

United States of America
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

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| In the Matter of |) | |
| |) | |
| DEPARTMENT OF THE TREASURY |) | |
| INTERNAL REVENUE SERVICE |) | |
| SALT LAKE CITY DISTRICT OFFICE |) | |
| SALT LAKE CITY, UTAH |) | |
| |) | |
| and |) | Case Nos. 90 FSIP 152 and |
| |) | 90 FSIP 165 |
| |) | |
| NATIONAL TREASURY EMPLOYEES UNION |) | |
| |) | |

DECISION AND ORDER

Requests for assistance were filed with the Panel by the Department of the Treasury, Internal Revenue Service, Salt Lake City District Office, Salt Lake City, Utah (Employer) in Case No. 90 FSIP 152, and the National Treasury Employees Union (Union) in Case No. 90 FSIP 165 to consider a negotiation impasse under section 7119 of the Federal Service Labor-Management Relations Statute (Statute).

The Panel determined that the cases concerning workhours should be consolidated and the impasse resolved on the basis of written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the dispute. Submissions were made pursuant to these procedures and the Panel has considered the entire record.

BACKGROUND

The Employer's mission is to administer the tax laws of the United States. The Union represents approximately 112,000 employees in a nationwide consolidated bargaining unit consisting of professionals and nonprofessionals in district, regional, and national offices. The dispute herein concerns 68 of the approximately 250 bargaining-unit employees which the

Union represents in the Salt Lake City District Office. These employees hold positions as Revenue Officers in the Collection and Taxpayer Service Division; their primary duty is to collect delinquent taxes. The Union and the Internal Revenue Service are parties to a master collective-bargaining agreement which is in effect until June 1994.

The dispute arose during renegotiations over a local agreement concerning alternative work schedules and hours of work. The parties have agreed that Revenue Officers would continue to have the option of working a flexitour schedule with credit hours.^{1/} They disagree, however, over whether there should be any change in the starting and quitting times for Revenue Officers and their core hours.^{2/} Currently, Revenue Officers are permitted to start work anytime between 7 and 8 a.m., leave as early as 3:30 p.m., and have core hours from 10 a.m. to 3 p.m.

ISSUE AT IMPASSE

The issue is whether the current hours of work including core hours for Revenue Officers should be maintained.

1. The Employer's Position

The Employer proposes that the earliest starting time for Revenue Officers be 7:30 a.m., with a 30-minute lunch break, and a quitting time of 4 p.m.; if a Revenue Officer wishes to take a longer lunch period of up to 1 hour, the quitting time would be extended accordingly; core hours for Revenue Officers would be from 9 a.m. to 4 p.m.

^{1/} Flexitour with credit hours is a fixed work schedule that includes a basic work requirement of 5 workdays of 8 hours each in an administrative workweek of the biweekly pay period and the ability of the employee to work, with managerial approval, additional hours (credit hours).

^{2/} Core hours are those hours of work when employees are required to be present.

In support of its position, the Employer contends that by law and agency regulation, Revenue Officers (R.O.) may not contact taxpayers prior to 8 a.m. without their consent; since 50 percent of the R.O.s start work at 7 a.m., valuable public contact time is being lost which would not be the case if their starting hours were 1/2-hour later. R.O.s, who are primarily field employees and not office workers, do not have enough "paper work" to occupy them for a full hour each morning before they may initiate "cold" calling; therefore, a later starting time would allow an R.O. more time at the end of the workday for public contact.

Furthermore, it would allow greater staff coverage in the late afternoon which would help to serve the taxpaying public better. In this regard, the change would delay the "mass exodus" of the majority of R.O.s which currently occurs at 3:30 p.m., leaving the office short staffed and, therefore, unable to serve the public effectively and efficiently until office hours end at 4:30 p.m. The absence of the majority of R.O.s after 3:30 p.m. "impedes and interferes with the Service's mission and creates additional work interruptions for the managers and those few Revenue Officers left behind who must set their work aside to handle post-3:30 p.m. taxpayer inquiries."

Moreover, "the unavailability of these employees hinders the Service's efforts and ability to improve its reputation and serves to fuel unwarranted (public) criticism." Management has the right under section 7106 of the Statute to determine its mission and the method and means of accomplishing it; the designation of a later starting time affects the Employer's mission-related objective of improving productivity and better serving the public.

Commuting time would not be affected significantly since Salt Lake City is a relatively small city (pop. 164,800, as of March 1, 1991), which does not have the same rush-hour gridlock as larger metropolitan areas. A later starting time is consistent with the practice in other divisions where all but very few start work at 7:30 a.m. or later. Additionally, it would provide more opportunity to contact attorneys or Certified Public Accountants who represent taxpayers, since these professionals generally work "normal" business hours of 9 a.m. to 5 p.m. Finally, the modification of workhours is part of a plan to increase field productivity in the Collection and Taxpayer Service Division which, in June 1988, had the lowest

field productivity in the nation. Thus, the business concerns of the Employer outweigh any potential damage to morale if hours of work are changed.

2. The Union's Position

The Union proposes to maintain the status quo; that is, R.O.s be allowed to start work under a flexitour schedule any time between 7 and 8 a.m., and retain the current core hours of 10 a.m. to 3 p.m.

The Union argues that its proposal would retain a longstanding past practice which, it asserts, there is no demonstrated need to change. Furthermore, the Employer has not met its burden of proof under the Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. section 6120 et seq., that the current hours have had an adverse impact upon agency operations. The Employer's claim that there is too much "down time" between 7 and 8 a.m. is specious, according to the Union; in this regard, taxpayer contact rules have been in effect for at least 10 years, yet the Employer never attempted to negotiate a change in R.O. workhours until recently. R.O.s should be permitted to start work at 7 a.m. to accommodate taxpayers who often prefer to meet before they start work in the morning; retaining current hours would maximize scheduling efficiency for both the taxpayer and the R.O. Employees who currently start work at 7 a.m. have plenty of work to do that does not involve calling upon the public; in this regard, a management study published in October 1990, found that 28 percent of an R.O.'s time is spent performing clerical duties.

Allowing R.O.s to start work at 7 a.m. helps them avoid the severe traffic problems which develop around the district office; an affiant on behalf of the Union, who is a planner for the Utah Department of Transportation, states that "our interstate system . . . is in failure during peak hours." Avoiding traffic congestion reduces air pollution, gas consumption, and employee stress.

Finally, when an R.O. initiates a new taxpayer contact, the call can last as long as 2 hours; when such calls are likely to extend beyond 3:30 p.m., the R.O. continues it and generally earns credit hours. Thus, R.O.s are capable of scheduling their workdays to accomplish the mission of the agency as efficiently as possible. Comparability data show that the majority of other district offices within the Southwest Region allow employees to start work prior to 7:30 a.m.

CONCLUSIONS

Having considered the parties' positions, we find that, on balance, the Employer's proposal provides a reasonable basis for resolving the dispute. Preliminarily, we note that the Union mistakenly asserts that the Panel is resolving the dispute under the Federal Employees Flexible and Compressed Work Schedules Act of 1982 (Act). To the contrary, the parties filed requests for assistance under the Statute, and the Panel asserted jurisdiction under it, where the cases properly belong for resolution. Therefore, the Employer does not have the burden to establish that the current workhours are causing an adverse agency impact as defined under the Act. Rather, the parties have a shared burden to develop a complete record and demonstrate the merits of their respective proposals.

We find that retaining the current workhours for R.O.s would not remedy the problem of short staffing in the office which occurs after 3:30 p.m. Rather, a later starting time should help relieve the pressure currently placed upon managers and those R.O.s who do not leave work at 3:30 p.m., to cover for their departed colleagues. Furthermore, continuing the past practice of allowing R.O.s to start work at 7 a.m. would not enhance the agency's efforts to improve its public image when R.O.s are often unavailable in the late afternoon to respond to public inquiries. Serving the public interest in the most efficient and practical manner, particularly in these times of economic retrenchment, should be a paramount consideration for both parties. A starting time which is only 30 minutes later would still allow employees to depart prior to the height of peak commuting hours. Finally, we find the Union's comparability data, which purport to show that a majority of district offices in the Southwest Region allow employees to start before 7:30 a.m., to be inconclusive as the evidence does not indicate whether R.O.s are among those permitted to start prior to that time. We note, however, that both parties will have the opportunity to evaluate the impact of this change prior to bargaining over any necessary refinements during the course of future midterm negotiations.

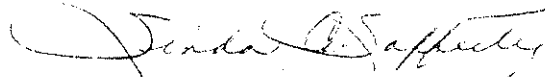
ORDER

Pursuant to the authority vested in it by section 7119 of the Federal Service Labor-Management Relations Statute and because of the failure of the parties to resolve their dispute during the course of proceedings instituted pursuant to section 2471.6(a)(2) of the Panel's regulations, the Federal Service

Impasses Panel under section 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the Employer's proposal.

By direction of the Panel.



Linda A. Lafferty
Executive Director

April 12, 1991
Washington, D.C.