

In the Matter of

GENERAL SERVICES ADMINISTRATION
REGION 7
MAINTENANCE CONTROL CENTER
FORT WORTH, TEXAS

and

COUNCIL 236, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 09 FSIP 59

ARBITRATOR'S OPINION AND DECISION

Council 236, American Federation of Government Employees, AFL-CIO (Union), filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Employees Flexible and Compressed Work Schedules Act of 1982 (Act), 5 U.S.C. § 6120, *et seq.*, to resolve an impasse arising from a determination by the General Services Administration (GSA), Region 7, Maintenance Control Center (MCC), Fort Worth, Texas (Employer), that implementation of the Union's proposed 4/10 compressed work schedule (CWS) for employees in the MCC at Fort Worth would cause an adverse agency impact.

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through mediation-arbitration by telephone with the undersigned, Panel Member Donald S. Wasserman. The parties were informed that if a settlement were not reached during mediation, I would issue a binding decision to resolve the dispute. Consistent with the Panel's procedural determination, on December 15, 2009, I conducted a mediation-arbitration proceeding by telephone with representatives of the parties. During the mediation phase, the parties were unable to settle the matter voluntarily. Thus, in accordance with 5 U.S.C. § 6131 and 5 C.F.R. § 2472.11 of the Panel's regulations, I am required to issue a final decision resolving the parties' dispute. In reaching this decision, I have considered the entire record, including the parties' pre-hearing submissions and additional information provided by the Employer after the hearing concluded.

BACKGROUND

The Employer's mission, among other things, is to deliver workplaces, acquisition services, and business solutions to enable federal employees to perform their jobs. It does this by leveraging the buying power of the federal government to acquire best value for taxpayers and its federal customers. The Union represents a nationwide consolidated bargaining unit of approximately 4,850 General Schedule and Wage Grade employees who occupy such positions as mechanic, police officer, contract specialist, program analyst, architect, engineer, and realty specialist. The Union represents approximately 750 employees in Region 7, but the dispute affects no more than 12 MCC bargaining-unit technicians at the Fort Worth location. The parties' master collective bargaining agreement (MCBA) is due to expire in November 2010.

The MCC in Fort Worth is one of three call centers that coordinates unscheduled vehicle repairs for the GSA Fleet, which consists of over 210,000 vehicles, and provides immediate assistance to vendor repair shops and/or its customers with vehicle breakdowns. The other MCC call centers are in Lompoc, California, and Atlanta, Georgia.^{1/} The GSA Fleet's biggest customer is the Department of Defense; other customers include the Department of Veterans Affairs, the Department of Homeland Security, Coast Guard, and the National Aeronautics and Space Administration. MCC technicians assist customers by locating vendor repair shops and providing authorizations for repairs and payment. On a typical day, the MCC receives 1,500 to 1,700 calls,^{2/} which are routed to the first available technician regardless of the technician's call center/physical location.

1/ Currently, the staffing level for technicians at the MCC is capped at 52 Full Time Equivalent (FTEs). The actual number of on-board technicians fluctuates. For example, from June to August 2008, there were a total of 46 technicians at the MCC (13 in Fort Worth); 51 in March 2009 (12 in Fort Worth); and there were 46 technicians in September 2009 (11 in Fort Worth). In addition, technicians may work a traditional 8-hour day, typically from 8 a.m. to 4:30 p.m., or a 5-4/9 CWS starting as early as 7 a.m. e.s.t. For example, in March 2009, 14 technicians were on a 5-4/9 CWS in Atlanta, 5 were on a 5-4/9 CWS in Fort Worth, and 4 were on a 5-4/9 CWS in Lompoc.

2/ In FY 2006, the MCC handled 372,197 Automated Call Direct (ACD) inbound contacts, and in FY 2007, 349,255 ACDs.

The MCC's operating hours are from 6 a.m. to 7 p.m. c.s.t., with peak call volume between 9 a.m. and 4 p.m. c.s.t. From June to August 2008, the MCC received an average of 170.42 calls per hour during peak call hours and an average of 66.18 calls per hour during non-peak hours. In an attempt to keep the MCC competitive with the private sector, management has had a target since 2006 of answering ACD inbound contacts in an average of 45 seconds. The Average Speed to Answer (ASA) ACD inbound contacts was 66 seconds in FY 2006 and 67 seconds in FY 2007.^{3/} In accordance with private industry standards, it also has adopted a target service level of 95 percent, i.e., 95 percent of the ACD inbound contacts should be answered within 45 seconds.

ISSUE AT IMPASSE

The sole issue before me is whether the finding on which the Employer has based its determination not to implement the 4/10 CWS on a trial basis in the Fort Worth MCC is supported by evidence that the schedule is likely to cause an adverse agency impact.^{4/} The Union's proposal, which was revised after the mediation-arbitration hearing, is as follows:

3/ The Employer did not provide data on peak and non-peak ASA times for these two fiscal years.

4/ Under 5 U.S.C. § 6131(b), "adverse agency impact" is defined as:

- (1) a reduction of the productivity of the 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).

The burden of demonstrating that the implementation of a proposed CWS is likely to cause an adverse agency impact falls on the employer under the Act. See 128 CONG. REC. H3999 (daily ed. July 12, 1982) (statement of Rep. Ferraro); and 128 CONG. REC. S7641 (daily ed. June 30, 1982) (statement of Sen. Stevens).

1. The Parties will conduct a 90-day pilot for 4/10 in the MCC in Fort Worth.
2. The Parties will allow 3 employees to participate in the test on 4/10. The day off per week will fall on Tuesday, Wednesday, or Thursday.
3. At the end of the 90 day pilot, the Parties will review the data collected to determine whether or not adverse impact occurred. If the Agency claims adverse impact occurred, the Union will see whether modification of the schedules can overcome the concerns. If the dispute cannot be resolved, it will be submitted for resolution through the normal labor relations channels.
4. After the 90-day pilot is concluded, the employees on the 4/10 schedule will revert back to their previous work schedules until the Parties resolve the 4/10 issues.

PARTIES' POSITIONS

1. The Employer's Position

The Arbitrator should find that the Union's proposed 4/10 CWS would result in an adverse impact upon Agency operations under all three of the Act's criteria. Preliminarily, the concept of "shrinkage" is important for an understanding of how the proposal would diminish the level of service provided to the MCC's customers. Shrinkage "is calculated by reducing the number of FTEs on staff by the number of FTEs unavailable to accept calls in the ACD system due to annual leave, sick leave, break, lunch, training, etc." From June to August 2008, after shrinkage, "33 FTEs on average logged into the ACD at any given time, or 70 percent of the total FTEs." The average service level was 42.52 percent below the MCC's target level during peak time, 34.99 percent below its target level during non-peak time, and the average service level overall was 55.89 percent. In September 2009, because 10 of the 46 technicians at the three MCC call centers were newer employees who required extensive training to operate at a satisfactory level, the service level was even lower than the 55.89 percent average attained from June to August 2008.

Given the effect that shrinkage has on actual staffing levels, implementation of the Union's proposed 4/10 CWS would

further diminish the level of service to GSA's customers because "fewer MCC technicians would be available during peak call time to answer calls" and "customers would be required to wait even longer to receive assistance." The Employer asserts that this is corroborated by the data it has provided establishing the direct correlation between staffing levels, service level and inbound call volume. It estimates that, for every four technicians on a 4/10 CWS, it would have to hire one additional FTE to maintain the level of service currently provided to MCC's customers, at a cost of \$121,000 per year. In addition, an informal survey of technicians in Fort Worth revealed that seven would work a 4/10 CWS if available. If the same percentage of the workforce were on a 4/10 CWS throughout the MCC, nine additional FTE would be required to maintain the existing level of service. The cost of hiring nine additional FTE (at over \$1 million annually) could not be absorbed by GSA even if MCC's staffing level were not capped at 52 FTE. Thus, permitting MCC technicians to work a 4/10 CWS would "debilitate" its efforts "to provide competitive, first-rate customer service." Moreover, in order to maintain its current level of service, implementation of the 4/10 CWS would require the Agency to increase the cost of its operations, "and any increase in costs would be passed on to the customer."

In accordance with a previous Panel decision,^{5/} the Act's definition of reduction in productivity is met where an employer demonstrates that a CWS would prevent increased productivity and improvements in customer service. If the Employer in this case were required to implement a 4/10 CWS, it would be unable to adjust the work schedule to place more employees on duty during peak call times when they are needed the most. In this regard, service levels are already higher during non-peak times where at least 1 hour necessarily would have to be added to the beginning or end of the day. Unless it adds an additional FTE, "during peak call time [the] staffing shortage would be especially evident as the service level plummets. During non-peak call time, employees' idle time would increase thus reducing their productivity." The Employer calculates that having five employees on a 4/10 CWS would result in 30 minutes of idle time for two FTEs from approximately 7:15 to 7:30 a.m., at a cost of approximately \$15,000 per year, and the cost of idle time to GSA if 10 FTEs were on a 4/10 CWS would be approximately \$120,640 annually.

5/ Department of the Interior, Bureau of Reclamation, Boulder City, Nevada, and Local 1978, AFGE, AFL-CIO, Case No. 01 FSIP 97 (May 24, 2001)

For these reasons, the Employer maintains that the Arbitrator should find that it has met its burden of proof under the Act under all three of the Act's criteria.

2. The Union's Position

The Arbitrator should find that the Employer has not met its burden under the Act of demonstrating that the proposed 4/10 CWS is likely to cause an adverse agency impact. The arguments it has used to support its case are misleading in a number of respects. First, the Employer misrepresented all three MCC call centers as being in the central standard time zone. Distinguishing the time zones is important because the MCC's ACD system automatically routes incoming calls from anywhere in the country to the call center that is available to immediately service that order. Second, the Employer presents data on the level of service to customers and cost that assume the 4/10 CWS is available to technicians throughout the MCC. The Union's proposal restricts the 4/10 CWS option to only three employees within the Fort Worth MCC for a 90-day trial period, gives the Employer discretion to determine which days of the week their regular days off (RDOs) would fall, and suspends the trial after the 90-day period until the parties have an opportunity to conduct a joint review of the data to determine whether the schedule is viable or adjustments should be made.

Contrary to the Employer's claims, the level of service to customers would not be diminished if the Union's proposed 4/10 CWS were implemented. A 4/10 schedule falls squarely within the MCC's hours of operation, so "regardless of what schedule an employee would be on, the employees would be present during the hours of operation, except on days off or leave." If, as the Employer contends, peak calls come during the core hours of 8 a.m. to 2:30 p.m, "there would be full coverage with a 4/10 schedule." In addition, the statistics and information it submitted regarding increased cost to the Agency's operations does not support its position. Again, if peak calls are received during core hours, and employees must be present during those hours regardless of their work schedules, there would be no need for additional FTEs, particularly in light of the fact that all three call centers share peak calls and the proposal does not mandate that all employees be off on the same day.

The Employer's position regarding reductions in productivity is "puzzling." Currently, the practice is that "paperwork in support of the calls/orders must be completed the same day the call is received." Given this fact, an 8- or 9-hour

day "equates to fewer orders being processed." Under its proposed 4/10 CWS, however, productivity would improve because the longer workday would permit employees to take more calls during peak hours and perform the necessary paperwork during the non-peak hours. Finally, the Employer's attempt to support its adverse agency impact claim by referring to 10 newer employees at the MCC who require extensive training to operate at a satisfactory level "should be rejected in its entirety." Among other things, the Union is proposing the 4/10 CWS for only 3 employees at the Fort Worth location, the employees who elect to work the schedule are likely to come from the small group of employees currently working the 5-4/9 CWS, and all 11 of the employees at Fort Worth are at the journeymen level.

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."^{6/}

Having carefully considered the totality of the evidence presented, I conclude that the Employer has not met its burden of establishing that an adverse agency impact is likely to occur if the Union's proposed CWS is implemented. As a preliminary observation, much of the Employer's case is based on its

^{6/} 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 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).

projected expansion of a 4/10 CWS option to employees at all three MCC call centers. The Union's proposal, however, is far more limited in scope and contains safeguards ensuring that adverse impact, if any, would be limited to a 90-day period.

Turning to the Employer's most cogent adverse impact argument, if all other factors are held constant, it would appear that reducing the number of staff available to take service calls during core hours would increase customer waiting times. But there is good reason not to hold all other factors constant. In this regard, the Employer's statistics show variations in the productivity of individual employees.^{7/} It follows that the actual impact of the 4/10 CWS on customer service times would depend to some extent on the individual productivity of the three employees who work the schedules. Moreover, the Employer's claim that it would have to hire one additional FTE to maintain the level of service currently provided to MCC's customers (at a cost of \$121,000 per year) for every four technicians on a 4/10 CWS, does not take into account that the employees are likely to come from the group that already has an RDO every pay period under the current 5-4/9 CWS. In my view, the Union also has effectively undercut the Employer's position by pointing out that 10-hour days would provide greater coverage during non-peak hours, thereby improving service times for those periods, and potentially increase productivity by permitting employees to take more calls during peak hours and perform necessary paperwork during the non-peak hours.

In summary, while the adoption of the Union's 4/10 proposal may have some affect on the Employer's ability to meet its service goals, in the absence of a trial period it is unclear whether this would meet the Act's standard of adverse agency impact. The parties can contribute to the success of the trial by further modifying the Union's proposal through the additional bargaining that will occur as a result of this decision.^{8/}


^{7/} During the mediation portion of the Panel's proceeding, as well as in its post-hearing submission, the Employer stated that it does not track the number of calls handled by each call center. From the information it provided concerning call volume per day per technician from July 15 through August 31, 2008, it appears that it could easily have aggregated the requested data.

^{8/} If an employer fails to meet its statutory burden under the Act:

Finally, after the trial period is completed, there should be objective evidence upon which the parties and, if necessary, the Panel, can determine whether the 4/10 CWS should be terminated or continued.

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 unit employees in the Fort Worth Maintenance Control Center.



Donald S. Wasserman
Arbitrator

February 18, 2010
Washington, D.C.

The Panel will direct the parties to return to the bargaining table and to continue negotiations on an alternative work schedule (128 Cong. Rec. H3999, daily ed. July 12, 1982) (statement of Rep. Ferraro). See also S. Rep. No. 97-365, 97th Cong., 2d Sess. 15-16 (1982).

For example, to accommodate the Employer's concerns the Union agreed to limit RDOs to Tuesdays, Wednesdays, and Thursdays. The Employer's own data, however, show that Fridays are the lightest days for ACDs. The parties may want to take this into consideration.