

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
BEAUMONT, TEXAS

And

LOCAL 1010, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 13 FSIP 52

DECISION AND ORDER

Local 1010, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and the Department of Justice, Federal Bureau of Prisons (FBOP), Federal Correctional Complex (FCC), Beaumont, Texas (Employer).

Following an investigation of the request, which concerns the establishment of compressed work schedules (CWS) for four Food Service Administrative Assistants (Assistants) in the Food Service Department, the Panel determined that the impasse should be resolved through the issuance of an *Order to Show Cause* (OSC). In this regard, the parties were ordered to show cause why the Panel should not impose the tentatively agreed upon "Proposed Compressed Work Schedule - Food Service Administrative Assistant" plan, dated April 9, 2013 (the April 9 Plan), to resolve their impasse.^{1/} Under this procedure, they first were directed to submit to the Panel, and each other, alternative

^{1/} Both the Union and the Food Service Administrator agreed to the plan, subject to the approval of higher level management. According to the Union, the FBOP South Central Regional Office "had issue" with Provision 4 of the tentative agreement.

wording, if any, to the provisions contained in the April 9 Plan. Thereafter, the parties were required to submit written responses to the OSC, with arguments and evidence to support their positions, including any rebuttal argument concerning the other party's alternative wording. After considering this information, the Panel would take whatever action it deems appropriate, which may include the issuance of a binding decision. The Panel now has considered the entire record.

BACKGROUND

The Employer's primary mission is to protect public safety by ensuring that Federal offenders in its custody serve their criminal sentences in facilities that are safe, humane, cost-efficient and appropriately secure. Inmates at the Beaumont FCC are housed in one of three facilities with varying risk levels. Additionally, there is a warehouse facility where inventory work is performed. The Union represents a bargaining unit consisting of approximately 640 professional and non-professional employees. The four Assistants affected by the impasse perform primarily administrative duties related to the fulfillment of food orders for the Employer's facilities. The parties are governed by a master collective bargaining agreement that expired on March 8, 2001; however, its provisions remain in effect until a successor agreement is implemented.

The parties' April 9 Plan (see attachment) essentially provides employees with a 6-month trial period where there would be five 4/10 CWS options, which include starting and ending times of either 5:30 a.m. - 4 p.m. or 7 a.m. - 6 p.m., and a variety of other provisions governing the implementation and continuation of the pilot period. Among other things, these other provisions address the circumstances under which employees may revert to regular 5-day workweek schedules, "in lieu of" days off during a holiday week, annual leave, and when the pilot period would start. The only wording in the April 9 Plan to which the Employer proposes a change is Provision 4,^{2/} which states:

If staffing levels for the Food Service Assistants drops below three (3) for more than two months, Food Service Assistants on CWS will revert to a five day

^{2/} In its response to the OSC, the Employer appears to suggest that the April 9 Plan contained the wording of its final offer on Provision 4. In fact, it contained the wording of the Union's final offer on Provision 4.

workweek. Within two weeks negotiations will be reopened to consider any adverse impact observed with the staff shortage to justify the change. If there is no evidence of adverse impact, the CWS will resume the following pay period.

ISSUE AT IMPASSE

The primary disagreement between the parties over the April 9 Plan concerns whether negotiations should be reopened within 2 weeks following a 2-month period where the staffing level has dropped below three and the Assistants have continued to work a 4/10 CWS.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer's final offer is identical to the April 9 Plan except for Provision 4, where it proposes the following wording:

If staffing levels for the Food Service Assistants drops below three (3) for more than two months, Food Service Assistants on CWS will revert to a five day workweek. Conversely, whenever the number of Food Service Assistants rises back to three (3) or more, they will be able to revert back to working the Compressed Work Schedule.

Its final offer also includes a form that individual employees would be required to sign prior to participating in the 4/10 CWS.

The imposition of its proposed wording would facilitate interactions between the two remaining Assistants and managerial staff on a daily basis. This would ensure that essential administrative and operational duties of the Food Service Department are accomplished during periods when the productivity of the Assistants throughout the FCC is reduced by 50 percent, "leaving the work of the two eliminated [Assistants] to be completed by the two remaining." Daily duties include storehouse requisitions, inmate rosters, "and updating the Religious Diet Check sheets," and weekly and monthly tasks include inmate payroll and time and attendance for staff.

2. The Union's Position

On the key issue, Provision 6 of the Union's final offer is identical to Provision 4 of the April 9 Plan. In addition, its final offer differs from the April 9 Plan in the following ways: (1) Employees could select one of five 4/10 CWS options, which include starting and ending times of 5:30 a.m. - 4 p.m., 7 a.m. - 5:30 p.m., and 7:30 a.m. - 6 p.m., and a sixth option would permit one position to work a 3/13 CWS with a 5 a.m. to 6:50 p.m. starting and ending time; (2) in case of "life altering circumstances," management would reserve the right to handle each staff's personal situation on a case-by-case basis in conjunction with the affected employee and the Union; (3) staff working CWS could revert back to a 5/8 schedule at the start of any pay period with prior approval from their supervisor; (4) wording about employees participating or returning to a 4/10 CWS with approval from the supervisor, only at the end of the workweek when the roster committee convenes for the upcoming quarter, is eliminated; (5) staff on the 3/13 schedule will revert to a 5/8 schedule during all holiday weeks; (6) the 6-month pilot period would begin the pay period after the necessary inter-agency reviews are completed but such reviews must be completed within 6 weeks; (7) any newly-hired Assistant would have the CWS option after 6 months in the Food Service Department; and (8) CWS staff would understand that no voluntary overtime could interfere with their regular work schedule without the consent of their immediate supervisor.

The Employer's proposal to create a permanent situation where employees cannot have a CWS unless there are three or more Assistants is unacceptable because it presupposes that adverse impact would occur if there is only two remaining staff. Moreover, in making its proposal, "the Agency is acting in bad faith." In this regard, the Employer has engaged in "continuous stall tactics in coming to the negotiation table" since the parties' bargaining over CWS for the Assistants began in August 2011. It also has attempted to add to the Assistants' duties during the negotiations while trying to claim adverse impact "as if total workweek hours are being increased." Even with these attempts, however, "the Agency did not prove or show adverse agency impact."

For these reasons, the Union has offered a revised version of a proposal it submitted on September 10, 2012, for the Panel to consider. The proposal was initiated, in part, because of the personal hardship of one of the Assistants, which a CWS would alleviate, and is consistent with the Office of Personnel

Management's "Handbook on Alternative Work Schedules." Furthermore, the primary duties of the Assistants are administrative in nature and can be done in a 40-hour week. When an Assistant is on leave, overtime currently is not required to meet the Food Service Department's needs; this would remain the same on a CWS. In fact, during Sequestration the Assistants have been augmenting the Cook Supervisors' positions "to avoid overtime." This demonstrates that they "are dedicated and continue to take on additional responsibilities while maintaining their duties to fulfill" the overall mission of the Food Service Department.

CONCLUSIONS

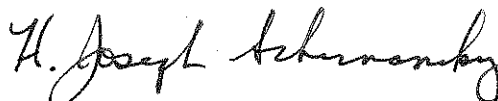
Having carefully considered the parties' responses to the OSC, we conclude that neither side has shown cause why the April 9 Plan they tentatively agreed to should not be imposed to resolve the parties' impasse over CWS for the Assistants in the Food Service Department. In our view, the Employer has failed to demonstrate why it should not be required to reopen negotiations within 2 weeks following a 2-month period where the staffing level has dropped below three and the Assistants have continued to work a 4/10 CWS. During the negotiations the parties could evaluate, on the basis of actual experience rather than speculation, whether the 2-month period where two Assistants are on CWS caused any adverse impact. Moreover, they could do so while the two Assistants are on 5-day workweeks. The Union, on the other hand, has failed to persuade us that its final offer should be adopted instead of the tentative agreement that was reached on April 9. Accordingly, we shall order the adoption of the April 9 Plan.

ORDER

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

The parties shall adopt the "Proposed Compressed Work Schedule - Food Service Administrative Assistant" plan, dated April 9, 2013, to resolve their impasse.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

June 6, 2013
Washington, D.C.



U.S. Department of Justice
Federal Bureau of Prisons
Federal Correctional Complex

P. O. Box 26035
Beaumont, Texas 77720

April 9, 2013

MEMORANDUM FOR: JESSELYN MAY, UNION REPRESENTATIVE
FEDERAL CORRECTIONAL COMPLEX, BEAUMONT, TEXAS

FROM: Cassandra Thomas, Food Service Administrator
Federal Correctional Complex, Beaumont, Texas

SUBJECT: Proposed Compressed Work Schedule -
Food Service Administrative Assistant

This memorandum contains a plan for implementing a compressed work schedule (CWS) in the Food Service Department at FCC Beaumont, Texas, for the Food Service Administrative Assistants. We propose the schedule of 5:30 a.m. - 4:00 p.m./7:30 a.m. - 6:00 p.m. (see attached).

Management acknowledges that staff may experience life altering circumstances; however, the basis for an alternative work schedule (AWS) is to enable managers and supervisors to meet their program goals while, at the same time, allowing employees to be more flexible in scheduling their personal activities (Handbook on Alternative Work Schedules, OPM). Therefore, Management reserves the right to handle each staff's personal situation on a case by case basis.

Management acknowledges that CWS programs are useful to the agency because they help to retain quality employees, attract new quality employees, boost morale, and reduce unscheduled leave; however, Management asks that the Union keep in mind the decision of employment has already been made, as staff are currently employed and negotiating to change their work schedules to improve their work life balance.

1. The proposed schedule would implement a work week, consisting of four, ten hour days with three (3) days off (see attached schedule). The parties working the 4/10 CWS understand and agree they will have a 30 minute duty-free lunch break.

2. Staff working the CWS may revert back to an eight hour, five day work week on the quarter change with prior approval from their supervisor. This must be done in writing prior to the convening of the roster committee for the upcoming quarter. Staff that wish to participate or return to the compressed work schedule may do so, with approval from the supervisor and must wait until the end of that work week. Staff must understand that no voluntary overtime will interfere with normal working hours.
3. One Food Service Assistant will be allowed "in lieu of" days off during a Holiday week. This will be determined by order of seniority and the last date received. For training of more than 8 hours locally or away from FCC Beaumont, and during assignment to jury duty, the affected Food Service Assistant will revert back to a 5 day, 8 hour work week.
4. If staffing levels for the Food Service Assistants drops below three (3) for more than two months, Food Service Assistants on CWS will revert to a five day work week. Within two weeks negotiations will be re-opened to consider any adverse impact observed with the staff shortage to justify the change. If there is no evidence of adverse impact, the CWS will resume the following pay period.
5. One Food Service Assistant may be on Annual Leave at any given time; however, during "prime" Holiday weeks (July 4th, Thanksgiving, Christmas, New Year's) up to two Food Service Assistants may be approved for leave simultaneously. Any other annual leave requests throughout the year will be considered on a case by case basis.
6. The pilot period of the agreed upon schedule will begin the pay period after the necessary approval from the Employment Law and Ethics Branch. The pilot period will last for six months. If issues arise during the pilot period, Management and the Union agree to explore viable resolutions to address and resolve the concerns. At the conclusion of the pilot period, both parties will meet, review the schedule, and determine if any changes are required.
7. A sample schedule is attached.

Union Official

Management Official

Proposed Food Service Assistant Compressed Work Schedule

Option	Hours	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	5:30 am - 4:00 am 7:30 am - 6:00 pm	Off	Off					Off
2	5:30 am - 4:00 am 7:30 am - 6:00 pm	Off		Off				Off
3	5:30 am - 4:00 am 7:30 am - 6:00 pm	Off			Off			Off
4	5:30 am - 4:00 am 7:30 am - 6:00 pm	Off				Off		Off
5	5:30 am - 4:00 am 7:30 am - 6:00 pm	Off					Off	Off

-specific days off may be requested quarterly based on seniority.