35 to 65 miles each way from their residences to the Employer's facilities. One less day each week

having to commute those distances would save both time and fuel expenses.

2. The Employer's Position

The 4/10 CWS proposed by the Union is likely to cause an adverse agency impact, as defined under the Act, because it would result in a reduction in productivity. In this regard, even if management were to extend the workday of inmates to 8 hours, 15 minutes to accommodate the Union's proposed schedule, the employees' 10-hour workdays still would be much longer than inmates' daily work schedules. The primary responsibility of the Facilities Services staff is to supervise inmates in making repairs, but employees would not have any supervisory activities for 1 hour and 45 minutes each workday; thus, there would be fewer work orders completed during a workweek and, necessarily, productivity would decline. Management cannot "invent" work for employees to do when not supervising inmates. Furthermore, having an RDO each week would diminish the level of services to the public (which includes inmates), not only because fewer work orders would be completed but also because inmates may have to be returned to their housing units when their work crew supervisor is on an RDO. While management would have the option of reassigning those inmates to another employee's work crew, this would raise some serious safety issues for both staff and inmates. An employee who takes on another staff member's work crew while the latter is on an RDO may not be able to adequately supervise the larger number of inmates, particularly in a prison setting spread out over 405 acres. Finally, the Union's proposal would not result in an efficient use of the taxpayer's money because staff idleness during nearly a 2-hour period each workday equates to an estimated cost of \$174,720 annually for wages spent while employees are non-productive.

CONCLUSION

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 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."^{2/}

Having carefully examined the arguments and evidence presented, we conclude that the Employer has met its burden of establishing that productivity is likely to be reduced under the Union's proposal. It is clear from the record that the primary responsibility of employees in the Facilities Services Department is the supervision of inmate work crews. While management may voluntarily agree to require inmates to increase work hours each day to accommodate the longer workdays employees would have under a 4/10 CWS, we are not persuaded that this should be imposed if it is unwilling to do so. More importantly, even if inmate work hours were increased to the extent suggested, there still does not appear to be a sufficient amount of non-supervisory work for employees to perform to justify a 10-hour day. Thus, productivity is likely to be reduced. Accordingly, we shall order the Union to withdraw its proposal.

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).

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(a) of its regulations hereby orders the Union to withdraw its proposal.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

January 4, 2007
Washington, D.C.