In the Matter of

DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT COMMAND
U.S. ARMY GARRISON
FORT WAINWRIGHT, ALASKA

and

LOCAL 1834, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 10 FSIP 128

**ARBITRATOR'S OPINION AND DECISION**

The Department of the Army, Installation Management Command, U.S. Army Garrison, Fort Wainwright, Alaska (Employer) 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 its determination to terminate the 4/10 compressed work schedule (CWS) of the Transportation Motor Pool (TMP) drivers in the Department of Logistics (DOL) represented by Local 1834, American Federation of Government Employees, AFL-CIO (Union).

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through mediation-arbitration with the undersigned, Panel Member Martin H. Malin. 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 October 12, 2010, I conducted a mediation-arbitration by telephone with representatives of the parties. Because the mediation portion of the proceeding failed to result in the voluntary settlement, I am required to issue a final decision resolving 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.

## BACKGROUND

The Employer's mission essentially is to provide logistics, public works, civil engineering and other services to the military personnel stationed at Fort Wainwright. In particular, the TMP transports: (1) material and supplies for post operation and functions for tenant and garrison units; (2) military/civilian personnel in the performance of official business; and (3) military/civilian personnel and cargo in support of troop training and mobility deployment exercises and real world deployments. The Union represents approximately 778 mostly Wage Grade employees who work to support these services, including the 12 TMP drivers whose CWS are at issue in this proceeding. The parties' collective bargaining agreement (CBA) was initially due to expire on March 1, 2007, but is still in effect by virtue of an annual rollover provision.

The TMP drivers' 4/10 CWS was initially implemented in 2007. At the time the Employer's request for assistance was filed, all 12 bargaining unit TMP drivers were on the schedule. Six of the drivers had Monday as their regular day off (RDO) and six had Friday RDOs. Half of the drivers start their workday at 6 a.m. and the other half start at 7:30 a.m. During the mediation-arbitration proceeding it was disclosed that the Employer recently approved a driver's request to switch from the 4/10 CWS to a 5/8 schedule. Thus, the instant impasse currently affects 11 TMP drivers.

This is the second attempt by the Employer to terminate the CWS. It filed a request for assistance in Case No. 10 FSIP 58 after conducting a study of the impact of the CWS on its mission based on TMP data collected from June 2008 to August 2009. The Employer withdrew its request for assistance after the parties effectuated a Memorandum of Agreement (MOA) on March 25, 2010. Essentially, the MOA: (1) continued the 4/10 CWS; (2) permitted the Employer to evaluate whether the parties' recent establishment of Overtime Standard Operating Procedures (SOPs) within the TMP, and/or the adjustment of working hours for six of the drivers that extended TMP's hours of operational coverage, adequately relieved the alleged adverse impact of the 4/10 CWS on Agency operations; and (3) specified that neither party waived any of its rights under the Act.

## ISSUE AT IMPASSE

The sole issue before me is whether the finding on which the Employer has based its determination to terminate the 4/10

CWS is supported by evidence that the schedule is causing an adverse agency impact.[1/]

## PARTIES' POSITIONS

1. The Employer's Position

The 4/10 CWS is diminishing the level of service furnished to its customers and increasing costs. Regarding its impact on customers, TMP services are requested through U.S. Army Alaska Form 248 (characterized by the Employer as the "Voice of the Customer"). Contrary to the Union's claims that the data upon which the Employer based its studies were somehow hidden, Form 248 requests are available for the Union's inspection without having to go through management. The Employer's evaluation of the Form 248 requests it received from April 1 through June 3, 2010, after the parties executed their MOA on March 25, 2010, revealed "the same basic outcome" as the study it conducted from June 2008 to August 2009, *i.e.*, "the 4/10 CWS has an adverse impact on the Agency even after the Agency changed the work hours to a split shift and implemented" new overtime SOPs.[2/]

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1/ Under 5 U.S.C. § 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).

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).

2/ During the mediation phase of the proceeding, however, the Employer's statistical expert acknowledged that the changes implemented through the MOA reduced the alleged adverse impact of the CWS to a limited extent, given that the total overtime during the 2-month period of the second study was 242.25 hours and the total overtime during the 2-month

Specifically, the data show that the 4/10 CWS has resulted in a diminished level of services provided to the customer "via having to attempt to reschedule mission request[s] around Mondays and Fridays." This is directly attributable to the fact that one-half of the TMP drivers are on their RDOs on Mondays and Fridays, while Fridays and Mondays "were the second and third most requested days for service."[3/] Denying customer requests for service, however, "is unacceptable because the mission cannot fail." In this regard, soldiers and their equipment must get to their deployment and redeployment sites on any given day. Consequently, the Employer must call TMP drivers in during their RDOs or task other qualified individuals from within DOL to meet the mission. Its analysis of the data further confirms that "Fridays and then Mondays were the days that additional drivers were needed to accomplish the mission."

The diminishment in the level of services caused by the CWS demonstrated through the Employer's statistical analysis is corroborated by the testimony of one of the TMP's primary customers, SFC April Letourneau, the soldier who has been responsible for scheduling training missions for the 1/25th Stryker Brigade Combat Team (SBCT) since August 2009. She estimated that, during the April 1 - June 3, 2010, timeframe, there were 10 to 12 instances where the TMP could not fully support her requests for services on behalf of the SBCT and, as a result, training missions had to be "compromised." More specifically, she testified concerning three such incidents occurring on Monday, April 19, Friday, May 7, and Monday, May 10, 2010, respectively, and stated that, generally, Monday and Friday missions had to be shifted to Tuesdays and Thursdays because the TMP Manager informed her he did not have enough drivers available. In response to questions from the Arbitrator, she added that such occurrences represent more than mere inconveniences because soldiers' inability to receive the necessary training on a given day has a "snow-ball effect" that undercuts overall combat readiness.

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period from February 1 through March 31, 2010, before the changes occurred, was 320.25 hours.

3/ In accordance with the Employer's analysis, from April 1 through June 3, 2010, 24.2 percent of Form 248 requests occurred on Thursdays, 22.5 percent on Fridays, and 19.2 percent on Mondays, cumulatively accounting for 65.9 percent of all the requests for services received from its customers during the study period.

The data from the Employer's study also demonstrate "a direct relationship between overtime hours and the RDOs of Monday and Friday." In this regard, during the period of April 1 to June 3, 2010, 66.2 percent (160.3 hours) of all TMP overtime was incurred during these 2 days alone. Not surprisingly, 78.6 percent of all of the Employer's assignments to TMP drivers on their RDOs, or to other qualified individuals within DOL, occurred on Mondays and Fridays. Using an average overtime rate of $45.09, it estimates that the cost of Monday and Friday overtime during that period was $7,027. By eliminating the overtime on these two weekdays, which would have been the case if the drivers were on a 5/8 schedule instead of the 4/10 CWS, TMP would have incurred only 81.9 hours of overtime "at a cost savings of $3,334, cutting almost half of the overtime." In summary, the Employer's study and the testimony of its witnesses establish that: (1) there is a "misalignment of manpower against workload" and the "Voice of the Customer"; (2) overtime costs on Mondays and Fridays are much higher than they need to be; and (3) both of these problems are directly connected to the existence of the 4/10 CWS. The Arbitrator should find that the Employer has met its statutory burden under the Act and order that the 4/10 CWS be terminated.

2. The Union's Position

The Employer has not met its burden under the Act and, therefore, the Arbitrator should order that the TMP drivers' 4/10 CWS remain in effect. Conceptually, the Union does not understand how the Arbitrator could conclude that the Employer has demonstrated that the schedule is causing either a diminishment in the level of services provided to TMP's customers, or an increase in costs, because it has failed to establish baselines for comparison regarding these statutory criteria. Without knowing what the level of services and overtime costs were prior to the establishment of the 4/10 CWS, there is no way to determine whether any alleged problems with the TMP's performance are attributable to the CWS or to other factors, such as mismanagement. In addition, the Union is skeptical about the conclusions the Employer has reached in all of the studies it has performed to date because of its refusal to actively involve the Union in the process of data collection and analysis. While the Union recognizes that there is no legal requirement for management to notify or permit it to participate in a CWS study, the Office of Personnel Management's Guidance Manual "encourages the Agency to seek Union input." The Union's previous offers to "partner" with the Agency to conduct a

jointly-designed study were declined "because the Agency knows a fair study supports [CWS]."

The Union's skepticism is buttressed by the fact that the study the Employer conducted using Form 248 data from April 1 to June 3, 2010, was "poisoned" by management's failure to follow the established procedures when assigning overtime, in accordance with the MOA the parties reached on March 25, 2010. Instead of following those procedures, "management has made off-duty personnel work overtime." This is confirmed by TMP drivers' time and attendance and commitment sheets, and their direct testimony, all of which establish that on numerous occasions during the study period management could have offered or required on-duty drivers to work overtime, rather than make it available to off-duty personnel, but chose not to do so. Because on-duty personnel would have accomplished part of the missions during their regular tours of duty, the call in of personnel on their RDOs to perform the missions inflated the amount of overtime paid. As a result, the Union filed a grievance in June 2010 over the Employer's failure to follow the agreed upon overtime SOPs. Had the Employer not intentionally inflated the overtime numbers, the study would not have found that the use of overtime increased on Mondays and Fridays. Moreover, the 2-month period was too short, conducted when most employees take their annual leave, "and designed to capture only certain data during a certain timeframe for the most damaging results." Thus, the study was "a waste of taxpayer monies" and a result of "management's obsession to terminate a successful [CWS] on Fort Wainwright" that should be dismissed.

In March 2010, the Employer also agreed to advertise TMP's extended operational hours on its website "and to request whenever possible that units requiring large moves try to schedule them on a Tuesday, Wednesday, or Thursday." By extending operational hours, service to the customer expanded 75 percent. This required employees to adjust their personal lives, such as child care and transportation, to help the Agency's mission of supporting soldiers. The request to schedule services for large troop movements during the middle of the workweek was aimed at lessening the workload on Mondays and Fridays because half of the drivers are off then "and management's chief complaint was the overtime costs on those days." The website, however, still shows TMP's previous operational hours, and management has made no effort to schedule large moves on Tuesday, Wednesday, or Thursday. Given the drivers' previous good faith efforts and management's failure to live up to its commitments, including its agreement to assign

overtime in accordance with the SOPs, the Arbitrator should find that the Employer has not demonstrated that the 4/10 CWS should be terminated.

## 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 to terminate a CWS if the finding on which the determination is based is supported by evidence that the schedule is causing an "adverse agency impact." 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."[4/]

Having carefully considered the totality of the evidence presented in this case, I find that the Employer has met its statutory burden by demonstrating that overtime costs would be reduced significantly if the 4/10 CWS at the TMP were terminated. In this regard, it is clear that Form 248 customer service requests provide an objective basis for determining the TMP's primary mission requirements during any given time period. Based on those forms, the Employer's analysis of the April 1 - June 3, 2010, time period revealed that 66.2 percent of all TMP overtime occurred on Mondays and Fridays. In addition, during mediation the parties agreed that most, if not all, of the Monday and Friday overtime during the study period took place on just 4 days - May 7, May 10, May 14, and May 17. Despite the Union's best efforts, none of the instances where its witnesses or documentary evidence established that management failed to comply with the overtime SOPs occurred on those 4 crucial days. The overtime on those days resulted from the need for more drivers than were available because half of the drivers were on

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4/ 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).

their RDOs. Thus, I am not persuaded that the results of the Employer's study are tainted by its failure to comply with the overtime SOPs, as the Union contends. This leads to the inescapable conclusion that, if half of the TMP drivers had not been on their 4/10 CWS RDOs on those 4 days, the Employer would not have incurred the overtime costs that it did. Put another way, if the TMP drivers had been on a 5/8 schedule they already would have been at work, and no or far less overtime costs would have been incurred. Accordingly, because the Employer has established that the increase in overtime costs was caused by the 4/10 CWS, I shall order that the schedule be terminated.

**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 termination of the Transportation Motor Pool drivers' 4/10 compressed work schedule in the Department of Logistics.

Martin H. Malin
Arbitrator

October 18, 2010
Chicago, Illinois