

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF VETERANS AFFAIRS
VA NORTH TEXAS HEALTH CARE
SYSTEM
VA MEDICAL CENTER
DALLAS, TEXAS

and

LOCAL 2437, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES,
AFL-CIO

Case Nos. 09 FSIP 20 & 21

DECISION AND ORDER

The Department of Veterans Affairs, VA North Texas Health Care System, VA Medical Center, Dallas, Texas (Employer) and Local 2437, American Federation of Government Employees, AFL-CIO (Union) filed separate requests 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 the Employer's decision to terminate the 5-4/9 compressed work schedule (CWS) of a bargaining-unit employee in Spinal Cord Injury Services (SCIS).

After investigation of the requests for assistance, the cases were consolidated and the Panel determined that the dispute should be resolved through an informal conference, via telephone, with Panel Member Barbara Bruin. The parties were advised that if no settlement were reached during the informal conference, Member Bruin would report to the Panel on the status of the dispute, including the parties' final positions and her recommendations for resolving the impasse. 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.

Pursuant to the procedural determination, Member Bruin conducted an informal conference by telephone with the parties on February 2, 2009, but no settlement was reached. The Panel has now considered the entire record, including the parties' pre-conference submissions and Member Bruin's recommendation for resolving the dispute.

BACKGROUND

The mission of SCIS is to provide clinical care to enhance the health, functional abilities, and quality of life for persons with spinal cord injuries, provide education for patients, their families, and all professional disciplines involved in spinal cord rehabilitation and ongoing care; and conduct research to expand and extend our knowledge of disease, impairment, disability and handicap as they relate to spinal cord injury or disability, and to apply that knowledge to improve clinical care. The Union represents approximately 3,265 Title 5 non-professional employees who work in such positions as food service worker, social worker, and a wide variety of clerical and program support positions. The collective-bargaining agreement covering these employees expired in 1997 but its terms remain in effect.

ISSUE AT IMPASSE

In accordance with section 6131(c)(3)(A) of the Act, the issue in dispute is whether the finding on which the Employer bases its determination to terminate the 5/4-9 CWS for the Secretary in SCIS is supported by evidence that the schedule has caused an adverse agency impact.^{1/} The employee's current

1/ Under 5 U.S.C. § 6131(b), "adverse agency impact" is defined as:

- (1) a reduction in 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 operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed work schedule).

schedule is as follows: Week 1 - Monday through Thursday from 7 a.m. - 4:30 p.m. and Friday from 7 a.m. to 3:30 p.m.; Week 2 - Tuesday through Friday from 7 a.m. - 4:30 p.m. with Monday as the regular day off (RDO).^{2/}

POSITIONS OF THE PARTIES

1. The Employer's Position

The 5-4/9 CWS for the Secretary in SCIS should be terminated because it has caused a diminished level of service to SCIS's customers (veterans), and a reduction in productivity. During the Secretary's RDO, when volunteers are available to provide SCIS with assistance, they are limited to answering the telephones and taking messages. These volunteers are incapable of performing the more complex secretarial duties including setting appointments, answering questions from staff and patients, typing, and other clerical duties. While an individual in a Work Study Program is available during the Secretary's RDO, his duties are also limited to answering the telephone and taking messages. The Secretary serves as the Customer Service Representative for SCIS, whose duties include the resolution of complaints raised by veterans at the lowest level. During her RDO, these issues are often deferred until the Secretary returns, resulting in diminished service to veterans because their complaints are not being properly addressed in a timely manner.

Productivity is reduced because other SCIS staff must interrupt their regularly-assigned work to ensure that the essential duties of the Secretary are accomplished. Performing secretarial duties has a negative impact on the ability of these employees, including management officials and SCIS physicians, to perform their required clinical and administrative duties. Finally, under the current CWS, the Secretary begins her workday at 7 a.m. The workday of SCIS's professional staff, and traffic from patients, however, does not begin until 8 a.m. The

The burden of demonstrating that the CWS has caused 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).

^{2/} Currently, the Secretary receives tutoring on her RDO while she pursues an advanced educational degree.

Secretary's starting time results in a reduction in productivity because there is insufficient work for her to perform daily from 7 to 8 a.m.

2. The Union's Position

The Panel should find that the Employer has not met its burden under the Act of demonstrating that the 5-4/9 CWS for the Secretary in SCIS has caused an adverse agency impact. Its assertion that productivity is reduced and customer service is diminished during the Secretary's RDO is without merit. In this regard, the Secretary works closely with Volunteer Services to ensure that SCIS has volunteers to cover for her on her RDO. In addition, an individual is available on Mondays from 8 a.m. to 4:30 p.m. through the Employer's Work Study Program to perform secretarial duties, including computer access and data entry. While the Secretary is the initial point of contact with veterans in her capacity as Customer Service Representative, anyone in management has the ability to take and resolve a complaint.

From 7 to 8 a.m. the Secretary completes numerous tasks without interruption that are helpful to prioritizing the workload before SCIS opens at 8 a.m. These include entering travel requests for patients for appointments, retyping SCIS policies, processing time cards to maintain privacy, preparing SCIS leadership minutes, loading the copying and fax machines, assisting employees on other shifts, setting up the conference room and ensuring that it is clean, and opening locked doors. When SCIS operated under a more team-oriented concept, all staff worked together to assist each other in the completion of their duties. Rather than terminating her schedule, the Employer and the Panel should allow the Secretary to remain on her 5-4/9 CWS until she finishes school in May 2010 so she can complete her degree within 1 year instead of 2.

CONCLUSIONS

Under section 6131(c)(3) of the Act, the Panel is required to take final action in favor of the agency head's (or delegatee's) determination to terminate a CWS if the finding on which the determination is based is supported by evidence that the schedule has caused an "adverse agency impact." As its legislative history makes clear, Panel determinations under the Act are concerned solely with whether an employer has met its

statutory burden on the basis of "the totality of the evidence presented."^{3/}

Having carefully considered the totality of the evidence presented in this case, we conclude that the Employer has demonstrated that the 5-4/9 CWS is causing a diminished level of service to SCIS's customers and a reduction in SCIS's productivity. In this regard, the Secretary's 5-4/9 CWS is causing other employees, including management officials and physicians, to perform secretarial duties during her RDO. Having other employees provide coverage during the Secretary's RDO has increased the workload of these employees at the expense of their own regularly-assigned duties. Accordingly, we shall order that the SCIS Secretary's 5-4/9 CWS be terminated.

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 that the SCIS Secretary's 5-4/9 CWS be terminated.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

February 5, 2009
Washington, D.C.

^{3/} See the Senate report, which states:

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).