In the Matter of

DEPARTMENT OF THE AIR FORCE
AIR FORCE TEST FLIGHT CENTER
EDWARDS AFB, CALIFORNIA

and

SPORT AIR TRAFFIC CONTROLLERS ORGANIZATION

Case No. 10 FSIP 92

ARBITRATOR'S OPINION AND DECISION

The Department of the Air Force, Air Force Flight Test Center (AFFTC), Edwards AFB, California (Employer) 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 its determination to terminate the 4/10 compressed work schedule (CWS) for all Air Traffic Controllers (ATCs) represented by the SPORT Air Traffic Controllers Organization (Union or SATCO) because it is causing an adverse agency impact.[1/]

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through mediation-arbitration at Edwards Air Force Base with the undersigned, Panel Member Donald S. Wasserman. The parties were informed that if a settlement were not reached during mediation, I would issue a binding decision to resolve the dispute. Consistent with the Panel's procedural determination, on July 27, 2010, I conducted a mediation-arbitration proceeding at Edwards AFB, California with representatives of the parties. Because the mediation portion of the proceeding failed to result in the voluntary settlement of the dispute, I am required to issue a final decision resolving the parties' dispute in

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1/ "SPORT" stands for Space Positioning Optical Radar Tracking. According to the Employer, "SPORT is a function known as a military radar unit (MRU)." In addition, one of the eight ATCs is currently on Air Force reserve duty until the end of the year and another is the SATCO President who performs ATC duties 20 hours per week.

accordance with 5 U.S.C. § 6131 and 5 C.F.R. §2472.11 of the Panel's regulations. In reaching this decision, I have carefully considered the entire record.

BACKGROUND

The mission of the AFFTC's MRU is to provide tracking and monitoring services that support military flight test and training missions in areas near Edwards AFB. In addition to the 7 GS-12 ATCs currently involved in this case, the Union represents 4 GS-9 employees, some of whom are Electronic Technicians who support the ATCs in their air traffic monitoring duties, for a total of 11 current bargaining-unit employees. The parties' initial and still current collective bargaining agreement (CBA) went into effect in 1994 and has been automatically renewed annually since that time because neither party has exercised its option to open negotiations over a successor. Article 20, Section 1, of the CBA establishes the 4/10 CWS that is the subject of the parties' impasse. The practice of permitting ATCs to work 4 10-hour shifts weekly was initialed in 1991 and actually predates the parties' first CBA in 1991.

The MRU cannot independently determine the level of employee workload on a given day because the mainly military organizations that conduct test and training missions decide the number and timing of flights. The mission and objectives of the organizations supported by the MRU and factors such as maintenance and weather, determine the timing and number of flights monitored each work day. Historically, the MRU remains operational mainly during daylight hours, which is the period of greatest flight activity for AFFTC. According to the agency, throughout calendar year 2009, except for the month of December, the MRU operating hours were from 7 a.m. to 7 p.m. every weekday. During the 19 years that the 4/10 CWS has been in effect shift start times have varied greatly. Currently, employees work one of three 10-hour shifts starting at 7 a.m., 8 a.m. or 9 a.m. and ending at 5 p.m., 6 p.m. or 7 p.m. During other years 6 a.m. and 10 a.m. shifts were also implemented. As recently, as February 2010 a 12 noon shift was introduced, but the record does not reveal whether that shift remains operational.

ISSUE AT IMPASSE

The sole issue before me is whether the finding on which the Employer has based its determination to terminate the 4/10 CWS is supported by evidence that the schedule is causing an adverse agency impact.[2/]

PARTIES' POSITIONS

1. The Employer's Position

The Arbitrator should find that the 4/10 CWS is causing "significant" adverse impact upon Agency operations in the MRU essentially because it is reducing ATC productivity and increasing "the cost of reducing some potential MRU overtime." Preliminarily, the Employer "assumes that the Panel is well versed in the tradeoffs inherent in 4/10 CWS." In this regard, the "bedrock assumption seems to be" that a 25-percent longer duty day will produce a proportional increase in workload performed, *i.e.*, one way of determining whether a 4/10 CWS has increased, decreased, or maintained work productivity is to assess whether the 25-percent "more production per shift threshold" has been met. The Employer has tested the assumption through an exhaustive and detailed analysis of the MRU's workload records, known as "position logs," for approximately all 235 workdays during 2009 for which it has records. These logs contain the exact starting and ending times that ATCs occupied "operating positions, their only significant duty."[3/]

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

> (1) a reduction of the productivity of the agency;
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> (2) a diminished level of the services furnished to the public by the agency; or
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> (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. Ferraro); and 128 CONG. REC. S7641 (daily ed. June 30, 1982) (statement of Sen. Stevens).

3/ In response to materials submitted by the Union at the conclusion of the mediation-arbitration proceeding, the

By comparing the 2009 workload data against 8-hour and 10-hour daily shift coverage, management was able to assess the productivity and labor cost of addressing the 2009 workload with and without CWS. Its analysis, described in greater detail below, determined that "shorter 8-hour shifts and the same seven [bargaining-unit employee] daily staffing level as CWS would have been considerably more productive and reduced cost."

The Employer's analysis establishes that 10-hour MRU shifts "fell far short of delivering 25 percent of extra production compared to 8-hour shifts" because ATCs do not perform the same amount of work during all portions of the day. Rather, there are "predictable lulls" in daily MRU workload, and 10-hour shifts "force the MRU to maintain high levels of staffing during workload lulls while 8-hour shifts do not." As found by the Panel in a number of previous CWS termination cases, there is a "fundamental incompatibility" between 10-hour shifts and the facility's workload.[4/] The data show that most MRU workload is concentrated in a period that averages 7 hours or less for even the busiest days. Applying 10-hour shifts against, at most, a 7-hour need "leads quite predictably to a very poor match." Additional analysis of the effect of the three 2009 CWS shifts, starting at 7 a.m., 8 a.m., and 9 a.m., respectively, confirms that "excessive coverage" was provided and that 8-hour shifts would "remedy the waste." These shifts create waste by either forcing employees to report 2 hours earlier than, or remain 2 hours later than, workload requires. For example, in the case of the 8 a.m. CWS shift, three employees remain available until 6 p.m., leaving a total of at least five bargaining-unit employees at the facility during that time period under the current schedule. In 2009, however, there were only 42 days for which the workload exceeded 2 bargaining-unit employees between

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Employer contends that the time ATCs spent on other than operating position activities averaged about 1 hour per week during 2009. Further, as the result of a new SPORT Training Operating Instruction that went into effect in late May 2010, it asserts that the average amount of time ATCs spend per day in productive activities, including the 3 hours per day that they work in operating positions, would be a total average of 3.75 hours per day.

4/ Among other cases, it cites Department of Army, Army Dental Activity, Fort Knox, Kentucky and Local 2303, AFGE, AFL-CIO, Case No. 06 FSIP 63 (May 31, 2006)(DENTAC) in support of its position.

4 p.m. and 6 p.m., and none of these instances involved enough work to occupy 3 bargaining-unit employees for 2 hours. Having the MRU schedule employees daily for periods that their assistance will be needed once a week for brief periods is wasteful, "about as sensible as crushing a bug by dropping a piano on it." A much less wasteful alternative would have been to establish 8-hour shifts and to cover the workload where more than two bargaining-unit employees are needed either through overtime or by having MRU supervisors cover such instances.

Of the three periods where ending CWS would reduce MRU coverage, the 4 p.m. to 6 p.m. period "was by far the least wasteful," *i.e.*, the very worst consequence of ending CWS for the MRU "is a savings of only 96 percent." For the other periods of excess coverage, it can obtain savings exceeding 99 percent by ending CWS. Overall, "while 10-hour MRU shifts may not represent 100-percent waste when compared to 8-hour shifts, they aren't far from it." Productivity calculations of work performed by each type of shift reveal that, under 10-hour shifts, on average workers are productive 26.6 percent of the workday, and that non-CWS productivity each day is 32.9 percent. Comparing these figures, "employees would have been over 23 percent more productive without CWS during 2009," which demonstrates that CWS caused an adverse agency impact by significantly reducing ATC productivity in the AFFTC MRU in 2009.

In addition, far from creating a situation where the termination of CWS would cause overtime to skyrocket, "what analysis shows to be true instead is that it is only the cost of using CWS to reduce occasional overtime that reaches the stratosphere." In this regard, the basic figures are that CWS adds 70 hours of employee coverage each week for the potential to avoid, on average, one overtime hour. Moreover, for the 235 workdays during 2009, the 4/10 CWS required 3,190 more coverage hours than the same staffing under 8-hour shifts and provided 4,375.5 hours of flight monitoring services for the year. Eight-hour shifts, on the other hand, would have assured 4,327 hours of annual coverage. Thus, what remains with 8-hour shifts is the need to close a "48.5 person-hour coverage gap." Even if 100 percent of the shortfall results in new bargaining-unit employee overtime at time and a-half, rather than supervisory coverage, the comparable non-CWS overtime cost is equivalent to 72.75 full-time coverage hours. This means that the choices for satisfying the relevant overtime needs are between investing in

3,190 CWS coverage hours or the equivalent of 72.75 full-time hours under 8-hour shifts. Given that the former is 43 times more expensive than the latter in addressing overtime needs, "CWS increased costs and caused adverse impact to the Edwards MRU."

2. The Union's Position

The Arbitrator should find that the Employer "has not established even a *prima facie* case" that the 4/10 CWS is causing an adverse agency impact. In this connection, the Employer admits that the MRU "cannot independently determine the level of employees' workload during a day" and that "some lack of MRU productivity is by design." This admission "dilutes and contradicts much of the Agency arguments which follow." The purpose behind negotiating a CWS with 10-hour shifts was to provide the extra margin of capacity that permits the MRU to remain continually ready to handle peaks in workload that often cannot be predicted in advance. This extra margin of capacity "has inured to the Agency's benefit for over 19 years," during which the MRU "has never failed to support a mission regardless of the lack of advance notice," including missions scheduled outside of the normal MRU operating hours. The 4/10 CWS also permits ATCs to work overtime on their rotating days off to support those missions, including after-hour missions scheduled without advance notice.

In support of its claims, the Employer has provided "hundreds of pages of redundant questionable statistics," but the Arbitrator should not be "fooled by volume."[5/] The graphs it has assembled based on these statistics are "speculative and only assert that the 8-hour shifts [would be] more optimum." The Act, however, requires the Employer to establish that the CWS is causing an adverse agency impact, not that an 8-hour shift would be more optimum. It would be interesting to see "how the group who created the many pounds of paper attendant to the CWS would address the firemen's positions at a fire station if they had not fought a fire for a week or a month." In any event, after acknowledging that some lack of MRU productivity is

5/ With respect to some of the Employer's statistics, the Union states that, "ironically, in 2009 the Agency arbitrarily and unilaterally created a 9 a.m. to 7 p.m. (10-hour) shift and is now before the [Panel] claiming the 10-hour shift is causing an adverse agency impact."

by design, the Employer "incredibly tries to argue that the CWS is causing the loss of productivity." Contrary to the Employer's position, the Panel's previous decision in DENTAC "is not applicable to the instant case" as it concerned an allegation that the CWS was diminishing the level of service to the public, something not in question here because "the SPORT MRU is not involved in any capacity with the public." With respect to increased costs, authorized ATC staffing in the SPORT MRU is set by a manpower study and not based simply on when operating positions are being occupied. ATCs are General Schedule employees working on an annual salary, and "the cost to the Agency is the same whether they are working 10-hour shifts, 8-hour shifts, or on 59 minutes of administrative leave."[6/] Indeed, because ATCs are working 10-hour shifts, "the MRU was able to reduce the authorized staffing from 14 to 11," *i.e.*, as the Employer acknowledges, 8-hour shifts provide less coverage than 10-hour shifts.

Some consideration should be given by the Arbitrator to the fact that Edwards AFB is a remote and very large base requiring long commutes to and from work. In this regard, the flexibilities Congress intended when it passed the Act "are most relevant at a base like this." The seven current bargaining unit ATCs commute at least 100 miles between their homes and the base and have benefited from the CWS since their employment at Edwards AFB began. Finally, the obvious question to be asked concerning this case is, if the CWS at the SPORT MRU has been causing an adverse agency impact for over 19 years why didn't the Agency address it before now? When asked this question, the Agency "gave no credible response." The fact of the matter is, over the past 19 years, the number of test flight missions has changed many times but there has been one constant. Missions are usually conducted during daylight hours, which is why the original negotiators chose a 4/10 CWS knowing that the period of daylight changes during the year. This has "worked out well for both the Agency and the controllers in both coverage and cost versus benefit."

CONCLUSION

6/ Concerning the latter, the Union contends that one of the reasons the Employer is asking the Panel to terminate the 4/10 CWS is its recent failure before a grievance arbitrator to end the parties' long-standing practice whereby supervisors may grant ATCs administrative leave at the end of a shift, operations permitting.

Under § 6131(c)(2)(B) of the Act, the Panel is required to take final action in favor of the agency head's determination to terminate a CWS if the finding on which the determination is based is supported by evidence that the schedule is causing 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."[7/]

Having carefully considered the totality of the evidence presented in this case, I find that the Employer has not met its statutory burden. Statistical analysis notwithstanding, there appears to be a fatal flaw in its main contention that the current 4/10 CWS is causing a reduction in the productivity of ATCs. The record indicates that the organizations the MRU services determine its workload and that the MRU has never failed to provide the services those organizations require while using 10-hour shifts. Overall productivity, therefore, would have remained the same in 2009 regardless of whether ATCs were on 10-hour or 8-hour shifts. Put another way, while 8-hour shifts would have increased the average number of ATCs working on any given workday by eliminating CWS regular days off, and limited daily work hours to the 7 a.m. to 5 p.m. period when most test fights occur, it could not possibly have increased the number of test flights that ATCs monitored. The "fundamental incompatibility" between workload and 10-hour shifts the Employer complains about merely would have been transferred to a larger number of employees working shorter workdays. The alleged "waste" caused by 10-hour shifts, and the alleged "savings" under 8-hour shifts, appear to be fictional. The only way for the Employer to achieve real savings in the current

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7/ 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).

circumstances would be to reduce the total number of bargaining unit ATCs, a measure that is within its control.

The Employer's other contention that the 4/10 CWS is increasing "the cost of reducing some potential MRU overtime" is equally unpersuasive. Embedded in its argument is the admission that an 8-hour shift would require management to close a "48.5 person-hour coverage gap" either through overtime or the use of supervisory ATCs. Thus, it appears the current CWS saves the Employer some overtime expenses that it would otherwise incur under 8-hour shifts. This may have been one of the factors the parties considered when they adopted the 4/10 CWS in 1991. In any event, for the reasons set forth above, I shall order the Employer to rescind its determination to terminate the 4/10 CWS in the MRU.

DECISION

Pursuant to the authority vested in me by the Federal Service Impasses Panel under the Federal Employees Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6131(c), and § 2472.11(b) of its regulations, I hereby order the Employer to rescind its determination to terminate the 4/10 CWS of Air Traffic Controllers at the Air Force Test Flight Center Military Radar Unit.

Donald S. Wasserman
Arbitrator

August 13, 2010
Washington, D.C.