In the Matter of

DEPARTMENT OF THE AIR FORCE
CHILD DEVELOPMENT CENTER
TYNDALL AIR FORCE BASE, FLORIDA

and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, LOCAL 3240,
AFL-CIO

Case No. 11 FSIP 115

ARBITRATOR'S OPINION AND DECISION

This case, filed by Local 3240, American Federation of Government Employees, AFL-CIO (Union) on July 14, 2011, concerns a dispute that arose during bargaining over the decision by Department of the Air Force, Child Development Center (CDC), Tyndall Air Force Base, Florida (Employer) to reduce work hours for employees at the base CDC. The Employer provides services to military personnel and their family members, as well as authorized civilians, which include food services, lodging, child care, recreational support and family services, activities that generate more than $8 million annually in non-appropriated funds. The Union represents a bargaining unit consisting of approximately 300 non-appropriated fund (NAF) employees whose wages and benefits are funded by income from the self-supporting activities that the Employer manages. At the CDC, where the Union represents approximately 50 workers, there are two categories of bargaining-unit employees: (1) "regular" NAF employees who receive benefits along with their wages, and (2) flexible or "flex" NAF employees, hourly workers who do not receive any additional employment benefits. Flex employees provide coverage for regular NAF employees when they are absent or on breaks; unlike regular employees, flex employees are not guaranteed a minimum number of work hours each pay period. The parties are covered by a collective-bargaining agreement (CBA) that is in effect until 2014.

On October 28, the Employer informed the Union that it needed to reduce the number of hours worked by regular employees at the CDC to 30 hours per week due to declining enrollment. In this regard, approximately 800 active duty personnel left Tyndall AFB last year, which resulted in a 25-percent decrease in enrollment at the CDC. Approximately 50 percent of funding for the CDC is from tuition paid by parents for child enrollment; the other half comes from appropriated funds, from which the General Schedule employees are paid and the building is maintained. The Union also was notified that room assignments for some employees would be changed in order to ensure proper teacher/child ratios.

After an investigation of the Union's request for assistance, the Panel directed the parties to mediation-arbitration with the undersigned.[1/] Accordingly, on November 22, 2011, a mediation-arbitration proceeding was held at Tyndall Air Force Base, Florida. During the mediation phase, the parties were able to resolve five of the six issues in their dispute. The parties were unable to resolve the sixth issue, hours of work for regular and "flex" employees, thereby requiring the undersigned to decide the matter in arbitration. By mutual agreement, the Arbitrator provided the parties until 5 p.m. on December 2, 2011, to submit any additional evidence and final statements of position to the Panel's offices. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and submissions made at the hearing.

BARGAINING HISTORY

The parties bargained on November 3, 2010, for about 1½ hours. They participated in two mediation sessions with an FMCS mediator on February 18 and May 5, 2011, for a total of 5 hours of mediated assistance. On September 1, 2011, FMCS referred the matter to the Panel.

ISSUE AT IMPASSE

The only remaining issue in dispute is **the hours of work for regular and flex employees**. The Union maintains that the Employer has taken hours from regular employees and given those hours to flex employees, resulting in some of the regular NAF employees working less than an 8-hour day. The Union further maintains that some of the flex employees are working close to a 40-hour week while the hours of some regular employees have been reduced.

The Employer maintains that most of the regular employees whose hours have been reduced individually requested that it do so to enable them to meet their own childcare or family obligations. The Employer further maintains that directing the workforce, and deciding the number and types of employees, is a management right.

STATEMENT OF FINAL POSITION OF THE PARTIES

Before closing the record on this matter, I requested the parties to submit a final statement of position for the Arbitrator. The Employer's final statement of position on the issue in dispute is as follows:

> Per Article 4 of the MOU with AFGE Local 3240, Management Officials of the Agency retain the right in accordance with applicable laws and regulations to hire, assign work, and schedule employees as needed to meet mission requirements. Therefore, management has the right to schedule Regular and Flexible employees based on actual mission needs.

1/ Panel Member Edward F. Hartfield.

The Union's final statement of position on the issue in dispute is as follows:

> Management unilaterally implemented a change to the negotiation schedule in November of 2011 without notifying the Union and providing an opportunity to negotiate on the impact and implementation of the schedule. The reduction of regular employees' hours has had a significant impact on their wages and corresponding benefits including sick leave, annual leave, 401 k, retirement, and holiday pay based on hours worked. The impact has also been amplified due to the pay freeze imposed on NAF employees.
>
> The Union is requesting that the Panel order the Agency to provide a copy of AF Form 1930 for the period of October 1, 2010, through October 31, 2011.

DISCUSSION

By way of background, the Employer points out that it informed the Union of the need to reduce the number of hours worked by regular employees at the CDC to 30 hours per week due to declining enrollment.

In this regard, approximately 800 active duty personnel left Tyndall AFB last year, which resulted in a 25-percent decrease in enrollment at the CDC. Since a significant portion of the CDC revenue is generated by enrollment fees, the Employer felt it had to reduce the number of hours of some regular employees. The Union maintains that while reducing the hours of the regular employees, the Employer has increased the hours of some flex employees to the point where a number of flex employees are working almost 40-hour weeks. The Union questions why hours of regular employees are being reduced when the hours of some flex employees are being increased. The Employer responds that, despite the reduction in enrollment, the CDC is required by both Florida and Federal law to maintain certain staff-to-child ratios, hence the need for flex employees to fill staffing "holes." The Employer further asserts that it utilizes a standard of "continuity of care" for the children; to maximize the care which is provided to children by the same adults so as to minimize confusion and anxiety in the children. It is the need to apply the "continuity of care" standard that results in the Employer always being able to offer additional hours to regular NAF employees because they are already deployed elsewhere in the facility.

This case hinges on an analysis of two key components: (1) the various agreements between the parties; and (2) an examination of the data submitted by the parties to support their assertions. Starting with **the agreements between the parties**, during both the Panel's initial investigation as well as the mediation portion of this proceeding, local Union President George White referred, on several occasions, to an agreement that he made with Management following their announcement of a change in schedule, that the most senior regular employees in the bargaining unit would receive as close as possible to the full 40 hour workweek that they worked for a long time. In addition, one of the letters (see letter of Jeanette Johnson) submitted by the Local Union in support of its position refers to such an agreement. Unfortunately, this arbitrator must assume that the agreement was of a verbal nature and, therefore, I am not able to assign a great deal of weight to that agreement because neither party submitted any written evidence of it.

An examination of the parties' Memorandum of Agreement (MOA) indicates that Article 4 (a) sets forth the Management Rights Clause which states that Management "retains the right in accordance with applicable laws and regulations to hire, assign work, direct and retain employees" . . . and in (c) " to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted."

Article 10 of the MOA implies, but stops short of guaranteeing, a 40-hour workweek. Section 1(b) states that "The basic workweek for regular employees will, to the extent allowed by the mission requirements of the Employer, consist of five consecutive workdays." In 1(d), the language reads, "The length of the basic non-overtime workday shall not exceed 8 hours." Perhaps the strongest implied language is in Section 7 where the language reads, "A regular employee scheduled to work a 40-hour workweek . . .", where the remainder of the section addresses premium pay.

Again, the language does not provide a guarantee that all regular employees will work a 40-hour workweek, only language that addresses those employees that do work a 40-hour schedule.

Finally, we turn to **Air Force Manual 34-310** issued on September 28, 2011 at section 1.7, p.17 which defines both "regular and flexible employees":

> 1.7.1 There are two types of employment categories, regular and flexible. **Supervisors determine which type of category of employee to use.** The following describes the compensation and benefits for each type of employment category.
>
> 1.7.1.1 **Regular employees are guaranteed a minimum of 20 hours and a maximum of 40 hours of work per week** and they receive benefits.
>
> 1.7.1.2 Flexible employees serve in either continuing or temporary positions. **These employees work a minimum of zero to a maximum of 40 hours per week,** but do not receive benefits. The work may be scheduled in advance or on an as needed basis. They must be given 24-hour notice of a schedule change.

Thus, a review of the current Air Force Manual on this issue supports the Employer's position that the range of hours being offered to regular and flex employees is in conformance with Air Force policy.

The Arbitrator commends both sides for submitting data in support of their positions. An examination of this data is insightful. First of all, the parties appear to be in agreement that there are five regular NAF employees who have requested that they not be provided additional afternoon hours due to other obligations. Removing those names, therefore, from the set of regular employees, it appears that there are at least eight regular NAF employees whose hours for the pay period of 10/17/11-11/17/11 are noticeably short of the 160 hours that one would

expect for a comparable 40 hour work-week.[2/] Second, this same document shows that 78.7 percent of the hours worked at the CDC are worked by regular NAF employees, which indicates that the Employer is in compliance with the AFI 34-248 requirement that at least 74 percent of all hours worked be worked by regular NAF employees who receive benefits.

The data submitted by the Union reveal the number of NAF employees and the hours that they typically worked early in 2011. The data does show a number of flex employees who worked a modest number of hours in the first three months of 2011 worked almost 40-hour schedules during the fall of 2011. It is unclear from the evidence submitted whether any of the regular employees whose hours have been reduced requested that management make additional hours available to them. Only one letter submitted by a regular employee makes reference to having asked to work additional hours and been refused by the CDC manager.

Second, a memorandum dated August 25, 2011, from a Ms. Yamica Mumphery, Assistant Director of the CDC to George White states:

> Some of the NAF employee work schedules have been changed from 6 duty hours daily to 7.5 duty hours daily with a 30-minute lunch break. NAF employees with 20 years or more service have been scheduled to work an 8-hour duty day with an hour lunch break.

This document indicates that the Employer has attempted to address the Union's concerns about the retirement impact of reducing the 40 hour work week of regular NAF employees by protecting those with 20 years or more service while taking hours away from those less senior, regular NAF employees. In the face of the reduced enrollment leading to reduced fees/revenue combined with the loss of revenue from government sources, this Arbitrator concludes that the Employer chose to honor the promise (the verbal agreement previously referred to) to protect the retirement inter.sts of the high seniority employees by taking hours from the less senior, regular NAF employees. According to the Air Force Manual cited above, it is within Management's discretion to do so.

Perhaps the most compelling argument raised by the Union is that the Employer unilaterally implemented the change in schedule without notification to the Union and without providing the Union with an opportunity to negotiate the impact of the decision. The Union submits a copy of an FLRA Settlement Agreement from 2009 in which the Employer agrees to provide timely notices of changes to the Union. Unfortunately, this Arbitrator, on behalf of the Panel, is not authorized to enforce Settlement Agreements or to pursue charges that belong in another forum for adjudication.

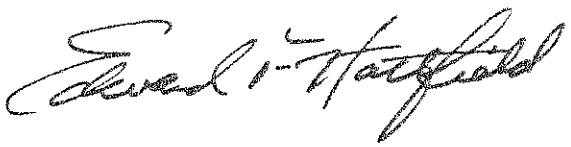
2/ Management document entitled "Flex and Regular Hours Work (sic) s-CDC, 10/17/11-11/11/11.

DECISION

Having carefully considered the evidence and arguments presented by the parties, I conclude that the Employer's position provides the more compelling basis for resolving this dispute. Therefore, I order the Union to undertake the following actions to resolve this impasse:

I. To the extent that the Union is proposing that the Agency maximize the hours of all regular NAF employees, the Union is ordered to withdraw its proposal.

II. The Union is also ordered to withdraw its proposal that the Panel order the Agency to provide a copy of AF Form 1930, from October 1, 2010, through October 31, 2011. If the Union believes that the Agency is in violation of the 2009 FLRA Settlement Agreement, it needs to pursue that claim in an appropriate forum.



Edward F. Hartfield
Arbitrator

December 22, 2011,
St. Clair Shores, Michigan