In the Matter of

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 EMPLOYEES, AFL-CIO

Case No. 10 FSIP 94

ARBITRATOR'S OPINION AND DECISION

Local 2924, 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 the Air Force, 309th Aerospace Maintenance and Regeneration Group (AMARG), Davis-Monthan Air Force Base (AFB), Tucson, Arizona (Employer) not to implement the Union's proposed 5-4/9 compressed work schedule (CWS) for AMARG unit employees.

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through mediation-arbitration with the undersigned, Panel Member Barbara B. Franklin. The parties were informed that if a settlement were not reached during mediation, a binding decision would be issued to resolve the dispute. On November 3, 2010, I conducted a mediation-arbitration proceeding at Davis-Monthan Air Force Base in Tucson, Arizona. Settlement efforts during the mediation phase were unsuccessful. Thus, I am required to issue a final decision resolving the parties' dispute in 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 considered the entire record, including the parties' pre- and post-hearing submissions.

BACKGROUND

309th AMARG, a tenant activity on Davis-Monthan AFB, is a joint service organization within the Air Force Materiel Command 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. 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 AMARG's customers. The Union represents approximately 1,000 professional and non-professional employees, both Wage Grade and General Schedule, in a wide variety of aircraft maintenance and technical positions. According to the Employer, at the time of the hearing the AMARG workforce numbered 820: 579 bargaining unit employees; 232 workers employed by 7 contractors; and 9 military personnel. The employees are divided into four squadrons, with both bargaining unit employees and contract employees in each squadron. Only bargaining unit employees would be eligible to request CWS under the Union's proposal. The parties' current Labor-Management Agreement (LMA) has been in effect since 2002 and will remain in effect until they complete their negotiations over a successor LMA.

ISSUE AT IMPASSE

The issue in dispute is whether the Employer has met its burden of establishing that implementation of the Union's proposed 5-4/9 CWS in the 309th AMARG is likely to cause an adverse agency impact.[1/]

1/ 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.

The Union's proposed Memorandum of Understanding (MOU) would establish the following, among other things:

- the only alternative work schedule option available to AMARG unit employees would be the 5-4/9 CWS;
- employees opting to work the schedule would submit written requests to their supervisors, including their desired regular days off (RDO), which would be on either the first or second Friday of the pay period;
- participation in the 5-4/9 CWS would be voluntary for full-time unit employees;
- supervisors would be required to make every reasonable effort to comply with an employee's request, which would be approved or disapproved in writing within 10 calendar days after receipt;
- employees whose requests are disapproved would be provided written explanations and any disagreements resolved through the negotiated grievance procedure;
- when a holiday falls on an employee's RDO, the employee would receive a day off in lieu of the holiday on his/her preceding regularly scheduled workday;
- supervisors could temporarily change an employee's CWS to a basic 8/5 schedule when required to do so for such purposes as official travel or training, or other operational requirements; and
- the MOU would remain in effect for a minimum of 1 year.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Arbitrator should find that the evidence upon which the Employer bases its determination not to implement the proposed 5-4/9 CWS throughout AMARG establishes that the schedule is likely to cause adverse agency impact under all three of the Act's criteria. With respect to reduced productivity, 1 hour of work time would be lost whenever, because of the timing of a federal holiday, an employee on CWS would take 9, rather than 8 hours of holiday leave. For example, due to the day of the week when most federal holidays fell in Fiscal Year 2010, the number of available work hours per employee on CWS would have been 1,991 had the Union's proposed schedule been in effect then, compared to 2,000 work hours for employees on a standard 5/8

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

schedule. If all of AMARG's bargaining unit employees were on the schedule, this would mean that production time equivalent to 3.5 employees would have been lost due to holidays alone. The voluntary nature of the Union's proposal "is also problematic." Certain tasks performed by AMARG require a specific number of employees working together to complete (*i.e.*, the "crew concept"). Supervisors with crews that do not unanimously agree to be on the same CWS "would encounter significant scheduling difficulties" and "inevitably production efficiency would suffer."

The summer heat in southern Arizona would also cause a reduction in productivity if the 5-4/9 CWS were implemented. As an industrial hygienist explained during the hearing, wet bulb globe temperature (WBGT) readings are the most accurate way to determine whether regulatory requirements are in effect that limit the number of minutes per hour employees can work in extreme heat. Over the past 3 years, from May to early October, an average of 36 percent of workdays had work-rest cycle restrictions authorizing employees to take 10 to 20 minutes rest per hour. In addition, employees who work outside are required to stop work if there is lightning within 5 miles. CWS would require longer days than the current summer schedule, where employees start at 6 a.m. and stop at 2:30 p.m. In most instances, employees cannot start work much before 6 a.m. because of the need for daylight. Therefore, when added work-rest cycles occur, CWS "will only decrease efficiency given the continual rise in temperature." While the parties disagree over how often supervisors and employees actually adhere to these work-rest restrictions, it is undisputed that employees are entitled to invoke the rest time if they desire. It is also undisputed that longer days for the 26 percent of the industrial workforce required to wear personal protective equipment, such as non-permeable clothing, "would further reduce AMARG's productivity and efficiency." In this regard, the Union's attempt to minimize the adverse impact of working longer days under CWS by suggesting that employees are already working overtime during the summer months should be dismissed. To the contrary, the Employer's analysis of voluntary overtime in one of AMARG's squadrons where the majority of the work is performed outdoors shows that employees average 1.6 hours of overtime per week. In other squadrons, where most of the work is indoors or under a maintenance shelter, the average overtime is between 2.6 and 4.5 hours per week. These statistics reflect employees' reluctance to volunteer for longer workdays during the summer.

In addition to the inevitable reductions in productivity that would occur under the 5-4/9 CWS, there would also be a diminishment in the level of service provided to AMARG's customers. In this regard, 74.9 percent of AMARG's employees directly support warfighters participating in Operation Iraqi Freedom and Operation Enduring Freedom by reclaiming critical replacement parts from C-130 and A-10 aircraft and shipping them to requestors engaged in those combat operations. Such parts requests have been received by AMARG "before, during and after regular duty hours 7 days a week." By permitting employees to elect the first or second Friday of the pay period as their RDO, however, the Union's proposal "guarantees a portion of AMARG's workforce will be absent 1 day each workweek." Thus, mission critical parts requests have a 20-percent chance (1 day out of 5) of being received at AMARG "with less than a full workforce." Those odds increase to 40 percent during the 10 weeks that have a federal holiday. To avoid mission delay, AMARG would be required to call employees in from their RDOs on overtime or take a qualified co-worker off a non-critical task to ensure that its customers' needs are met. In either case, overall efficiency would be reduced and employee morale is likely to suffer.

The increase in AMARG's costs under the Union's proposed 5-4/9 CWS is harder to estimate because the number of employees who would opt for the schedule is unknown. As stated previously, however, if every direct worker at AMARG elected to participate, 3.5 employees would have to be hired to compensate for the lost production time, at an additional cost of approximately $234,858 per year. Even if only half of the employees select the option, a reasonable assumption given that 86 percent of the employees surveyed earlier this year were in favor of the proposed schedule, "AMARG would realize a net loss in excess of $100,000 per year." Because AMARG relies on the revenue it generates to cover its operating costs, any increase in expenditures due to the CWS would have to be passed along to its customers. This would erode AMARG's ability to compete for the depot maintenance work it currently has gained from other Air Force Logistics Centers. To prevent losing its competitive advantage, "manpower and other reductions would be necessary in an effort to maintain a billing rate attractive to customers." Management also would be more inclined to hire contractors working 5/8 schedules rather than civil service employees "to ensure maximum support to the warfighter."

The Panel has agreed with the Employer's rationale in previous CWS cases. For example, in *Department of the Army,*

Corpus Christi Army Depot, Corpus Christi, Texas and Local 2142, American Federation of Government Employees, AFL-CIO, Case No. 84 FSIP 28 (June 21, 1984), which also involved a working capital fund activity, the Panel found that the 5-4/9 CWS proposed by the union would have increased overtime costs and jeopardized the timely completion of assembly line projects.[2/] The CWS proposed by the Union in this case "would have the same impact for AMARG." In conclusion, the Act was initially conceived in 1978 to help alleviate Washington, D.C. traffic congestion. For "the assumed convenience of AMARG employees, 32 years later this same law is being thrust upon a one-of-a-kind military organization in Arizona" where traffic is not a concern. If the Union's proposal is imposed, "supervisors will be required to adjust work tasks and juggle crews to accommodate employees" who elect CWS and a specific RDO. To accomplish mission critical tasks, employees would have to be called back during their RDOs on overtime or others would have to be taken off non-critical tasks to perform the work. Either option is unattractive and "would result in an adverse impact to the Agency." Consequently, "the current production model and work schedule used by AMARG to support our military forces in Operation Iraqi Freedom and Operation Enduring Freedom is not ripe for an experiment."

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. Its claim that the schedule would reduce production time because of holidays "has no merit." If that were a true concern, Congress "would have considered that as a legitimate argument and not enact[ed] the law" in the first place. The Employer also makes the false assumption that all of AMARG's bargaining unit employees would elect the option. In this regard, the survey that was conducted in March 2010 was given to approximately 550 to 600 AMARG personnel; only 386 responded to the questionnaire, and only 86 percent of the respondents indicated an interest in CWS. Clearly, if CWS is implemented, "not all personnel will participate." As to the Employer's contention that certain

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2/ The Employer also cites the Panel's decision in *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 No. 09 FSIP 20 & 21 (February 5, 2009), in support of its position.

tasks require a specific number of employees working together to complete, AMARG's own "manpower by function" document shows that no AMARG shop is undermanned, nor would any shop become undermanned due to employees' RDOs. Each shop has at least three workers and most have six or more, "which is sufficient manpower to cover any work load or job assignment in AMARG including any surprise work load that may be caused by the need for unexpected support for the war effort." Moreover, "normally, most job assignments require only [one] person to be production acceptance certified."

The Employer's allegation that high summer temperatures in Arizona "should be reason enough" to deny employees' CWS is "disingenuous." Management provided no documentation showing the actual hours used during heat stress work/rest periods, and employees testified that "they have never been ordered nor had they ever taken rest periods" for WBGT-related reasons. Without accurate time-keeping records "it is impossible for the Agency to determine any accurate cost factors or . . . if there is or will be any diminished service to the Employer, or its war effort, based on the wet bulb guidelines." In addition, the Employer's argument that implementation of the Union's proposal would render requests for critical replacement parts "partially dormant" during RDOs and the following weekend should be rejected. CWS "has no effect on emergency requests for parts or support" because AMARG has procedures in place for emergency requests and "employees can be and have been called in to fulfill these requests over the weekend." Similarly, the AMARG Commander's assertion during the arbitration hearing that CWS at Hill AFB resulted in the failure of engineers to respond to a technical question from a General regarding an F-16 engine problem is completely unsubstantiated and has no bearing on the Union's proposal in this case. AMARG provides a service that produces a specific product, not the sort of technical support described in the Commander's example.

In further reference to Hill AFB, the Employer included power point slides in which it asserts that CWS caused the Hill AFB Depot Aircraft Execution Plan to be given "low performer" status. There is no basis in fact for this assertion. The 309th Hill AFB employees have had the 5-4/9 CWS option for the last 9 years, and management at that installation has not alleged that the schedule is causing adverse agency impact. Alternatively, the CWS at Hill AFB "has no tangible proven impact" on the proposed CWS at AMARG. The Employer also represented that an earlier trial CWS at AMARG during 1995 and 1996 caused a decrease in output per man day (OPMD) from 5.5 to 4.5 hours per

day. This representation is not factual and, under questioning, "the Agency admitted there was no documentation to support [its] allegations of a decrease [in] OPMD." If, in fact, productivity did diminish because employees took too much leave, it is the Agency that controls the approval or disapproval of leave for unit employees. Like all of its other arguments, the Employer has based its determination that adverse agency impact would occur if the Union's proposed CWS were adopted on "mere speculation." The Panel, however, has consistently held that an agency's arguments of adverse agency impact must be more than speculative if its legal obligation under the Act is to be met. In fact, "the only way to get accurate data is to implement" the Union's proposed 5-4/9 CWS.

In contrast, "[t]he implementation of AWS will have a positive effect on all employees, especially those with limited sick leave balances" who will have the "opportunity to schedule personal and medical appointments" on their RDOs. Consistent with the high priority performance goals the President has established for the Office of Personnel Management encouraging the use of workplace flexibilities, "research shows a positive return when employees pay attention to work/life issues, reducing absenteeism and lowering costs to the Agency." Additional consecutive days off will provide relief for employees whose work "is manual in nature and physically demanding," as well as energy savings from reduced commuting costs. Further, CWS will improve the war effort by adding an additional hour each day to regenerate and reclaim aircraft and "save cost by eliminating 30 minutes of break time per pay period."

CONCLUSION

Under § 6131(c)(2)(B) of the Act, the Panel is required to rule in favor of an 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."[3/]

3/ See the Senate report, which states:

As the Employer points out, the origins of the legislation that ultimately became the Act may be traceable to concerns about traffic congestion in the Washington, D.C. area. In 1982, however, Congress expanded the purpose of the Act when it found that "the use of flexible and compressed work schedules has the potential to improve productivity in the Federal Government and provide greater service to the public."[4/] Thus, the Employer's complaint that the Act is being "thrust upon" AMARG even though traffic congestion is not a problem in southern Arizona is not germane to the issue at hand. Rather, the issue is whether the totality of the evidence presented by the Employer is sufficient to establish that implementation of the Union's 5-4/9 CWS proposal is likely to result in adverse agency impact. Having carefully examined the arguments and evidence presented by the parties, I conclude that the Employer has not met its statutory burden.

With regard to the Employer's contention that a 5-4/9 schedule would reduce productivity, its worst-case assumption is that all - or at least half -- of AMARG's unit employees will choose the schedule. Given that only 381 out of approximately 670 AMARG employees responded to the parties' joint survey, and only 329 of the respondents indicated that they were "in favor of" CWS, there is no way to determine how many would request the option. Thus, the Employer's contention that a significant amount of time would be lost because of the timing of federal holidays is highly speculative. In addition, the Union's proposed MOU would permit employees to request either the first or second Friday of the pay period as their RDO, and although supervisors would be required to make every reasonable effort to comply with those requests, they could deny a request, or temporarily change an employee's CWS schedule, for operational

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> 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).

4/ 5 U.S.C. § 6120.

reasons. Therefore, the selection by a large number of employees of the same Friday RDO or of a 9-hour day that falls on or next to the majority of federal holidays is not inevitable; to a large degree, those choices are within management's control.[5/] Significantly, federal law already permits agencies to adjust the holiday schedules of employees on a CWS, notwithstanding the terms of any collective bargaining agreement, "if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact."[6/] For these reasons, the Employer's holiday-related contention falls short of demonstrating that AMARG's productivity would be reduced if the CWS were implemented.

Similarly, the Employer's argument that longer summer hours under the CWS would reduce productivity because of regulatory requirements mandating rest periods during excessive heat or lightning conditions is not persuasive. First, when faced with conflicting testimony regarding how often employees actually followed the prescribed rest periods, I found it impossible to determine how much productive time might be lost in this manner. Thus, although a former supervisor testified that he did institute breaks when he received a message over his two-way radio that the WGBT had exceeded certain levels, he admitted that the limitations were "subjective to a point" and that it was generally up to the employees to know their own limits and abilities. He further testified that rest periods were not as "drastic" for employees who worked under shelter. Union officials claimed that most employees took time during extreme

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5/ An examination of holiday schedules in FY 2011 does not support the contention that a significant number of productive hours would be lost due to the timing of federal holidays.

6/ 5 U.S.C. § 6103(d)(2) states as follows:

> (2) An agency may prescribe rules under which employees on a compressed schedule may, in the case of a holiday that occurs on a regularly scheduled non-workday for such employees, and notwithstanding any other provision of law or the terms of any collective bargaining agreement, be required to observe such holiday on a workday other than as provided by subsection (b), if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact.

heat conditions for sufficient hydration but rarely, if ever, stopped work for any length of time except for those who were working outside when there was lightning within 5 miles. It was undisputed that employees were not required to sign out when taking such rest periods and that, therefore, there is no documentation of the amount of productive time lost during the summer months due to the restrictions. Also, the need for protection from extreme weather conditions affects only a little more than one-quarter of the employees. Further, the Employer's presentation did not explain why those employees who work under shelter where electric lights are available could not start work in the summer before 6 a.m. and thereby work the extra hour when the heat is not so oppressive. Finally, according to the Employer's own statistics, the employees now work substantial amounts of overtime. The Employer contends that each employee working outdoors in the Storage & Disposal Squadron averages only 1.6 hours of overtime per week. However, that figure suggests that most of those employees are assigned at least one 9-hour day a week even in the summer - presumably without a dire effect on overall productivity - which is no more than an employee would work under CWS. And the percentages of overtime assigned in other squadrons were much higher. Moreover, an employee who is, in the Employer's words, reluctant to volunteer for a longer workday during the summer need not volunteer for CWS. Given the totality of the evidence on this issue, the Employer's contention that the introduction of CWS would result in measurable decreased productivity because of extreme weather conditions in summer was simply not substantiated.

In agreement with the Employer, implementation of the Union's proposed 5-4/9 CWS undoubtedly would require supervisors to adjust work tasks and juggle crews to accommodate employee requests. The fact that CWSs may be more administratively burdensome than 5/8 schedules, however, is not sufficient to establish that an employer has met its statutory burden under the Act. Rather, whether the degree of such burdensomeness rises to the level of adverse agency impact is best determined after a schedule has been implemented.

With regard to whether CWS would result in a diminished level of services, the Employer's arguments reflected genuine concern regarding the impact the 5-4/9 CWS would have on AMARG's ability to maintain its current performance in support of combat operations, but in the end they are equally unavailing. Its claim that the completion of certain tasks performed by AMARG requires a crew of employees working together may be correct, but current staffing levels appear to be sufficient to handle

workload requirements even if Fridays are retained as the only days on which employees could schedule RDOs. In this regard, the Employer admits that an employee could be temporarily assigned from a non-critical job to a crew that has a critical need. Moreover, it should be noted that employees working for contractors are employed in all the squadrons. Those workers would not be eligible for CWS and therefore would be available to fill in for those who might be absent on a Friday. Insofar as the Employer claimed that it was necessary to maintain an intact crew because of certification requirements, the Union credibly argued - and the Employer presented no evidence to refute the claim - that only one individual on a crew needs to be certified in order to complete a task.

The Employer's contention that 3-day weekends would cause unacceptable delays in filling mission-critical parts requests overlooks the fact that it currently has procedures in place to handle such requests in the case of 2-day weekends and weekends where a holiday is celebrated on a Monday or Friday. More importantly, the employer concedes that such requests come in "before, during and after regular duty hours [7] days a week." Surely, having some employees at work for an additional hour one day a week can only help, rather than hinder, the processing of requests that might arrive after the regular workday has ended. Although there may be deleterious effects caused by the absence of some employees taking RDOs, the fact remains that each employee will still be working 40 hours a week, with the possible exception of those who gain an additional hour of leave because of the timing of a federal holiday, as discussed above. During the hearing, the Commander of AMARG repeatedly relied on an incident that had happened when he was serving in Iraq to argue that the introduction of a 5-4/9 schedule could negatively affect the war effort: when a call was made to a depot in the U.S. for assistance that was deemed critical, the person at the depot who could have rendered that assistance was not at work that day. According to the Commander, the same problem could occur if a call came in from the military in Iraq or Afghanistan and the individual to whom the call was directed was on his RDO. Although I was - and remain - sympathetic to arguments involving the need for quick action to address a perceived military need, I do not find any evidence that supports the relevance of this incident to the situation at AMARG. First, the call was made to a different facility where apparently only a particular individual could respond to the request; in contrast, the employees at AMARG work in crews and no evidence was presented to establish that any AMARG employee has such individualized expertise that could not be duplicated by others. Second, the

Commander did not attempt to show that the same type of call would ever be made to AMARG. Finally, there is no reason to assume that such a call, even if it were relevant to AMARG, would arrive on an employee's RDO, rather than on a weekend, a holiday or after regular working hours. Accordingly, given the totality of the evidence, I find little factual support for the contention that the introduction at AMARG of CWS would cause a diminished level of services.

Finally, I do not find solid evidence to support the Employer's argument that CWS would increase the cost of Agency operations. In making this claim, the Employer questionably assumes that: (1) prohibitively large numbers of AMARG employees will want to work the CWS; and (2) RDOs ultimately will fall exclusively on Fridays. Moreover, the cost increases it projects are derived from its estimates of lost production time. As discussed above, these estimates are based on the unsubstantiated assumption that employees on the 5-4/9 CWS will end up working fewer hours per year than employees on a 5/8 schedule because of holidays. They also do not take into consideration the cost savings created by the elimination of break times on an employee's RDO or by the potential elimination of some overtime that may be unnecessary when CWA employees are working a 9th hour on straight time.

Nonetheless, the Employer did make a strong case that, as a "capital fund" activity - and because its traditional role as a storage facility for excess airplanes is diminishing - it needs to keep its costs down in order to compete effectively with Air Force depots for overflow maintenance and repair work. Although the evidence is insufficient to support a finding that CWS will adversely affect AMARG's ability to compete in that arena, a trial period under a 5-4/9 schedule will give the Employer the opportunity to examine the actual effects of CWS, if any, on its financial situation.

This leads to two important points regarding the establishment of CWS under the Act. First, because the Employer has not met its burden, the parties must now go back to the table and negotiate over the issue.[7/] While the Union's proposal

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7/ If an employer fails to meet its statutory burden under the Act:

> The Panel will direct the parties to return to the bargaining table and to continue negotiations on an alternative work schedule (128 Cong. Rec.

already appears to contain certain supervisory flexibilities designed to ensure that there would be no adverse impact on the accomplishment of AMARG's mission, during subsequent bargaining management is entitled to propose a 5-4/9 CWS that addresses the concerns it has raised, particularly in the area of the effect of RDOs scheduled exclusively on Fridays. Second, although the Union's proposal calls for the CWS to remain in effect for a minimum of 1 year, the Act states that once a CWS is implemented an agency may seek to terminate the schedule at any time, notwithstanding the provisions of any collective bargaining agreement.[8/] In addition, the Act requires the Panel to decide such impasses within 60 days and to terminate the schedule if the finding on which the agency's determination is based is supported by evidence that the schedule has caused an adverse agency impact.[9/] Thus, while it appears that under the circumstances presented the only way to substantiate the Employer's allegations is by implementing the schedule and collecting accurate data, the Act ultimately safeguards AMARG's ability to perform its vital mission and to maintain its competitive edge. Implementation of a 5-4/9 CWS also will enable the parties to evaluate whether the Act's purpose of improving productivity and providing greater service to the public is achieved.

I was impressed during the hearing by the Commander's sincerity in wanting to increase the numbers of direct, non-contract employees so as to build a strong team motivated by esprit de corps and loyalty to the military mission. I am confident that the parties will be able to negotiate a CWS MOU that will enable them to assess more accurately the effects of an alternative work schedule on both the employees and the ability of management to fulfill its mission.

H3999, daily ed. July 12, 1982) (statement of Rep. Ferraro). See also S. Rep. No. 97-365, 97th Cong., 2d Sess. 15-16 (1982).

8/ 5 U.S.C. § 6131(a).

9/ 5 U.S.C. § 6131(c)(3)(C).

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 parties to return to the bargaining table and negotiate over the Union's proposed 5-4/9 CWS in AMARG.

Barbara B. Franklin
Arbitrator

January 11, 2011
Washington, D.C.