United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

UNITED STATES DEPARTMENT OF ARMY
FORT RUCKER
FORT RUCKER, ALABAMA

And

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 1815

Case No. 19 FSIP 003

ARBITRATOR'S OPINION AND DECISION

This request for assistance concerning the termination of existing compressed work schedules (CWS) was filed by the United States Department of Army, Fort Rucker, Fort Rucker, Alabama (Agency or Management) on October 12, 2018, under the Federal Employees Flexible and Compressed Work Schedules Act (Act) of 1982, 5 U.S.C. § 6120, *et seq.* Following investigation of the request for assistance, on November 14, 2018, the Panel determined that the dispute should be resolved through face-to-face Mediation-Arbitration at the Agency's facility in Fort Rucker, Alabama with the undersigned, Federal Service Impasses Panel (FSIP or Panel) Member Jonathan Riches. The parties were advised that if no settlement were reached during mediation, I would issue a binding decision to resolve the dispute. Consistent with the Panel's procedural determination, I conducted a Mediation-Arbitration on December 10, 2018, with representatives of the parties. Because the mediation portion of the proceeding failed to result in a voluntary settlement, I am required to issue a final decision involving 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 carefully considered the entire record, including post-hearing briefs that the parties submitted to me on December 14, 2018.

BACKGROUND

The Agency is a component of the United States Department of the Army. It is the primary flight training base for Army Aviation and is home to the United States Army Aviation Center of Excellence and the United States Army Aviation Museum. The American Federation of Government Employees, Local 1815 (Union) represents around 1,800 bargaining unit employees. The parties are governed by a collective bargaining agreement (CBA) that expires on December 15, 2020. Article 9 of the CBA authorizes negotiations over CWS.

The Agency has 17 directorates, or components, on base that perform various tasks to further the Agency's mission. Six of these directorates (identified below) have bargaining unit employees who are on CWS.[1] Among these work units, around 60 bargaining-unit employees are currently on a 5/4/9 CWS. Thus, they all have a rotational day off (RDO) once every other week, usually on Mondays or Fridays. None of these work units have a written CWS agreement; however, Management does not dispute that there are existing agreements that have been in place for "years."

The Agency notified the Union in August 2018 that it wished to suspend CWS throughout the base so that the parties could bargain over whether to continue those schedules on a permanent basis. The Union agreed to that suspension, and it lasted until October 13, 2018. In September, the Union submitted several information requests to the Agency concerning the rationale behind Management's decision to seek the termination of the schedules. The parties also met to negotiate on September 13 and 26, 2018. However, they could not reach any agreement. Accordingly, the Agency filed its request for Panel assistance on October 12, 2018. On November 14, 2018, the Panel asserted jurisdiction over this dispute and ordered it to be resolved through a Mediation-Arbitration with the undersigned.

ISSUE AT IMPASSE

In accordance with §§ 6131(c)(3)(B) and (C) of the Act, the sole issue before me is whether the finding on which the Agency has based its determination to terminate CWS for all bargaining-

[1] Non-bargaining unit employees were also on CWS, but the Agency terminated those schedules in October 2018.

unit employees is supported by evidence that the schedules are causing an adverse agency impact.[2]

POSITIONS OF THE PARTIES

The six directorates with employees on CWS are: (1) Garrison Resources Management Office (Resources Office); (2) Directorate of Public Work (DPW); (3) Safety Office; (4) Child Youth Services; (5) Legal Office; and (6) Religious Services. For reasons discussed below, Management seeks to end CWS for all bargaining unit employees in each of these groups. The Union wishes to maintain all their schedules.

In addition to the directorate specific arguments discussed below, the Agency argues that it has experienced a decrease in funding and personnel over the past year. Thus, its resources have been stretched significantly, making the continuation of CWS untenable. Relying on these same facts, however, the Union contends that any work difficulties stems from a lack of resources, and other issues contributed by management. These resources are within the Agency's control and have nothing to do with CWS. Instead, the Union believes that Management is seeking to terminate the schedules due to Management's misplaced concern that all employees should be on the same type of non-CWS schedule.

1. Resources Office

A. The Agency's Position

The mission of the Resources Office is to oversee resource allocations for all base support activities, including budget formulation, control and execution, accounting policy, funding

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

> (1) a reduction of the productivity of the agency;
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> (2) a diminished level of the services furnished to the public by the agency; or
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> (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).

of manpower resources, managing garrison equipment levels, developing installation support agreements, and monitoring the Agency's Government Travel Card Program.

There are approximately 14 employees in this office, and roughly ten of them are on a CWS. Thus, these employees have at least one day off every other week. The Garrison Commander testified that this unavailability has led to at least four situations within the past year or so in which Agency personnel on government travel were unable to contact Resource Office personnel to receive assistance for travel card issues. Additionally, Management points to one situation in which a non-CWS employee had to respond to a data request while on overtime because a CWS employee was unavailable due to their RDO.

Another area of concern for Management is the establishment of an Acquisition Review Board (Review Board). The purpose of the Board is to meet with other components to review the acquisition process throughout base. However, because of RDO's, the Resources Office has not yet established the Board. Additionally, the office is behind on providing certain data spreadsheets to base officials. Relatedly, Management contends that the office can take up to two weeks to process civilian hiring requests when such requests should normally take only 24 hours. The foregoing delays, Management alleges, are attributed to unavailability caused by RDOs. Based on all of the aforementioned arguments, Management believes CWS must be terminated for all Resources Office employees.

B. Union Position

The Union essentially maintains that all of the areas discussed above are due to problems created by Management. The travel card issues were due to personnel not timely activating their travel cards. It is up to each individual to take responsibility for their own cards. As for the data request issue, employees are routinely available on Mondays and Fridays.

Concerning the Review Board, a Union witness testified that its establishment was actually on hold because Management has not yet hired a contract officer who would be responsible for conducting the meetings. However, the witness also testified that the meetings could occur without the officer. On the topic of hiring requests, a separate witness testified that Resource Office employees turn around those requests quickly. Instead, it is other base personnel who delay the processing of the

requests. In conclusion, the Union believes that CWS has no impact on any Agency challenges.

2. DPW

This office provides direct and indirect support to maintain the infrastructure of installation. Thus, they are responsible for servicing various maintenance requests submitted by other directorates and tenants. Of all the units involved in this dispute, this unit has the largest number of employees on CWS. To wit, there is somewhere between 30 and 40 employees on such a schedule (the parties' presentations were not clear on this number).

A. The Agency's Position

The Agency maintains that CWS has created an increased delay in response time to submitted work orders and other DPW services. The Agency also asserted that unavailability of personnel resulted in a loss of productivity. By way of example, the Commander testified about airfield inspections that occur several times a year and require the presence of a subject matter expert from DPW. On at least one inspection, an employee had to participate on overtime due to unavailability arising from CWS. In addition to delaying the completion of a task, this incident increased Agency operating costs. Also increasing costs is Management's belief that supervisors have to work longer hours to ensure employees on CWS are performing duties during their hours of work (although the Agency could not provide specific data to support this contention).

The Agency also argues that it has received complaints about the completion of work projects. The Commander testified about an incident where DPW employees were responsible for replacing rotting wood at one location. And, although they did so, it was not performed satisfactorily. The Agency believes this was the result of CWS employees not making themselves available to complete the task in full.

All of the foregoing incidents have led to diminished customer satisfaction. As part of its presentation, the Agency provided data that allegedly demonstrates a 50% customer satisfaction rate whereas the overall goal is 90%. According to the Agency, this diminished number is directly attributable to CWS. Thus, for this and all of the other aforementioned reasons, CWS must be terminated within DPW.

B. The Union's Position

The Union disagrees with the Agency's position that CWS for DPW is creating an adverse impact. It maintains that DPW employees are always available if a subject matter expert is needed. Indeed, one DPW employee testified that she receives phone calls generally on at least one RDO per month about work related matters, and she has no qualms with providing assistance. She also testified that she has been informed that attempting to alter the day of her RDO for a temporary scheduling need would require Management to permanently change the day of the RDO. In addition to this specific information, as a general matter, the Union believes overlapping coverage is always available.

The Union also rejects the Agency's reliance on the survey data it offered as part of its case in chief. The Union claims that the Agency's proffered data is not specific to the DPW and largely focuses on complaints arising from work performed by contractors. The Union instead offered survey data it claims relates solely to DPW. This data, the Union maintains, demonstrates that customers are largely satisfied with the work performed by the employees of this office. Thus, contrary to Management's narrative, there is no widespread dissatisfaction with the services of DPW. Accordingly, CWS should be maintained.

3. Safety Office

The responsibility of the Safety Office is to conduct safety investigations for the various directorates. They also investigate base-related accidents. Currently, this office has two employees, one of whom is on a CWS. The Agency will soon hire a third employee, however.

A. Agency Position

Due to the limited number of individuals in the Safety Office, coverage for safety inspections and investigations can be quite difficult. This is especially true since one of the two individuals has one day off every other week. The installation Commander offered specific testimony about one incident in which the Agency needed a safety inspection of a slide that would be used by children on base. One of the employees was on extended sick leave, and the other was the CWS employee. Due to the latter's RDO, no Safety Office employee

was available to conduct the inspection of the slide. The office had at least one week notice of the inspection too. A second Agency witness testified about a missed safety meeting, however, he could not provide specifics about the meeting. As a general matter, the Agency also maintains that having one employee unavailable an extra 26 days a year makes scheduling inspections difficult. According, for all the foregoing reasons, the Agency believes CWS must be terminated for the Safety Office.

B. Union Position

The Union found the Agency's presentation at the arbitration portion lacking in specificity. Additionally, in a written statement, an employee of the office noted that Management cut the number of employees from eight to three. According to the Union, Management's insistence that CWS is creating an immediate safety threat is unconvincing; instead, staffing cuts to the office are the primary cause of any reduced level of service. Moreover, employees in this office are not "first responders," and there is rarely, if ever, events that require their immediate presence. If safety incidents occur, personnel can be pulled from the Agency's Aviation Branch Safety Office.

4. Child Youth Services

This office is responsible for facilitating youth activities for children of military personnel. The office has five personnel, including a youth sports specialist (specialist). The specialist is the only employee on a CWS.

A. Agency Position

The Agency maintains that the specialist is responsible for coordinating various youth sports events and soliciting parent volunteers to assist with sports. However, because she has one day off every other week, that is 26 fewer days per year available for the scheduling of games. Additionally, the CWS hours worked by the specialist are not conducive to soliciting volunteers within the community. In this regard, because of CWS, the specialist starts the duty day before 7:00 am. Management does not believe parents can be reached during this time and, as such, solicitation efforts are being hampered by the schedule. Accordingly, Management believes the schedule must be terminated.

B. Union Position

The Union contends the Agency has not demonstrated any challenges that can be attributed to the specialist's CWS. Management was unable to provide anything more than general concerns about the ability to schedule sporting events. However, the Union believes other employees are always available. Additionally, Management could not show a link between CWS and the lack of volunteers. To the contrary, the Union maintains that this lack is attributed to delayed background checks. In summary, CWS is not creating an adverse impact.

5. Legal Office

The Legal Office provides various legal services to the directorates and installation community. Only one employee, the Senior Paralegal Specialist (paralegal), is on a CWS. In addition to performing various administrative tasks, the paralegal coordinates information technology (IT) issues. Thus, she facilitates resolution of office IT problems.

A. Agency Position

The paralegal's RDO means there are 26 days per year when she is unavailable to provide administrative or IT assistance. Additionally, her CWS hours means she is in the office when customers are not available. However, at the hearing, the Agency witnesses offered as the only example of diminished service the absence of this employee to coordinate volunteers during tax season, although it was unclear whether this was tied to CWS. No other specific incidents were provided related to the CWS.

B. Union Position

The Union believes that the paralegal's CWS is not creating adverse impact. Management offered no specific incidents. Thus, its challenge should be rejected.

6. Religious Support Office

This office provides religious support and services to base personnel and their dependents. It has only one civilian employee and that employee is on CWS. She provides administrative and IT support to the office.

A. Agency Position

The Agency believes that the employee's hours and 26 RDOs mean that there are fewer hours during the day and days per year when the employee can provide services. This unavailability also means there are fewer opportunities for the employee to provide religious materials to customers. The Commander testified he was aware of at least one situation in which the employee had to work on their RDO. However, the Commander could not provide specifics when pressed.

B. Union Position

The Union contends that Management offered no specifics in support of its contention that CWS within Religious Support is creating an adverse impact. As to IT issues, employees can always contact a national help desk number for technical assistance.

CONCLUSIONS

Under § 6131(c) (3) (C) of the Act, the Panel (or its designee) is required to take final action "in favor of the agency's determination to terminate [CWS] if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact." Under the plain language of the statute, the evidentiary standard is whether the agency's decision regarding CWS termination is "supported by evidence," and if so, the law requires that the Panel take action "in favor" of that determination. As its legislative history makes clear, Panel determinations under the Act are concerned solely with 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:

> 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).

This case involves compressed work schedules for employees of multiple work units. Although the Agency is seeking to terminate CWS for all bargaining unit employees within Fort Rucker, the plain language of 5 U.S. Code § 6131,[4] and prior decisions of the Panel,[5] leads the undersigned to conclude that the Agency must present evidence that "a particular" or specific work schedules of each unit, as opposed to the work schedules for the entire bargaining unit, have caused an adverse impact.

Having examined the documentary evidence presented, met with and interviewed witnesses from both the Agency and the Union, and reviewed all briefing in this matter, I am persuaded that the Agency has met its statutory burden by presenting evidence of adverse agency impact for some work units, but failed to meet its burden for other work units.

The Agency has presented evidence that CWS has caused an adverse agency impact for the employees in the following work units: (1) Garrison Resources Management Office (2) Directorate of Public Work; and the (3) Safety Office.

The Agency presented evidence that the CWS of personnel within the Resources Office caused hiring delays and postponed the establishment of an Acquisition Review Board to coordinate the base-wide acquisition process. The Agency also presented evidence that travel card processing had been delayed as a result of CWS. As a result, CWS in this directorate has caused a reduction of the productivity of the Agency. Additionally, on at least one occasion, overtime was necessary for a Resources Office employee to cover for another employee who was out on an RDO. Although limited, this resulted in an increase in the cost to agency operations.

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4 *See* 5 U.S. Code § 6131(a) ("[I]f the head of an agency finds that a *particular*…compressed schedule under this subchapter has or would have an adverse agency impact…) (emphasis added);" *id.* at (C) ("The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact." (emphasis added).

5 *See, e.g., Department of the Air Force 412th Test Wing and American Federation of Government Employees, Local 1406,* Case No. 17 FSIP 077 (2017).

The Agency also presented evidence that CWS within the Directorate of Public Works has caused delays in processing work orders. This has created a backlog for what is perhaps the most significant function the Agency provides - maintenance of installation infrastructure. The head of the Agency presented further evidence that on at least one occasion, an employee was unavailable for important airfield inspection as a result of CWS. As a result, CWS has caused a reduction in the productivity of the DPW.

The Agency further presented evidence that CWS within the Safety Office has resulted in a limited ability for the directorate to conduct safety inspections and accident investigations. This is particularly true because the directorate has only two employees, one of whom is on CWS. The Agency head presented specific evidence about an instance in which no one from the department was available to conduct a safety survey at a children's slide because one employee was on sick leave and the other on CWS. Consequently, CWS has caused a reduction in the productivity of the Safety Office.

Thus, the undersigned is satisfied that the Agency has met its statutory burden of showing that its determination to terminate CWS for the employees in the Resources Office, DPW, and the Safety Office has caused an adverse agency impact by reducing the productivity of the Agency or increasing the cost of agency operations.

On the other hand, the Agency presented insufficient evidence that CWS has caused an adverse agency impact for the following work units: (1) Child Youth Services; (2) Legal Office; and (3) Religious Services. Although the Agency asserted that CWS had caused reduced productivity or a diminished level of services within these directorates, when pressed on examination, the Agency's own witnesses admitted that there was little to no evidence that CWS for employees in these work units *caused* an adverse agency impact. Thus, the few examples offered by the Agency did not demonstrate a sufficient causal connection between the CWS and the asserted agency impact.

Accordingly, the Agency's determination to terminate CWS for employees in Child Youth Services; the Legal Office; and Religious Services is not supported by evidence.

ORDER

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), I hereby order the termination of the compressed work schedules for personnel in the following work units: (1) Garrison Resources Management Office (2) Directorate of Public Work; and the (3) Safety Office. I further order the Agency to rescind its determination to terminate the compressed work schedule for the following work units: (1) Child Youth Services; (2) Legal Office; and (3) Religious Services.

Kimberly Moseley

/s/ Jonathan Riches
FSIP Member

December 20, 2018
Washington, D.C.