United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF THE AIR FORCE LANGLEY AIR FORCE BASE LANGLEY AIR FORCE BASE, VIRGINIA and LOCAL R4-106, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, SEIU, AFL-CIO	)	Case No. 91 FSIP 129

DECISION AND ORDER

Local R4-106, National Association of Government Employees, SEIU, AFL-CIO (Union), filed a request for assistance with the Federal Service Impasses Panel (Panel) pursuant to the Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. §§ 6120-6133 (1988) (Act) to resolve an impasse arising from the determination of the Department of the Air Force, Langley Air Force Base, Langley Air Force Base, Virginia (Employer) not to establish a compressed work schedule.

The Panel determined that the impasse should be resolved on the basis of written submissions from the parties, with the Panel to take final action in accordance with section 6131 of the Act and section 2472.12 of its regulations. Submissions were made pursuant to these procedures and the Panel has now considered the entire record.

BACKGROUND

The Employer is the home base of the 1st Tactical Fighter Wing. Its mission of air space defense requires the ability to mobilize on short notice for deployment in response to hostile aggression. The Union represents 2 separate bargaining units (one professional and one non-professional) of approximately 2,000 employees who provide support for this effort; they are covered by a single collective-bargaining agreement. The

instant dispute arose as a result of negotiations for a new contract; the prior agreement was to expire on July 22, 1988, but remains in effect until a successor is implemented.

Although the parties reached agreement on their successor at the local level, the Employer has refused to implement the new contract because the agency head determined that an agreed-to 4-10 alternative work schedule (AWS) provision would have an adverse agency impact. In making this determination, the Employer relies on section 6131 of the Act.[1/] Thus, in considering this matter, the Panel is required to "take final action in favor of the agency's determination if the finding is supported by evidence that the schedule is likely to cause an adverse agency impact."[2/]

ISSUE AT IMPASSE

The sole issue is whether the finding on which the agency has based its determination not to establish a 4-10 work schedule is supported by evidence that the schedule is likely to cause an adverse agency impact.

1. The Employer's Position

The Employer proposes that the Panel take final action in favor of its determination that Article 13, Section 2, of the new agreement, which establishes a 4-10 work schedule option, is likely to cause an adverse agency impact. In support of its position, the Employer has submitted 14 separate letters from military supervisors which describe the adverse impact that the 4-10 option is likely to have on the installation's various organizational components. Generally, these letters all state that the agreed-to 4-10 provision is incompatible with the

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1/ 5 U.S.C. § 6131(b) (1988) defines adverse agency impact as:

(1) a reduction of the productivity of the agency;

(2) a diminished level of 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).

2/ 5 U.S.C. § 6131(c)(2)(B) (1988).

Employer's mission. More specifically, the individual authors raise the following points: (1) a 4-10 work schedule would likely result in civilian employees not being available when needed; (2) since an increasing number of affected positions are one deep, coverage would not be available 1 day per week, thereby resulting in decreased productivity; (3) in some occupations, no productive work would be available during the last 2 hours of the day, as the work flow for these jobs is tied directly to the work of military personnel or commercial vendors who work regular 8-hour schedules; (4) a 4-10 work schedule would have a negative impact on the morale of military personnel who work side by side with civilians; (5) under a 4-10 schedule, military supervisors would be required to work five 10-hour days per week, which would result in increased stress and fatigue; (6) a 4-10 work schedule may result in increased use of overtime to complete "emergency-type" work which occurs on Mondays or Fridays; (7) a 4-10 work schedule would result in increased employee fatigue, thereby having a negative impact on productivity; (8) a 4-10 work schedule would result in increased energy costs; and (9) since some civilian supervisors would be eligible to participate in the 4-10 schedule, continuity of supervision would likely be disrupted.

2. The Union's Position

The Union argues that the Employer has not submitted sufficient evidence to support its determination that a 4-10 work schedule is likely to cause adverse agency impact, and therefore, proposes that Article 13, Section 2, be maintained. The Union notes that the Employer had agreed to the provision at the local level and that the evidence which has been submitted to the Panel is questionable as it "merely reflect[s] opinions of high-ranking military officials who wish not to establish a 4-10 workweek." It disputes that the 4-10 option is incompatible with the Employer's mission and asserts that a compressed work schedule could actually have a positive impact on the installation's ability to mobilize on short notice. According to the Union, alternative work schedules have worked well in some organizational components in the past and have resulted in increased productivity and enhanced employee morale. It emphasizes that during periods of increased military alert, the Employer would be able to suspend the compressed work schedule in order to fulfill its mission requirements.

CONCLUSIONS

Section 6131(c)(2)(B) of the Act requires the Panel to take final action in favor of the Employer's determination not to

establish a flexible or compressed work schedule if the finding on which it is based is supported by evidence that the proposed schedule is likely to cause an adverse agency impact. The Act's legislative history makes it clear that the agency bears the burden of proof with respect to showing adverse impact.3/

Having considered the record before us, we find that the Employer has met its statutory burden. In our view, the 14 separate letters from various military supervisors which document the adverse effects that a 4-10 work schedule is likely to have on the individual organizational components constitute sufficient evidence to support the agency's finding on which it based its determination not to establish the 4-10 schedule. In reaching this determination, we note that most of the statements contained in the letters submitted by the Employer were not refuted by the Union. Furthermore, we are particulary mindful of the Employer's unrebutted assertion that one-deep positions would not be covered 1 day per week. Accordingly, we shall take final action in favor of the agency's determination and shall order the parties to delete Article 13, Section 2, from their agreement.

ORDER

Pursuant to the authority vested in it by the Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. § 6131 (1988), the Federal Service Impasses Panel, under section 2472.12(b) of its regulations, hereby orders the parties to delete Article 13, Section 2, from their collective-bargaining agreement.

By direction of the Panel.

Linda A. Lafferty
Executive Director

September 12, 1991
Washington, D.C.

3/ See 128 CONG. REC. 15799 (1982) (remarks of Rep. Ferraro); and 128 CONG. REC. 15414 (1982) (remarks of Sen. Stevens).