In the Matter of

DEPARTMENT OF THE AIR FORCE
EIELSON AIR FORCE BASE
EIELSON, ALASKA

and

LOCAL 1836, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 65

ARBITRATOR'S OPINION AND DECISION

Local 1836, American Federation of Government Employees (AFGE/Union), filed a request for assistance on December 21, 2010, concerning a dispute over a Union proposal to implement a 4/10 compressed work schedule (CWS) with regular days off (RDOs) on Monday and Friday[1/] for employees in four shops within the Civil Engineering Squadron.

Following investigation of the request for assistance, the Panel determined to assert jurisdiction under the Federal Employees Flexible and Compressed Work Act, 5 U.S.C. § 6131, and directed that the dispute should be resolved through mediation-arbitration with the undersigned, Panel Member Edward F. Hartfield. The parties were informed that if a settlement was not reached during mediation, I would issue a binding decision to resolve the dispute. Consistent with the Panel's procedural

1/ Last year, the Union sought the Panel's assistance on the same issue. On May 27, 2010, it filed a request under the Federal Employees Flexible and Compressed Work Schedules Act (Act), 5 U.S.C. § 6131, in Department of the Air Force, 354th Civil Engineering Squadron, Eielson Air Force Base, Eielson AFB, Alaska and Local 1836, American Federation of Government Employees, AFL-CIO, Case No. 10 FSIP 89. The case was withdrawn when the Employer agreed to resume negotiations. The parties returned to the bargaining table but they were not successful in reaching agreement over either a 4/10 CWS or the RDOs under such a schedule. The Union, therefore, submitted a second request for Panel assistance.

determination, on August 11, 2011, I conducted a mediation-arbitration proceeding by telephone with representatives of the parties.[2/] During the mediation phase, the parties were unable to resolve their dispute thereby causing the need for the undersigned to convene an arbitration proceeding, allowing the parties to present their case including the opportunity to provide any additional exhibits, evidence, and testimony. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and submissions made at the hearing. Neither party had any additional documentation to submit other than their statements of position requested by the Arbitrator and the record was closed at the end of the day on August 11, 2011.

BACKGROUND

The Employer's mission is to maintain facilities and infrastructure at Eielson Air Force Base, located 26 miles south of Fairbanks, Alaska. The Union represents a bargaining unit consisting of approximately 335 professional and non-professional General Schedule and Wage Grade employees. The parties are covered by a collective-bargaining agreement (CBA) that was to have expired on November 17, 2010, but remains in effect while the parties bargain a successor CBA. During successor agreement negotiations, which are ongoing, the parties signed off on the Hours of Work article which allows employees the option of working a 4/10 CWS, 5-4/9 CWS or a straight 8-hour tour of duty. Currently, the employees affected by this dispute work a 5-4/9 CWS with Friday as the RDO.

ISSUE AT IMPASSE

The sole issue in dispute is whether the June 10, 2011, finding by the Commander of the 354th Civil Engineering Squadron on which the Employer bases its determination not to implement a 4/10 CWS is supported by evidence that the proposed schedule is likely to cause an adverse agency impact as defined under the Act.[3/]

2/ Originally, the Panel scheduled Panel Member Hartfield to travel to Alaska to conduct the mediation-arbitration hearing on site. However, due to an injury, the hearing was conducted by telephone, on August 11, 2011.

3/ Under § 6131(b), "adverse agency impact" is defined as:

(1) a reduction of the productivity of the

PARTIES' POSITIONS

Before convening the hearing on this matter, I requested the parties to provide statements of position for the Arbitrator.

1. The Union's Position

Despite the fact that the Employer, United States Air Force, Eielson Air Force Base, has agreed to provisions in new CBA language consistent with that contained in the Union's proposal, the Union's statement only addresses whether the Employer has met its statutory requirement in denying the CWS proposal.

In its document "Agencies Response to AFGE 1836 4-10 Compressed Work Week for the 354th Civil Engineer Squadron (CES), Eielson AFB, Alaska", the Employer alleges the Union's proposal would cause a loss of productivity, increased cost and diminished service to the public. This position in restated in the supervisor statements submitted to the Panel as an Employer exhibit on August 10, 2011.

By law, and the question for the Arbitrator to decide, is whether the Employer met the Act's requirement of demonstrating adverse agency impact in its denial of the CWS proposal submitted by the Union.

The Employer alleges the proposed CWS would negatively impact productivity because of reduced civilian/military interface for mentoring/training. The Union disputes this allegation as the schedule worked by military personnel is administratively controllable by the Employer. If it was of

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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).

Under the Act, the burden of demonstrating that a proposed CWS would have, or has had, an adverse agency impact falls on the employer. The Act requires the head of the agency to make the determination that the CWS has had, or would have, an adverse agency impact.

sufficient concern, the Commander has the authority to align the military work schedule with that of civilian employees.

During the arbitration portion of the proceeding, the Union requested of Mr. Andrew Schumacher, Deputy Chief of Operations 354th Civil Engineering Squadron, documentation or data used by the Employer to substantiate its claim of adverse agency impact resulting from increased overtime costs and reduced productivity. Mr. Schumacher responded that management had no such documentation or data since the shops have not worked the schedule which the Union proposes.

Lacking such data or documentation, the Union contends that the Employer's claim fails to meet the statutory standard of adverse agency impact.

The only documentation supporting an adverse agency impact resulted from an increased cost of operations when a 4/10 CWS schedule was unilaterally changed by the Employer so that the RDO for all shop employees was changed to the same day, Monday The Union subsequently agreed to a modification of that CWS to alleviate the adverse impact it was causing.

The Employer claimed that the Union's CWS proposal would result in decreased customer service since the primary schedule worked on Eielson AFB is 0730 - 1630, Monday through Friday. From previous CWS negotiations in other work centers, the Union became aware that although 0730 - 1630 may be the core hours worked, there is in fact, a wide variety of schedules employed on Eielson AFB. Furthermore, there is ability by the Employer to schedule work, not dependent on core hour facility access, which can be accomplished outside of core hours, thereby mitigating this issue.

The Union asserts that adverse agency impact caused by a diminished level of services furnished to the public refers to the general public, not the population of Eielson AFB.

In summary, the Union asserts the Employer's claims are speculative and not based in fact. If documentation or methodology existed for supporting the Employer's claims, they should have properly presented it to the Union and the Panel. The Union's proposal specifies a 1-year trial period which would allow the parties to address any adverse agency impact.

Based on the failure of the Employer to provide substantiating documentation, the Union requests the Panel rule

that the Employer has failed to demonstrate adverse agency impact under the Act.

2. The Employer's Position

Eielson's mission is to provide aerial combat flying training to coalition and Allied forces, in exercises called Red Flag Alaska. These exercises take place approximately 6 to 8 times per year and last for 2 to 3 weeks. Eielson AFB is a self-contained small city in the interior of Alaska. The Civil Engineering Squadron provides all utilities to the installation, including heat, electricity, water and waste water treatment.

The Employer asserts that establishing a 4/10 workweek in these four shops would cause adverse agency impact in terms of reduced productivity, diminished services to the public and increased costs. Productivity would be decreased by implementing different start and stop times for the shop work force. The military would remain on the current 5-4/9 schedule while the civilians would convert to a 4/10 schedule. That will create 1-hour a day when the military and civilian employees could not be dispatched together to complete a specific job task. One of the primary functions of the civilian work force is to mentor and train young airmen to ensure they possess the necessary skills required during a real world deployment. Similarly, there would be time at the end of the duty day when the civilian employee[s] would have to return to the shop to return the military at the conclusion of their duty day, and would have insufficient time to accomplish other work requirements. Because of the different work schedules there would be either a 1-hour delay at the beginning of a duty day or ½ hour on both ends of the day.

Access to facilities to perform work would be problematic when employee workhours fall outside the normal workweek duty hours of the general base populace. The time associated with these factors exceed the Union's stated 1-hour gain in productivity per pay period by eliminating one clean-up time and two 15-minute breaks. A significant number of jobs require a two or three-man policy due to the nature of the work, such as working in certain types of space and in below ground utility corridors. Jobs would have to be delayed until there were sufficient employees available to cover the safety requirements.

There would be days during the workweek when there would be insufficient employees to cover the work requirements; service

to the public would be reduced because employees would not be able to respond to service calls in a timely manner.

Since only bargaining-unit employees would be on a 4/10 schedule, the Employer still would be required to provide supervision to cover the 5-day workweek, 50 hours per week. Since all of the sections in question have a civilian supervisor working a 5-4/9 CWS, having to supervise employees on a 10-hour day would require the supervisors to work 1 hour of overtime per day under their 5-4/9 schedule. Doing so would increase overtime by 9 hours per pay period per supervisor, thereby increasing costs.

If the Union's proposed work schedule is of paramount importance to an individual employee, the Employer contends that adequate opportunity exists within the Squadron for employees to move to jobs that have a 4/10 schedule.

In conclusion, the Employer is unable to grant bargaining-unit employees' desire to convert their workweek to a 4/10 schedule. The impact of the two ongoing wars in the Middle East creates an operations tempo at Eielson that drastically reduces management's flexibility while still enabling it to execute its National Defense Mission.

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."[4/]

4/ *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

Having carefully considered the evidence and arguments presented by the parties, I conclude that the Employer has not met its burden of demonstrating that the Union's proposal for a 4/10 CWS with RDOs divided between Mondays and Fridays would cause an adverse agency impact. In reaching this conclusion, I note that the Employer has presented a fair number of statements articulating its concerns but no significant evidence to substantiate claims of increased overtime, loss of productivity, or reduced level of service to the public.

This case revolves primarily around two conflicting, but not irreconcilable, interests: the Employer's interests are to assure coverage to the base and fulfillment of its mission while limiting costs and maintaining productivity. The Union's overarching interest on this issue is employee morale, specifically, in the form of maximizing the number of 3-day weekends that its bargaining-unit members can enjoy during the short summer months by spending blocks of time with their families and to reduce commuting to provide relief from the severe Alaskan winters.

An examination of the information presented by the Employer reveals the deficiencies in its case. The Employer presented written statements from supervisors in the Utilities, HVAC, Structures, and Electrical Shops. Each of these statements express concerns about the potential impact of changing the current 5-4/9 working schedule to a 4/10 schedule. The concerns, for the most part, offer speculation as to what might happen if the schedule is changed to the Union's proposal but provide very little in the way of actual evidence or data to substantiate the concerns.

One Employer concern is that if the working schedule of the civilian group changes, the schedule will not align with that of the military work force. This Arbitrator believes that management has the discretion and authority to align the civilian and military work schedules. The schedules of the buildings/customers are entirely a matter of discretion and can be changed to accommodate the needs. Moreover, with respect to access to facilities beyond core hours, the Employer apparently

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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).

expects the Arbitrator to believe that a building/customer with a serious HVAC, plumbing, structural or other issue will not provide early access or guarantee access after hours in order to have that problem fixed.

A second Employer concern revolves around the Employer's suggestion that productivity decreases with the length of the work day, jeopardizing both safety and productivity. Again, no data has been submitted, and it becomes difficult to regard this as a serious issue when the change represents only 1-hour difference from the current schedule. Has there been any documentation of reduced productivity under the 5-4/9 schedule? Has there been any documentation regarding reduced productivity or level of service for any of the shops that currently work the 4/10 schedules? If such documentation exists, why was it not presented? If it doesn't exist, on what basis does the Employer expect to persuade the Arbitrator of adverse agency impact?

Several of the supervisors refer to the critical importance of being able to respond to heating emergencies in the severe Alaskan winter. Their description of what might happen if certain conditions could not be responded to on a timely basis were, on the surface, persuasive. To this Arbitrator, however, this issue appears easily addressed by an agreement to limit the 4/10 schedule to the summer months as the Employer has already done with a number of other units on base.

Another supervisor's letter refers to a previous experience with a shop that was operating under a 4/10 schedule in which management decided to have all personnel take their RDO on the same day. Apparently, numerous overtime call-outs became necessary resulting in increased costs to the unit. While one can understand the tendency to draw an inference from this example, the Union's proposal in this case to divide the RDOs for bargaining-unit employees among Mondays and Fridays in order to maintain coverage capabilities remains unaddressed by the Employer as to coverage problems.

The Employer also presented an overview of the various other shops and units on base and the variety of work schedules that civilian employees in those shops enjoy. In doing so, the Employer does successfully demonstrate that there is not a blanket opposition to the concept of CWS schedules or even to 4/10 schedules. Several of the base units do work under 4/10 arrangements. I would have expected the Employer to document their actual experience with regard to higher costs, reduced productivity, and diminished level of services in any of the

units working either a 5-4/9 or 4/10 schedule. The Employer has chosen not to do so, relying instead on general statements expressing its reservations.

The most compelling argument that the Employer presents revolves around staffing concerns due to:

1. the relatively small size of the shops;
2. the relatively low number of individuals with the same skill sets that some of the shops have in one or more classifications;
3. the inability to hire civilian replacements due to budget restrictions;
4. the high deployment rate among the military work force; and
5. the difficulties that could arise if an emergency ensues while one of the journeyman is on some sort of leave.

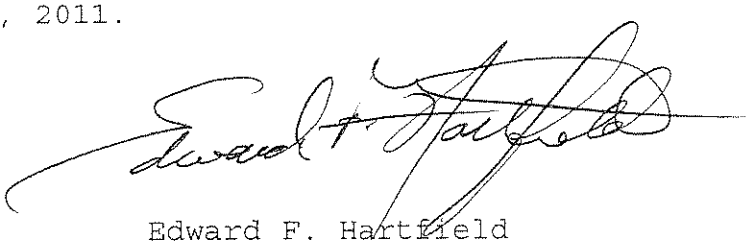
The Employer asserts and the Union does not rebut the fact that there are several shops in which specific crafts may have only one civilian tradesperson per craft. The Employer's argument is that emergencies which arise on those individuals' days off would have to be handled by overtime, thereby increasing costs. It is not clear why the Employer made no attempt to document the current overtime costs which result from the existing 5-4/9 schedule as a baseline of costs that it is trying to manage. As such, this Arbitrator has no idea how often the situation that the Employer is concerned with happens even under the current CWS schedule.

Had the Employer presented anything substantive in the form of problems encountered with the current 5-4/9 schedule in terms of increased overtime, increased costs of any kind, reductions in productivity or level of service, it would have made the task of finding that it had met its burden of proof easier. For whatever reason, it chose not to do so.

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 negotiate over the Union's 4/10 CWS proposal for bargaining-unit

unit employees in the Utilities Distribution Shop,[5/] the Combined Electrical Section, the Heating, Ventilating and Air conditioning Shop, and the Heavy Structures Section in the Civil Engineering Squadron. I further order the parties to conclude their negotiations on this matter, including mediation, no later than 45 days following receipt of this decision, or in any case, not later than September 30, 2011.



Edward F. Hartfield
Arbitrator

August 19, 2011
St. Clair Shores, Michigan

5/ According to the Employer, the Utilities Distribution Shop has been newly titled as the "Utilities Maintenance Shop."