

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
WILLIAMSBURG
SALTERS, SOUTH CAROLINA

and

Case No. 10 FSIP 55

LOCAL 525, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

ARBITRATOR'S OPINION AND DECISION

The Department of Justice, Federal Bureau of Prisons (FBOP), Federal Correctional Institution (FCI) Williamsburg, Salters, South Carolina (Employer) and Local 525, American Federation of Government Employees, AFL-CIO (Union) jointly filed a request for assistance with the Federal Service Impasses Panel (Panel) to resolve a negotiations impasse between the parties under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101, *et seq.*

After an investigation of the request for assistance, which arises from bargaining over the creation of a 4/10 compressed work schedule (CWS) in the Employer's Unit Management Department, the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on June 17, 2010, a mediation-arbitration proceeding was held at the FCI in Salters, South Carolina, with representatives of the parties. During the mediation phase, the parties were unable to voluntarily resolve the outstanding issues. In reaching this decision, I have considered the entire record in this matter, including the parties' statements of position and the last best offers they submitted on June 18, 2010.

BACKGROUND

FCI Williamsburg is a medium security facility that houses male inmates. It has an adjacent Federal Prison Camp (FPC) for minimum security prisoners. The Employer's mission is to protect public safety by ensuring that Federal offenders in its custody serve their criminal sentences in a facility that is safe, humane, cost-efficient and appropriately secure. The Union represents approximately 200 bargaining unit employees who, among other things, work in food service and facilities maintenance and in positions such as secretaries, accountants, educators, case managers, correctional counselors and corrections officers. The parties are covered by a master collective bargaining agreement (MCBA) that expired on March 8, 2001; however, its provisions will remain in effect until a successor agreement is implemented.

Inmates are encouraged to participate in a range of programs that have been proven to reduce recidivism and prepare them for a mainstream lifestyle and values once they are no longer imprisoned. The Unit Management Department is responsible for overseeing inmates' participation in these programs. Unit Management employees work in three separate buildings, each of which is located within FCI's secured, fenced environs. Known as Buildings 1, 2 and 3, each one houses between 550-575 inmates. Six case managers and six correctional counselors are assigned to each building. Teams of two (one manager and one counselor) are given a caseload (a group of inmates) to manage. One secretary is assigned to each building to support the work of the managers and counselors. One non-bargaining unit manager (unit manager) supervises the work of all three positions. The FPC's approximately 130 minimum security inmates also are managed by Unit Management employees. One case manager, one correctional counselor and one non-bargaining unit secretary are assigned to them. Instead of a unit manager, FPC employees report to the Warden's Executive Assistant who is assisted by his confidential secretary.

ISSUES AT IMPASSE

The parties essentially disagree over: (1) the number of employees that should be permitted to participate in the 4/10 CWS in Buildings 1, 2 and 3 of the Unit Management Department; (2) the schedule each should work (*i.e.*, hours of work each day and days off each week); and (3) the criteria the parties should follow in deciding who is eligible to participate and the

circumstances permitting the Employer to remove a participating employee from the CWS schedule.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that a total of 12 case counselors and/or correctional officers (4 per unit) and all 3 secretaries in Buildings 1, 2 and 3 be allowed to participate during a 6-month 4/10 CWS trial period. The case manager and correctional counselor attached to the FPC also would be included.^{1/} Case managers and correctional counselors who choose to work a 4/10 CWS would start at 7 a.m. (a half-hour earlier than their current 7:30 a.m. start time), and work until 5 p.m. (an hour later than they now leave), for 3 of their 4 work-days. On the fourth day, they would work from 11 a.m. until 9 p.m. The 3 secretaries would work from 9 a.m. to 5 p.m. all 4 days. Although the days would vary (i.e., some Thursday-Saturday; some Saturday-Monday, etc.), all employees working a 4/10 CWS would be given 3 consecutive days off. The Union attaches a Memorandum of Understanding (MOU) to its proposed schedule that, among other things, establishes the 6-month test but adds that "[a]t the conclusion of the 6-month pilot program, the agency will fully implement the program or assert adverse agency impact" as defined by 5 U.S.C. § 6131. In a separate attachment the Union proposes that the "only event" that can cause an individual "to revert to a 5 day, 8 hour week will be for the completion of one (01) week of ART and one (01) week of performing Correctional Officer posts during ART."

In its supporting statement, the Union advised the undersigned that the Unit Management team's dedication to and performance of the Employer's mission was recently recognized by a "Superior" rating on its Program Review. Its proposed 4/10 CWS is simply an effort on the Union's part to seek "a balance in their work/personal life situations" for the affected employees. To "lend context to (its) proposal," the Union describes its historical quest to establish a 4/10 CWS schedule

^{1/} The Union recognizes that, in addition to her unit management responsibilities, the FPC secretary serves as the assistant to the Warden's Executive Assistant and, therefore, is a confidential employee who is not in its bargaining unit. Nevertheless, the Union included her in the 4/10 CWS schedule it proposed in its June 18 last best offer.

in Unit Management, an effort that began in 2004 with the opening of FCI. Although the Employer offered a 4/10 CWS to all Unit Management employees in 2008, the Union rejected it.^{2/} The Union urges that FCI Bennettsville - another medium security institution in South Carolina - allows all of its Unit Management employees to work a 4/10 CWS schedule. The Union questions how the Employer can deny its employees this benefit when "a sister facility, which is the mirror image in design, construction, manning and inmate population" grants it. The Union argues that a majority of FCIs across the country allow their Unit Management teams to work 4/10 schedules.

2. The Employer's Position

The Employer contends that a 4/10 CWS should not be imposed if it would prevent the FCI from accomplishing its mission of providing "safety and security" to those within and outside its walls. To ensure that its goals are met, the FBOP has implemented the Unit Management concept. Under this approach, Unit Management team members are assigned a number of inmates to work with on a daily basis. Staff is interspersed among their assigned inmates so that they are easily accessible to one another. This physical closeness encourages the development of quality one-on-one relationships between staff and inmates, thereby enhancing communication, observation and education. The more direct and natural observation staff has of the inmates, the less likely it will be for behavioral problems and other incidents to occur. Moreover, with greater access to those who make primary decisions about their lives, inmates will make a better adjustment to prison life and, therefore, have a better chance at success when released. The Employer expresses concern that reducing the number of days that Unit Management staff have contact with the inmates has a risk of undermining the Unit Management concept, thereby impeding the mission of the FCI. The Employer observes that, overall, FCIs which do not have 4/10 CWS tend to rank better and show better outcomes than those that do. The Employer concedes that it cannot prove that a 4/10 CWS causes lower outcomes at FCIs but urges that the overall experience provides a reason to move cautiously in this area.

The Employer agrees with the Union's interest in offering employees a 4/10 CWS that promotes the quality of their lives.

^{2/} The 2008 CWS the Employer proposed had some employees working from 7:30 a.m. to 4 p.m. and others from 8 a.m. to 6:30 p.m. In addition, in each building several employees had non-consecutive days off.

It strenuously argues, however, that this legitimate interest must not be accommodated to a point that it has a negative impact on the FCI's "overriding concern" of ensuring "safety and security." It maintains that the proposal it puts forth in its last best offer provides that balance. In this regard, the Employer's proposal also includes a 6-month trial period. Because the FCI has no prior experience with a CWS in Unit Management, and in light of its safety and security concerns, it proposes that the test should include 13 employees: 1 case manager and 1 correctional counselor from each unit; 2 additional employees from Units 1, 2 or 3;^{3/} the 3 secretaries; and the case manager and correctional counselor for the FPC.^{4/} Although most employees will receive 3 consecutive days off, those few who do not will, at least, get weekends off.

In the Employer's view, its proposal provides a better use of Unit Management time than the Union's. Under the Union's proposal, employees would work daily between 4 and 5 p.m. even though inmates are locked in their cells for a body count by correctional officers for approximately 45 minutes during that period. Unit Management staff would not have contact with the inmates during this period. Therefore, although the Employer would permit 4/10 CWS employees to work from 7 a.m. to 5 p.m. as requested by the Union, the remaining Unit Management staff would continue to leave at 4 p.m. so all of their available work time is dedicated to the Unit Management mission. Finally, the Employer also attaches an MOU to its proposed schedule. Unlike the Union's, however, it adds a number of criteria allowing it to pull an individual off of his 4/10 CWS if he fails to meet certain performance criteria. Moreover, the Employer's proposed MOU does not expressly require that the pilot become permanent but only includes a statement of management's right to claim

3/ The two additional employees can be either two case counselors, two correctional counselors, or one of each. In addition, these staff members would be determined by unit-wide seniority with the caveat that both may not come from the same unit.

4/ The dispute before the Panel centered on the number of Unit Management employees who could participate in a 4/10 CWS in Buildings 1, 2 and 3. The record is clear that the parties agreed that the case manager and correctional counselor assigned to the FPC would be allowed to participate in the CWS. Therefore, the Employer will be ordered to modify its proposed CWS to include these employees during the 6-month trial period.

that the schedule is creating an adverse agency impact within the meaning of 5 U.S.C. § 7131.

CONCLUSIONS

Having carefully considered the entire record in this case, including the evidence and arguments presented by the parties, I conclude that the schedule proposed by the Employer represents a reasonable balance between the important and competing interests presented. I understand the Employer's argument that the Panel should not impose a CWS that poses a risk of negatively impacting its ability to maintain security and prepare its inmates for post-incarceration life. I appreciate its explanation that the Unit Management structure is critical for both, and I am sensitive to the fact that FCI's Unit Management Department has no experience with a 4/10 CWS and, therefore, would like to gradually implement that schedule.

On the other hand, I am also persuaded that because a large number of BOP facilities throughout the United States have already incorporated a 4/10 CWS in their Unit Management Departments, it is more likely than not that implementation of a 4/10 schedule at FCI Williamsburg will not pose an unreasonable risk for the institution. I am particularly persuaded by the fact that Bennettsville FCI - an institution that is very much like and located in the same state as FCI Williamsburg - allows its Unit Management team to work a 4/10 CWS. And I also consider that in 2008, the Employer proposed a 4/10 CWS for the Unit Management staff.


I am also sympathetic to the Union's frustration with the lengthy and prolonged negotiations in which it has been involved in seeking a 4/10 CWS. The key is to balance the Employer's legitimate concerns based on the overall Unit Management approach, its lack of experience with a 4/10 CWS in Unit Management and the pattern of comparative outcomes in institutions using a 4/10 CWS in Unit Management and those that do not use it against the legitimate interest of the Union that the employees it represents not be denied a benefit enjoyed by their colleagues at most other institutions. To achieve this balance, the 6-month trial period must allow a reasonable number of Unit Management employees to work a 4/10 CWS and must provide for evaluation of the outcome of the trial that will not degenerate into another prolonged round of negotiations over the fate of the CWS.

In this regard, I find the Employer's schedule which allows 8 out of the 18 case managers and correctional officers in buildings 1, 2 and 3 (almost half) to participate in the pilot program to be reasonable. This number increases considering the fact that both the case manager and correctional counselor for the FPC and all three bargaining unit secretaries are also allowed to participate. Added together, the total number of case managers and correctional counselors that may work a 4/10 CWS are 10 out of 20, or exactly one-half. Thirteen out of 23, more than half, of the total number of Unit Management employees may do so.^{5/}

However, to ensure that once the pilot period is over the parties do not relapse into additional lengthy negotiations over the fate of the program, I am imposing an MOU that in paragraph 17 requires the Employer to either extend the 4/10 CWS to all Unit Management employees at the end of the 6-month pilot or proceed under Section 6131 of the Federal Employees Flexible and Compressed Work Schedules Act to terminate the CWS. I have incorporated all of the provisions that were agreed to by both parties in their separate MOUs into the one I am imposing. In addition, I have added some of those proposed by the Employer that allow it to remove an individual employee from participation if he or she fails to meet the objective work performance standards articulated therein and, therefore, jeopardizes the mission of the Unit Management team. I believe that by doing so, a delicate balance between security and quality of life issues has been attained.

DECISION

The parties shall adopt the attached schedule, which the Employer will modify to include the unit employees at the Federal Prison Camp, and Memorandum of Understanding, to resolve their impasse.



Martin H. Malin
Arbitrator

June 29, 2010
Chicago, Illinois

^{5/} The FPC's secretary is not included in this total because she is a confidential, non-bargaining unit employee.