

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE AIR FORCE
309th AEROSPACE MAINTENANCE AND
REGENERATION GROUP
DAVIS-MONTHAN AIR FORCE BASE
TUCSON, ARIZONA

and

Case No. 11 FSIP 147

LOCAL 2924, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

DECISION AND ORDER

Local 2924, 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 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and the Department of the Air Force, 309th Aerospace Maintenance and Regeneration Group (AMARG), Davis-Monthan Air Force Base (AFB), Tucson, Arizona (Employer).

Following an investigation of the request, which concerns a dispute over the implementation of a 5-4/9 compressed work schedule (CWS), the Panel determined to resolve the matter through the issuance of an *Order to Show Cause (OSC)*. In this regard, the parties were directed to show cause why the Panel should not resolve the parties' impasse by imposing the CWS Memorandum of Understanding the Union initially proposed in 2010 (2010 CWS MOU).^{1/} In their responses to the OSC, both parties

^{1/} See Attachment A for the text of the 2010 CWS MOU. The 2010 CWS MOU was the subject of Panel Member Barbara B. Franklin's *Arbitrator's Opinion and Decision in Department of the Air Force, 309th Aerospace Maintenance and Regeneration Group, Davis-Monthan Air Force Base, Tucson, Arizona and Local 2924, American Federation of Government*

proposed alternatives to the 2010 CWS MOU.^{2/} In reaching its decision, the Panel has now considered the entire record.

BACKGROUND

309th AMARG, a tenant activity at Davis-Monthan AFB, is a joint service organization within the Air Force Materiel Command (AFMC) structure that stores, regenerates, reclaims, and disposes of aircraft and related aerospace items, such as special tooling, special test equipment, engines, pylons, and miscellaneous airframe components. Notably, it services Joint and Allied/Coalition warfighters in support of global operations and combat support for a wide range of military operations, including combat operations in Iraq and Afghanistan. 309th AMARG is primarily financed as a "Working Capital Fund" activity, which means that the vast majority of funding for its operations, including wages, is derived from 309th AMARG's customers. 309th AMARG has a total workforce of approximately 893, including 579 bargaining unit employees (BUEs), 232 contractors, 9 military and 73 supervisory employees. The Union represents a unit of 1,100 professional and non-professional General Schedule and Wage Grade employees in a wide variety of aircraft maintenance and technical positions, more than half of whom work at 309th AMARG. The parties have recently negotiated a new Labor-Management Agreement (LMA) that will remain in effect until April 2014.

Employees, AFL-CIO, Case No. 10 FSIP 94 (January 11, 2011). In that case, after conducting a mediation-arbitration proceeding at Davis-Monthan AFB, Member Franklin ordered the Employer to negotiate over the Union's proposed 2010 CWS MOU, concluding that the totality of the evidence did not support the Employer's finding that implementation of the Union's proposal would likely cause an adverse agency impact under any of the three criteria specified in the Federal Employees Flexible and Compressed Work Schedules Act (Act), 5 U.S.C. § 6131. The Union requested the Panel's assistance in the instant case after the parties returned to the bargaining table and failed to reach an agreement over the 2010 CWS MOU.

2/ See Attachment B for the text of the Union's alternative CWS MOU, and Attachment C for the text of the Employer's alternative CWS MOU.

ISSUES AT IMPASSE

The parties essentially disagree over the following issues: (1) the date for implementation of the CWS MOU; (2) whether there should be a test period; (3) the procedure the Employer should use if it decides to terminate the 5-4/9 CWS; (4) which employees should be allowed to work a 5-4/9 CWS; (5) whether participation in CWS should be voluntary or mandatory; (6) whether employees should be allowed to choose their RDOs; (7) the starting and stopping times on the 5-4/9 CWS; (8) the circumstances under which the Employer could temporarily change an employee's CWS or remove an employee from CWS; (9) the impact of details or reassignments on an employee's CWS; and (10) distribution of the parties' CWS MOU.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that a 5-4/9 CWS consisting of "eight 9-hour days, with one 8-hour day and a regular day off (RDO)" be made available to 309th AMARG employees. Unlike its proposed 2010 AWS MOU, however, no reference would be made to the parties' 2002 LMA since they are now covered by a successor LMA. The 5-4/9 CWS would be implemented at the conclusion of the second pay period following the signing of the CWS MOU. According to the Union, it has checked with the "Civilian Pay Clerk" who confirmed that a month is more than enough time to put a CWS plan into place. In deference to 309th AMARG's use of teams, the Union adds that two pay periods gives first line supervisors enough time to receive CWS requests, "establish team concepts and schedules, and develop alternate strategies and procedures to accommodate any team concepts if needed." The Union's alternative CWS MOU does not contain an end date, allowing it to remain in effect indefinitely unless 309th AMARG seeks to "terminate the 5-4/9 [CWS]." If so, the Employer would have to "submit a FLRA Form 14 in compliance with 5 USC Sec 6131.^{3/}" The Union also would make the 5-4/9 CWS available to "all [BUEs]." Participation, however, would be strictly "voluntary" to recognize that while those who have limited leave balances or perform work that "is manual in nature and physically demanding" might opt for CWS, those who do not experience "work life issues and are content with the standard

^{3/} FLRA Form 14 is used by parties to request the Panel's assistance.

8-hour day schedules should not be uprooted and forced to work a 5-4/9" CWS.^{4/}

Under the Union's alternative CWS MOU, all CWS employees would begin their shifts year-round at 0600 and end their shifts at 1530 on 9-hour days and at 1430 on the 8-hour day. The Union believes that these "pre-established beginning and ending shift hours," separated by evenly dispersed breaks and a lunch period, would "accommodate the employees and continue to meet the Agenc[y's] needs and mission requirements." To avoid "confusion or disruption of service," the Union proposes that 5-4/9 employees revert to an 8-hour workday when they receive orders for temporary duty (TDY) to commands that do not offer CWS. Employees detailed or reassigned, however, would retain their CWS schedules. If conflicts arise, a "supervisor can discuss other options/arrangements for the employee['s] RDO." Finally, to "keep all employees informed of the 5-4/9 CWS MOU and its processes," the Union proposes that the Employer circulate a copy to all employees once it is signed.

In the Union's view, the Employer's alternative CWS MOU "would cause a reduction of the productivity of the Agency and certify a diminished level of service furnished to the public." Its proposal for a 90-day test period and "arbitrary extensions" as it "unilaterally deems necessary" would effectively waive the Union's right to negotiate to impasse "over a very important condition of employment for the BUEs." This portion of the Employer's proposed alternative CWS MOU is also unnecessary because "management has the right to promptly end" any alternative work schedule that adversely impacts the Agency "provided it can prove to the [Panel] that those adversities" in fact exist. In addition to requiring mandatory participation in the CWS, management's proposal would make the first Friday of the pay period the only RDO. BUEs, however, "should have disparate RDOs to maintain the level of expertise needed to support the mission through the regular work week Monday through Friday."

2. The Employer's Position

The Employer agrees with the Union that only a 5-4/9 CWS should be offered to 309th AMARG employees. Its proposed

^{4/} The Union's alternative CWS MOU does not specify which days of the week employees could choose as their RDO. The Panel assumes, therefore, that the Union would allow employees to choose any day of the pay period as their RDO.

alternative CWS MOU, however, also would include no implementation or end date. Instead, it proposes that the CWS MOU be in effect as a test for 90 days and, at the end of the 90-day period, if management determines that there has been an adverse impact under any of the three criteria specified in the Act, the test would be terminated and all employees would return to a regular 40-hour workweek. If the Employer "does not have enough information to make an adverse impact determination" at the end of 90 days, it could extend the test another 90 days before deciding whether to terminate the 5-4/9 CWS. If no adverse impact is found, the CWS would continue for a year and then be renewed annually, so long as the Employer does not determine, at the end of each year, that the schedule is creating an adverse impact.

The Employer must have unfettered ability to quickly terminate the 5-4/9 CWS because of the unprecedented impact the 2011 Budget Control and Budget Act will have on the Air Force. Several initiatives are already underway. Last November, for instance, the AFMC announced a major reorganization to streamline the command structure and reduce overhead costs to help the Air Force meet its goal of eliminating 9,000 civilian positions. In addition, because President Obama's November 11, 2011, Executive Order mandates "a spending reduction plan of 20 percent below FY 2010 spending levels," 309th AMARG has been directed to implement a hiring freeze as well as reduce overtime and operating expenditures. In this fiscal environment, "[a]ny initiative that increases our costs or reduces workload" is unacceptable. Because 309th AMARG is partly a capital fund activity, some cost increases are passed on to the customer, thereby jeopardizing its competitive edge in the working capital fund world. A 90-day test period would give the Employer the flexibility to quickly terminate the schedule to prevent an "irreversible financial loss."

The Employer's alternative CWS MOU also would require all BUEs to work the 5-4/9 CWS, have the same starting and stopping times, and share the same RDO - the first Friday of the first pay period. Mandatory implementation is essential because "a large part of [309th] AMARG's workload prohibits employees from working independently. Safety concerns, contractual obligations with the Union, partnerships with current contractors and the inherent nature of the work require two or more employees working together." Some jobs, like towing an aircraft, require 4 to 5 employees and take 1 to 3 hours depending on the size of the aircraft and the distance it must be towed. The nature of 309th AMARG's work, therefore, requires teamwork which, in turn,

means that the Employer wants as many employees as possible at the jobsite at the same time. For this reason, the Employer has announced that "[i]f a mandatory CWS is ordered by the Panel," non-BUEs, as well as BUEs, would be required to work the 5-4/9 CWS. An additional advantage of requiring everyone to work the same schedule is that overtime expenses would be kept at a minimum. Moreover, the implementation of its alternative CWS MOU would avoid the inevitable scheduling conflicts that arise when team members and supervisors have different starting and ending times and RDOs.

The Employer's proposed tours of duty would change by an hour depending on whether 309th AMARG is on a summer or winter schedule. In the winter, the starting time would be 0700; in the summer, employees will begin an hour earlier at 0600 to avoid long hours in the enervating Arizona sun. In addition, requiring all employees to work the same RDO would save 309th AMARG \$36,061 to \$60,102 per year in utility costs by permitting it to shut down operations 1 day every pay period. Under both the Union's proposed 2010 CWS MOU and its current alternative MOU, on the other hand, "energy costs will increase over current rates" because employees are likely to elect different RDOs, thereby increasing 309th AMARG's operational hours to a minimum of 88 hours per pay period. Unlike the Union's alternative CWS proposal, which only would allow supervisors to take employees off their CWS when they are on TDY, the Employer's should be adopted because it would permit them to do so whenever "operational requirements" dictate, as well as when they are on TDY or in training. In addition, employees serving a disciplinary suspension would revert to an 8-hour schedule and, at the election of their supervisors, those on a performance improvement plan would do so as well.

CONCLUSIONS

Having carefully considered the parties' responses to the OSC, we shall order the implementation of a modified version of the 2010 CWS MOU to resolve their impasse. Preliminarily, we note that the 2010 CWS MOU was initially developed jointly by the parties and presented for review to the previous 309th AMARG Commander, who decided to delay its consideration until the arrival of the current 309th AMARG Commander. In our view, it is more comprehensive than either of the CWS MOUs proposed by the parties and appropriately balances the interests of both sides in this dispute. In this regard, the Union's proposed CWS MOU fails to address key issues, such as which days are available for RDOs; how supervisors would resolve scheduling conflicts;

what, if any, criteria they would apply when denying employees' CWS requests; and whether their determinations could be appealed and/or grieved. Moreover, supervisors would not be given sufficient flexibility to revert employees' CWS to an 8-hour schedule when necessary. In contrast, there are provisions dealing with all of these matters in the 2010 CWS MOU. For example, employees would advise supervisors which of two authorized RDOs they prefer, the first or second Friday of the pay period. Employees and supervisors are encouraged to informally work out scheduling conflicts but, if they are unable to do so, Squadron Directors would be empowered to resolve them based on non-discriminatory criteria. Any disagreement with a Squadron Director's decision "may be resolved through the negotiated grievance procedure." Thus, the 2010 CWS MOU is more likely than the Union's current approach to avoid conflict in the first place, and provides a clear mechanism for resolving disagreements if they do arise.

As to the Employer's proposed CWS MOU, we are not persuaded that CWS must be mandatory on the basis of its contention that "a large portion of [309th] AMARG's work prohibits employees from working independently." In support of its position, the Employer submitted declarations from, among others, 309th AMARG's Chief of Financial Services and a Production Controller. While the Chief of Financial Services stated that 39,000 tasks in FY 2011 required at least two employees, the declaration is incomplete because it does not provide the total from which that number was derived nor what percentage of the whole it represents. The Production Controller's explanation that "planners" generate work control documents for each assigned task and are "responsible for reviewing applicable guidance to determine if safety issues or the nature of the job itself requires more than one employee," appears to concede that employees do work alone; it is also an admission that in each case a determination is made whether more than one person is needed to perform a task. Even if the Employer assumes it will have to complete at least 39,000 tasks in 2012 with more than one person, it cannot accurately predict whether that will be possible with a 5-4/9 CWS until it knows how many employees will work that schedule. For the same reason, the Employer's claim that overtime costs would become exorbitant also appears to be speculative. In addition, the portion of the Employer's proposed CWS MOU that would permit it unilaterally to terminate the CWS would deprive the Union of its statutory rights under the Act, a matter over which it is not required to bargain.

While neither party has shown cause why the 2010 CWS MOU should not be imposed to resolve the impasse, we believe that their responses support two modifications to their jointly developed agreement. As noted by the Union, the first sentence of the second paragraph of the MOU should be changed to reflect the fact that the LMA that was in effect in 2010 has been superseded. The Employer also accurately points out that Section 12 of the MOU appears to prohibit management from alleging that the 5-4/9 CWS is causing adverse agency impact prior to the expiration of a 1-year trial period, a prohibition that does not comport with § 6131(a) of the Act. Accordingly, our Order shall require modifications to the 2010 CWS MOU consistent with these observations.

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 pursuant to the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the 2010 CWS MOU (Attachment A) modified such that: (1) The first sentence of the second paragraph shall state: "In accordance with the LMA between DMAFB and AFGE Local 2929:"; and (2) Section 12 of the CWS MOU shall state:

The parties expect this MOU to remain in effect for a minimum of 1 year from the date it is implemented. Should management determine that the 5-4/9 CWS is causing an adverse agency impact, however, in accordance with the requirements of 5 U.S.C. § 6131, it may exercise its right to terminate the CWS at any time during the 1-year period. Neither party waives any rights in accordance with the LMA or the Labor Statute.

By direction of the Panel.


H. Joseph Schimansky
Executive Director

March 20, 2012
Washington, D.C.