

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL INSTITUTION  
SCHUYLKILL  
MINERSVILLE, PENNSYLVANIA

and

LOCAL 3020, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 06 FSIP 110

**DECISION AND ORDER**

Local 3020, 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 (FCI) Schuylkill, Minersville, Pennsylvania (Employer), not to establish a 5-4/9 compressed work schedule (CWS) in the Recreation 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 Mark A. Carter. The parties were advised that if no settlement were reached during the informal teleconference, Member Carter would notify the Panel of the status of the dispute, including the parties' final 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 conducted an informal conference by telephone with the parties on December 6, 2006, 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 Employer's mission is to protect society by confining criminal offenders in the controlled environments of prisons and community-based facilities that are safe, humane, and secure. The FCI is a medium security facility that houses approximately 1,600 inmates; the site also includes a Federal Prison Camp. The Recreation Department is responsible for providing recreational activities at both facilities designed to assist inmates in developing healthier lifestyles and reduce inmate idleness. Overall, the Union represents about 200 employees, at grades GS-5 through -11, WG-5 through -9, and WS-7 through -11, who are part of a consolidated nationwide unit of about 23,000. Currently, there are seven bargaining unit employees (Recreation Specialists) in the Recreation Department; one works a 4/10 CWS, and the others, who are on traditional 5/8 schedules, have requested a 5-4/9 CWS. The parties are covered by a master collective bargaining agreement (MCBA) that expired on March 8, 2001; its provisions will remain in effect until a successor agreement is effectuated.

### 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 5-4/9 CWS proposed by the Union is supported by evidence that the schedule is likely to cause an adverse agency impact.<sup>1/</sup>

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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 PARTIES**

1. The Employer's Position

The Panel should find that the evidence on which the Employer bases its determination not to implement the proposed CWS establishes that the schedule is likely to cause an adverse agency impact as defined under the Act. In its view, the schedule would cause a reduction in the productivity of the agency and a diminished level of services furnished by the Recreation Department. Recreation Specialists' duties are "divided into two main categories: planning of activities and directly supervising the Recreation areas." Under the Union's proposal, coverage of these areas would be reduced by one full day per pay period for each staff member participating in the schedule. This amounts to "156 days loss of coverage, of both programming and security, of the Recreation Department each year." When coupled with the use of annual and sick leave, attendance at mandatory and other training, and military obligations, "inmate programs and security, primarily at the Prison Camp, would be reduced to approximately one third of the current coverage." This "significantly hinders" the FCI's ability to directly supervise inmates and their movements in this area, "account for inmates, monitor signs of unusual groupings/tension, in concert with providing and supervising programs."

While the Union contends that its proposal would provide an additional hour per day of "meaningful inmate interaction," the current schedule "already provides adequate coverage of Recreation areas." Additional staffing would be "redundant and provide for an overlap of services," and any potential benefits to adding one overlapping hour of staff coverage per day are far outweighed by the diminished level of services furnished to the public and the reduction in the productivity of the agency. In this regard, "management should not have to reduce services in order to provide a [CWS]."

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Ferraro); and 128 CONG. REC. S7641 (daily ed. June 30, 1982) (statement of Sen. Stevens).

## 2. The Union's Position

The Union proposes that all seven Recreation Specialists be permitted to work a 5-4/9 CWS. Its proposed schedule would provide coverage for all seven Recreational posts, including days, evenings, weekends, and the Prison Camp, and would remove the current 4/10 CWS post. By way of background, Recreation Specialists initially wanted to work a 4/10 CWS, but the Union countered with a 5-4/9 CWS when management denied the request. The parties agreed to a 5-4/9 CWS "and began negotiating particular proposals associated with that schedule." After these negotiations were underway, "management pulled the schedule from the table, declaring adverse agency impact." The Employer subsequently failed to provide the Union with any new data that was not available during their initial approval of a 5-4/9 CWS, and "incorrectly argue[s], without data, that giving staff an extra day off creates a loss of coverage, which would negatively affect programming and security."

The basis of the Employer's initial decision to approve a 5-4/9 CWS was that it would meet management's established minimum requirement of having three Recreation Specialists present per day, with the exception of most holidays, when there would be four. Under any of the 5-4/9 CWSs that were discussed during negotiations, "between four and five staff members [] are assigned to work everyday." Thus, the Employer's allegation that inmate programs and security, primarily at the Prison Camp, would be reduced by approximately one-third due to regular days off (RDO) under a 5-4/9 CWS is simply "not true." Although a problem would arise if 3 or 4 staff are allowed to be on annual leave at any one time, management would be creating the hardship itself since the approval of annual leave requests is under its control. Hence, the Union's proposed schedule does not require management to "vacate" the Prison Camp, nor has the Employer provided any evidence to demonstrate that its implementation would diminish productivity or inmate programming, or cost any additional money. Therefore, the Panel should find that the Employer has not met its statutory burden under the Act and order the parties "to return to negotiations regarding the implementation of the Recreation Department's request" for a 5-4/9 CWS.

### CONCLUSION

Under § 6131(c)(2)(B) 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."<sup>2/</sup>

Having carefully examined the totality of the evidence presented in this case, 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. During the informal conference, the parties agreed that the Recreation Specialist post located at the Prison Camp has been vacated numerous times in the past, primarily when employees are on annual or sick leave, or being trained. This has not adversely affected inmates' ability to participate in recreational programs because "inmate helpers" are available to ensure that such activities continue even when the Recreation Specialist is absent. Under a 5-4/9 CWS, however, given the number of RDOs that up to seven employees would receive per pay period, we are persuaded that the number of times that the Recreation Specialist post at the Prison Camp would be vacated is likely to increase significantly. It is clear from the record that the supervision of inmates is a core element of the Recreation Specialist position. Consequently, we shall order the Union to withdraw its CWS proposal.

#### 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)

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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, 97<sup>th</sup> Cong., 2d Sess. at 15-16 (1982).

of its regulations hereby orders the Union to withdraw its proposal.

By direction of the Panel.

H. Joseph Schimansky  
Executive Director

December 22, 2006  
Washington, D.C.