

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL INSTITUTION  
TALLADEGA, ALABAMA

and

LOCAL 3844, COUNCIL OF PRISON LOCALS  
#33, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 08 FSIP 68

**DECISION AND ORDER**

Local 3844, Council of Prison Locals #33, American Federation of Government Employees, AFL-CIO, 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 determination by the Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution (FCI), Talladega, Alabama (Employer) that implementation of a 5-4/9 compressed work schedule (CWS) for the Food Service Warehouse Material Handler Foreman would cause an adverse agency impact.

Following investigation of the request for assistance, the Panel determined that the case should be resolved through an informal conference with Panel Member Joseph C. Whitaker. The parties were informed that if a settlement was not reached during the meeting, Member Whitaker would notify the Panel of the status of the dispute, including his recommendations for resolving the issue. After consideration of the record, the Panel would take final action in accordance with 5 U.S.C. § 6131 and 5 C.F.R. §2472.11 of the Panel's regulations.

Pursuant to the Panel's procedural determination, Member Whitaker convened an informal conference at the Talladega FCI on July 22, 2008, but a voluntary resolution was not reached. The

Panel has now considered the entire record, including the parties' pre-conference and post-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 Talladega FCI is a medium-security facility that includes a minimum security Satellite Camp.

### ISSUE AT IMPASSE

The primary issue in dispute is whether the finding on which the Employer has based its determination not to implement the 5-4/9 CWS for the Food Service Warehouse Material Handler Foreman is supported by evidence that the schedule is likely to cause an adverse agency impact.<sup>1/</sup> Under the Union's proposed 5-4/9 CWS, during the first week of the 2-week pay period Warehouse Foreman would work from 6 a.m. - 3 p.m. on Monday through Wednesday, 7 a.m. - 3 p.m. on Thursday, and Friday would be his regular day off (RDO). The work hours for the second week would be 6 a.m. - 3 p.m. The seven inmates supervised by the Warehouse Foreman would work from 6:30 a.m. to 3 p.m., and on his RDO, they would report to a Camp Food Service detail. There would be a 6-month trial period in order to assess the effect of the schedule on the FCI. Weekly deliveries to the Warehouse would continue on their current schedule of Monday

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<sup>1/</sup> 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. Ferraro); and 128 CONG. REC. S7641 (daily ed. June 30, 1982) (statement of Sen. Stevens).

through Thursday during hours of operation; incidental deliveries would follow the same schedule during the 6-month trial period.

### **POSITIONS OF THE PARTIES**

#### 1. The Employer's Position

The Panel should find that the evidence upon which the Employer bases its determination not to implement the proposed 5-4/9 CWS establishes that the schedule is likely to cause an adverse agency impact as defined under the Act. The proposed 5-4/9 CWS would reduce productivity and diminish the level of service furnished to the public. Productivity would be reduced because the Warehouse Foreman would have an hour of idle time each day where he is not performing his primary function of supervising inmates, resulting in lost production time of 208 man hours per year. The proposal would also place inmates in a non-work status every other Friday, during which they would be engaging in unproductive activity for 7 hours every 2 weeks, without earning income, for a total of 1,092 man hours per year. To keep the inmates busy, the only alternatives would be to assign them to another detail or to assign another employee to supervise the inmates during the Warehouse Foreman's RDO. These work details already consist of 20-30 inmates; adding more inmates would reduce the quality of supervision by increasing the supervisor's workload. Consequently, the inmates would not receive the same level of job-skill training to help them become law-abiding citizens upon release. Also, to accommodate the Warehouse Foreman's proposed schedule, the Union's proposal would require the Employer to place inmates on a CWS. Thus, inmates would work more than 7.5 hours per day, which violates Bureau of Prison policy unless they are also given bonus pay.

Closing the Warehouse every other Friday would delay the delivery of goods and services to the FCI, as vendors would be unable to make deliveries on that day. Over the past 6 months, there were 32 deliveries on Fridays that totaled over \$80,000. Delays in delivery could increase these costs and affect the bidding process for vendors. To avoid this result, management would have to assign another employee to cover for the Warehouse Foreman on his RDO. Within the past 6 months, the Warehouse Foreman has been provided a total of 181.50 hours of coverage during his annual leave and unscheduled sick leave by the Food Service Assistant, "which equates to 1½ months or approximately 45 days of coverage." The Union's proposal would require another 26 days of coverage that would greatly restrict the Food

Service Assistant's ability to perform his/her required duties in addition to performing those of the Warehouse Foreman.

## 2. The Union's Position

The Panel should find that the Employer has not met its burden under the Act of demonstrating that the proposed 5-4/9 CWS is likely to cause an adverse agency impact. First, when the Warehouse Foreman is on leave or training the Employer regularly assigns the Food Service Assistant to work at the Warehouse during his absence without any apparent loss of productivity or service to the public. Secondly, the Employer's assertion that assigning Warehouse inmates to other Food Service details would reduce productivity is without merit. The two Camp Food Service details are understaffed; the maximum number of inmates per detail is 35. Currently, the two details have 26 and 23 assigned inmates, respectively; therefore, assigning seven additional Warehouse inmates would not cause an undue burden on supervisors. The inmates would also be performing much-needed sanitation duties that are within their appropriate detail of training.

The Union's proposal to change the reporting times of inmates during the days the Warehouse Foreman is on duty, and to assign them to other Camp Food Service details during the Foreman's RDO, would increase the amount of time inmates are actually working from 70 to 72 hours each pay period. This refutes the Employer's claim that there would be a loss of earned income if its proposal were implemented. Finally, the FCI can determine the dates and times for deliveries in their contracts with vendors. Therefore, deliveries can be scheduled around the Warehouse Foreman's RDO or when the Warehouse is covered by the Food Service Assistant without causing a disruption in service. Delivery schedules are attached to the purchase order when a contract is awarded to vendors that spell out the days and times these deliveries will be accepted. As a result, the FCI can schedule deliveries well in advance of the Warehouse Foreman's RDO.

### CONCLUSION

Under § 6131(c)(2)(B) of the Act, the Panel is required to take final action in favor of the agency head'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 arguments and evidence presented by the parties, we conclude that the Employer has met its burden of establishing that an adverse agency impact is likely to occur if the Union's proposal is implemented. In this regard, the Union's proposed 5-4/9 CWS would result in the Warehouse Foreman not performing his primary function of supervising inmates for 1 hour each day. In our view, the Union has failed to effectively rebut the Employer's argument that this would reduce the productivity of the FCI. The Employer has also demonstrated that the Union's proposal would require it to either close the Warehouse or assign another employee to perform the Warehouse Foreman's duties on his RDO. Given the disruption to deliveries and inmate work schedules it would create, we are not persuaded that the Employer should have to close the Warehouse every other Friday merely to accommodate the Warehouse Foreman's desire for a 5-4/9 CWS. The alternative of requiring the Employer to assign another employee to provide coverage during the Warehouse Foreman's RDO would increase the duties and responsibilities of the assigned employee at the expense of his or her regularly assigned duties. Accordingly, we shall order the Union to withdraw its 5-4/9 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) of its regulations hereby orders the Union to withdraw its 5-4/9

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<sup>2/</sup> 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).

CWS for the Food Service Warehouse Material Handler Foreman at the Talladega FCI.

By direction of the Panel.

H. Joseph Schimansky  
Executive Director

August 19, 2008  
Washington, D.C.