

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of )

DEPARTMENT OF AGRICULTURE )  
FEDERAL CROP INSURANCE CORPORATION )  
KANSAS CITY, MISSOURI )

and )

LOCAL 858, NATIONAL FEDERATION )  
OF FEDERAL EMPLOYEES )

Case No. 92 FSIP 184

DECISION AND ORDER

Local 858, National Federation of Federal Employees (Union), filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of Agriculture, Federal Crop Insurance Corporation, Kansas City, Missouri (Employer).

After investigation of the request for assistance, the Panel determined that the impasse, concerning compressed work schedules, overtime/compensatory time entitlements, compressed workhours for the chief steward, and customer service requirements should be resolved through written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the impasse. Written submissions were made pursuant to this procedure and the Panel has now considered the entire record.

BACKGROUND

The Employer's mission is to improve the economic stability of agriculture through a sound system of crop insurance. The Union represents a bargaining unit consisting of approximately 300 professional and nonprofessional employees. Professionals hold positions as accountant, statistician, and nurse. Typical jobs held by nonprofessionals include program analyst, crop insurance specialist, underwriter, and clerk. The parties are covered by a collective-bargaining agreement (CBA) which expires in October 1993.

The dispute arose during renegotiation of Article 10, of the CBA concerning hours of work and overtime.

## ISSUES AT IMPASSE

The parties disagree over: (1) compressed work schedules, (2) official time in connection with compressed work schedules, (3) overtime/compensatory time, and (4) management control of scheduling.

### POSITIONS OF THE PARTIES

#### 1. Compressed Work Schedules

##### a. The Union's Position

In essence, the Union proposes that: (1) a 4-10 program be implemented for a 1-year trial period, subject to the same rules and restrictions currently in place for the 5/4-9 compressed work schedule.

The Union argues that a sufficient number of employees are interested in a 4-10 program to make a 1-year trial period worthwhile. Specifically, 65 out of approximately 300 employees surveyed would experiment with a 4-10 schedule. By applying the same rules and restrictions as in the current 5/4-9 program, the Employer has the opportunity to limit the use of a 4-day workweek in a manner which it finds acceptable. The Employer fails to demonstrate why the parties should not experiment with it. Any allegation that the current schedule has caused problems and, therefore, the 4-10 plan should not be implemented, is dubious since the Employer has decided to retain the 5/4-9 schedule with little change. Additionally, employees work in an environment where adherence to standard workhours, Monday through Friday, is not essential.

##### b. The Employer's Position

The Employer proposes that the status quo be maintained with respect to the availability of compressed work schedules; that is, it be limited to the current 5/4-9 schedule.

The Employer opposes establishing a 4-10 schedule contending that employees already have available flexitime or a 5/4-9 schedule. An extra option only would add to the disruption caused by a recent reorganization. Additionally, since the Union's proposal doesn't provide for the Employer to have "any say as to which employees could elect" such an option, it is nonnegotiable. Furthermore, a 4-day workweek is likely to result in increased costs because it would require the Employer to hire additional staff or pay overtime or approve compensatory time for existing employees to cover for those on their scheduled day off each week. Problems are likely to arise in meeting customer service

responsibilities since there are a number of one-of-a-kind positions with no backup available; therefore, fulfilling the agency's mission would be jeopardized. In the past, there have been difficulties with employees working a schedule which permits them 1 day off every biweekly pay period; such problems would worsen if employees are allowed 2 days off per pay period.

### CONCLUSIONS

Having considered the evidence and arguments, we conclude that the Union has failed to demonstrate a need for an additional compressed work schedule. We note that employees currently have the option of working a 5/4-9 plan or a flexitime schedule which gives them some flexibility in choosing their workhours. The Union presents no evidence concerning the benefits which may accrue to employees and the Employer from an additional alternative work schedule nor does it explain how the 5/4-9 program and the 4-10 test would work together.

## 2. Overtime/Compensatory Time Entitlement

### a. The Union's Position

The Union proposes the following:

A. It is understood that employees working under the Fair Labor Standards Act (FLSA non-exempt) are entitled to overtime pay,<sup>1/</sup> and though the employee may request compensatory time in lieu of overtime pay, the employee will not be required to work for compensatory time. B. It is understood that employees working under Title 5 (FLSA exempt) are entitled to compensatory time,<sup>2/</sup> and though the employee may request overtime pay in lieu of compensatory time, the employee will not be required [to] work for overtime pay. (Footnotes added.)

The Union maintains that neither provision A nor B is intended to give employees the right to refuse overtime assignments. For FLSA non-exempt employees, the intent is to ensure that employees cannot be required to accept compensatory time for overtime work. As to part B, the proposal would ensure that FLSA exempt employees cannot be required to accept overtime pay in lieu of compensatory time, since they "make less money on overtime than on regular time."

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<sup>1/</sup> 29 U.S.C. § 207 (a).

<sup>2/</sup> 5 U.S.C. § 5543 (a).

b. The Employer's Position

The Employer contends that the Panel should order the Union to withdraw its proposal. It unduly interferes with management's right to assign work and does not reflect appropriate approval requirements. Furthermore, part A of the Union's proposal is already in the parties' CBA. Finally, the Union's proposal could be construed as giving employees the option of refusing overtime assignments.

CONCLUSIONS

Having considered the evidence and arguments, we conclude that the dispute over overtime/compensatory time entitlements should be resolved on the basis of a modified version of the Union's proposal. The modification shall provide that nothing in the subsection should be construed as limiting the Employer's right to assign work or direct overtime. This added provision should minimize the Employer's concerns about interference with its right to assign work which were its only stated objections to the Union's proposal.

3. Official Time For The Chief Steward

a. The Union's Position

Essentially, the Union proposes that should the chief steward elect to work a compressed workweek, he or she should be allowed to schedule and utilize the full 12 hours of official time authorized in Article 7, of the parties' CBA.

The Union argues that it is not requesting additional official time for the chief steward, but merely is seeking the same rights for the chief steward as all other bargaining-unit employees have. Since the CBA restricts the use of official time to 4 hours on Monday, Wednesday, and Friday, without the proposal change, the chief steward effectively would be precluded from participating in a compressed work schedule. The change would permit participation in a compressed work schedule without having to compromise representational obligations to the bargaining unit.

b. The Employer's Position

The Employer urges the Panel to order the Union to withdraw its proposal. It argues that since the Union's proposal does not specify that the supervisor would have approval authority over scheduling, the proposal is nonnegotiable.

CONCLUSIONS

Having considered the evidence and arguments, we conclude that the dispute over official time should be resolved on the basis of a modified version of the Union's proposal. We see no reason to prevent the chief steward from working a compressed work schedule because of the way official time is to be scheduled under the negotiated agreement. Accordingly, the parties should adopt the following modification:

(1) Should the chief steward elect to work a compressed workweek, he or she will be allowed to arrange and utilize the full 12 hours of official time granted in Article 7; (2) the chief steward's right to elect a compressed work schedule is subject to the same rules and limitations as that of other bargaining-unit employees; (3) the parties will attempt to resolve the adjustments such an election would necessitate to the official time hours designated in Article 7, without changing the total number of hours; and (4) disputes shall be resolved through the grievance procedure.

This solution should minimize disputes over interpretation, while ensuring that the Union steward will be subject to the same alternative work schedule restrictions as other bargaining-unit employees.

4. Customer Service Requirements

a. The Employer's Position

The Employer proposes the following:

All offices must ensure that telephone coverage, technical assistance and consultative services, and all other required services are provided during the customer service band. The scheduling of workhours, meal breaks, leave, etc., is a management prerogative necessary to ensure that mission requirements are met. Because of certain job requirements or office needs, it may not be possible to provide the same degree of choice to every employee.

The Employer argues that the purpose of the proposal is to ensure that management, as required by 5 U.S.C. § 6122(a) of the Federal Employees Flexible and Compressed Work Schedules Act, has some say in who may work an alternative work schedule.

b. The Union's Position

The Union contends that the Panel should order the Employer to withdraw its proposal. It asserts that part of the proposal is redundant and other parts directly contradict previously agreed upon sections of the parties' contract.

CONCLUSIONS

Having considered the evidence and arguments, we conclude that the proposal appears unwarranted and, therefore, it should be withdrawn. The parties already have agreed to a 5/4-9 program; however, the Employer now seeks a separate provision that would provide, without specifically mentioning alternative work schedules, restrictions on their availability to employees. In our view, adoption of the Employer's proposal only would lead to further disputes instead of resolution of the issue.

ORDER

Pursuant to the authority vested in it by 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under section 2471.11(a) of its regulations hereby orders the parties to adopt the following:

1. Compressed Work Schedules

The Union shall withdraw its proposal.

2. Overtime/Compensatory Time Entitlements

The parties shall adopt the Union's proposal modified to provide that "nothing in this (sub)section shall be construed to limit the Employer's right to assign work or direct overtime."

3. Official Time For The Chief Steward

The parties shall adopt the Union's proposal modified to provide that:

(1) Should the chief steward elect to work a compressed workweek, he or she will be allowed to arrange and utilize the full 12 hours of official time granted in Article 7; (2) the chief steward's right to elect a compressed work schedule is subject to the same rules and limitations as that of other bargaining-unit employees;

(3) the parties will attempt to resolve the adjustments such an election would necessitate to the official time hours designated in Article 7, without changing the total number of hours; and (4) disputes shall be resolved through the grievance procedure.

4. Customer Service Requirements

The Employer shall withdraw its proposal.

By direction of the Panel.



Linda A. Lafferty  
Executive Director

November 6, 1992  
Washington, D.C.