

United States of America
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF STATE, PASSPORT SERVICES
CHARLESTON, SOUTH CAROLINA

And

NATIONAL FEDERATION OF FEDERAL EMPLOYEES
LOCAL, 1998

Case No. 19 FSIP 076

DECISION AND ORDER

This request for assistance concerning the establishment of six (6) Alternative Work Schedules (AWS) in Charleston, SC under the Federal Employees Flexible and Compressed Work Schedules Act (Act) of 1982, 5 U.S.C. § 6120, et seq was filed by Local 1998, National Federation of Federal Employees, Federal District 1 (NFFE or the Union). After consideration of the Union's request for assistance, the Panel determined, in accordance with its regulations, 5 C.F.R. § 2472.7, to assert jurisdiction over the dispute and directed the parties to submit their dispute to Member Czarnecki, for an Informal Conference. The Informal Conference was held on February 18, 2020, in Charleston, SC. As the parties were not able to resolve all of the outstanding issues, the parties were directed to submit Written Submissions for consideration by the full Panel. Both parties complied with the instruction. The record is closed and the Panel issues the following decision in accordance with 5 U.S.C. §6131 and 5 C.F.R. §2472.11 of its regulations.

BACKGROUND

The parties conducted negotiations from June 2018 and into August 2018. In August 2018, mediation was requested to resolve the bargaining impasses. A Mediator from the Federal Mediation and Conciliation Service (FMCS) conducted the mediation from October 2018 and into December 2018. At the close of the

mediation in December 2018, the parties agreed to implement, in part, a new work schedule agreement. This agreement includes regular 8-hour work schedules along with flexible work schedule plans, such as a Flexitour¹, and Compressed Work Scheduling plans² (4/10-schedule³ and 5/4-9-schedule⁴). As a result of that agreement, 105 different schedules went into place effective April 2019. The Union submitted the remaining six (6) unresolved proposed schedules to the Panel.

The Union originally filed this request for assistance (Case No. 19026) over the negotiations of a local AWS Agreement in March 2019. At that time, the Agency was unwilling to agree to the proposed AWS schedules because the Agency claimed they were not authorized to bargain for those schedules (other than the ones that they agreed to) under the CBA; the old CBA did not provide for the additional schedules. During the investigation, the Agency agreed that the new, December 2018-CBA made it clear that parties could in fact bargain for the AWS schedules at the local level. As such, the Agency agreed to return to the bargaining table to address the Union's proposed schedules. The Union withdrew its request for assistance in FSIP Case No. 19026 and the parties returned to the bargaining table.

The parties met in April 2019 to negotiate the Union's proposals. The Agency did not advance, nor counter with any proposals. No agreement was reached. The parties met with the Mediator from FMCS to continue negotiations in September 2019. Again, the Agency did not advance, nor counter with any proposals. The FMCS Mediator released the parties. On September 25, 2019, the Union once again filed a request for assistance with the Panel. On November 26, 2019, the Agency provided the Union its declaration that the 6 remaining proposed schedules would have an adverse impact on the productivity of the agency and/or services furnished to the public.

¹ CPC agreed to 29 different Day shift schedules and 18 different night shift schedules.

² For Day shift, CPC agreed to 22 different 5/4/9-schedules and 14 different 4/10-schedules. For Night shift, CPC agreed to 11 different 5/4/9-schedules and 11 different 4/10-schedules.

³ A 4/10-work schedule is when a full-time employee works 10 hours a day for 4 days a week, with one regularly scheduled day off (RDO) each week.

⁴ A 5/4/9-work schedule is when a full-time employee works eight 9-hr days and one 8-hr day for a total of 80 hours in a biweekly pay period, with one regularly scheduled day off (RDO) every pay period.

ISSUES AT IMPASSE

In accordance with §§ 6131(c)(3)(B) and (C) of the Act, the sole issue before the Panel is whether the Agency's determination that the proposed schedule would cause an adverse agency impact (as defined by 5 USC 6131⁵) is supported by evidence as defined under the CWS Act.

POSITIONS OF THE PARTIES

The Union requests, consistent with the options now available under the Master CBA, that the Agency offer the following 6 schedule flexibilities under the local AWS Plan in the Charleston, SC office:

- Credit Hours
- Gliding Schedule
- Split 8s/9s/10s Schedule Plans (a.k.a. Maxiflex)
- Flexitour Variable Week
- CWS Variable Week
- 5:30AM Start Time

1. Credit Hours for BUEs in AWS

In accordance with OPM guidance, credit hours are hours in excess of an employee's basic work requirement (e.g., 40 hours a week) which the employee elects to work to vary the length of a workweek or a workday. Agencies may limit or restrict the earning and use of credit hours. The law prohibits carrying over more than 24 credit hours from one pay period to the next (5 U.S.C. 6126).

Union proposal:

A bargaining unit employee (BUE) can elect to accrue Credit Hours when working an AWS in excess of his/her work day to use at another time to vary his/her workweek, and/or workday. BUEs

⁵ Under § 6131(b), "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 schedule).

can elect to work Credit Hours regardless if FLSA Overtime is suffered and permitted, or not.

A BUE at CPC electing to accrue Credit Hours must email his/her supervisor, and/or appropriate Management Official before the end of his/her start time of the times working for credit hours. A BUE can notify his/her supervisor verbally of working to accrue Credit Hours, but must follow-up with an email before or at the time of working Credit Hour(s). CPC BUEs can also submit requests day(s) in advance for a schedule to accrue Credit Hours either before/after his/her respective shift.

Hours worked for Credit Hours in excess of the BUE work schedule shall be noted in MIS, but not listed in any record as Overtime. BUEs documenting to working and using accrued Credit Hours shall apply the use of these hours in MIS under the Section "Schedule - Hours".

BUEs can elect to use Credit Hours at any time the day after it was worked, by sending an email to his/her supervisor, and/or appropriate Management Official prior to varying the length of the workday/workweek.

Credit Hours can be accrued in addition to any suffered and permitted FLSA Overtime.

If CPC is open on non-work days such as a Saturday, any BUEs can also accrue Credit Hours, in addition to FLSA Overtime.

Agency Position

First, the Agency suggests that credit hours is not a good option for this bargaining unit because of all of the limitations on when credit hours would even be available to these BU employees. The Agency argues that the Union's proposal is not agreeable because it is not consistent with the State Department's policy on the requesting and granting of credit hours; the proposal does not express the Department's requirements and limitations of credit hours⁶. Under the

⁶ 3 FAM 335.4 - Every position may not be suitable for earning credit hours. For example, there may not be sufficient work for more than 8 hours per day, work may only be generated at certain times of the day, or the requirements for office coverage may prevent a schedule that allows an employee to apply credit hours to make up their basic work requirement. Employees on a compressed work schedule are not eligible to earn credit hours;

Department policy and the OPM guidance, a supervisor may limit the flexible hours established by the bureau/post, if necessary, given the needs of the office and/or the schedules of other employees. The supervisor may also limit an employee's ability to accumulate credit hours if the supervisor determines that there is insufficient work or other compelling circumstances. Additionally, per OPM guidance, credit hours cannot be used in conjunction with a compressed work schedule, no more than 24 credit hours can be carried over from one pay period to the next, and credit hours must be used in 1-hour increments. Following that guidance and limitations, credit hours could only be available to CPC BUEs working regular Day Shift schedules, excluding BUEs on CWS and/or Night Shift. Given these limitations, the Agency believes that the use of compensatory time is a better option for BUEs.

Next, in making its adverse agency impact arguments, the Agency first argues that documenting credit hours will be extremely costly and time-consuming because it cannot be done in the existing timekeeping system (TATEL) and there is no automation in place to enter the varying scheduling items. Tracking would have to be done in a new, separate internal database. The Agency estimates it would take a minimum of 18 months⁷ to create a new automated tracking system at an estimated cost of \$200,000. Additionally, allowing employees to accrue

(2) Credit hours are worked at the election of the employee consistent with agency policies and must be worked within an employee's nonovertime tour of duty. Also, per Department policy (3 FAM 2335.4(b)(1)(b)), CPC cannot be obligated to pay night differential for credit hours worked before 6:00 a.m. or after 6:00 p.m:

Credit hours: Those hours within a flexible work schedule that an employee elects to work in excess of his or her basic work requirement so as to vary the length of a workweek or workday. Credit hours are not the same as overtime hours of work or compensatory time off. Credit hours may only be worked by employees on a flexible work schedule and require supervisor approval.

Night work: Regularly scheduled nonovertime work performed by an employee between the hours of 6:00 p.m. and 6:00 a.m. An overseas post can establish a different start and end time of night work based upon the customary hours of business at that location.

Overtime work: Subject to certain exceptions and exclusions set forth by law or regulation, overtime work generally includes work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek.

⁷ The Agency assumes and calculates for a 6-month set back; a cost overrun of close to \$70,000 dollars.

credit hours would require increased work hours for CPC's administrative personnel inputting credit hour data. The Agency estimates that administrative personnel would work an additional 25 hours per pay period on tracking credit hours at a financial cost of \$42,607.50 annually to the Agency.

Secondly, in making its adverse agency impact case, the Agency argues that this schedule could not be permitted in this work unit because it impacts production and service provided and accounted for at the national level. The national system (MAC) tracks the number of passport applications received and matches that work with availability of each Passport Center. In assessing the availability of each Center and making the assignment of work to the Centers, MAC takes into account the inventory in each Center, including the backlog of work, and the staffing hours of production available at each Passport Center. MAC then assigns the work to each Center, normally on a weekly basis. MAC requires the input from each Passport Center on a daily, weekly, biweekly, and monthly basis to inform the system of availability. Each Passport Center is responsible for assessing and reporting on the number of staff on board, the hours of work staff will perform, at what date/time/length staff are available to do the work, including overtime, and the type of backlog work they have in their inventory.

In the case of CPC, the staff adjudicates regular and expedited desk work, applicant response (follow-up on incomplete cases), special issuance, and applicant renewals. Work is assigned to teams. In this environment, any inaccuracies in the reporting of the CPC's availability has a ripple effect on the entire Passport Services operation. Such disruption would have an immediate and lasting impact on Passport Office production and service to the public. In sum, the Agency presents an argument that the flexibility in the schedules of the staff would cause delay and inaccuracy in reporting the Center's availability to the MAC, thereby causing a disruption in the scheduling of service that would impact not just CPC, but would impact the scheduling of service throughout the nationwide system.

Union Position

The Union argues that the intention of its proposal is to expand opportunities available to BUE in work scheduling as a benefit not just to the employee, but also as a means of continuing production and services. The Union argues that employees needing to take leave (sick, annual) can use this

flexibility to expand their work hours (make themselves available to perform work) on some days to cover those hours of work that they have been approved to miss. The Union clarifies that this proposal is meant to be read consistent with Department policy, so all of the appropriate approvals and limitations would be in place. With that acknowledgement, the Union argues that this flexibility would not result in increased night pay⁸ or overtime, but instead would allow the employees to make themselves available to continue providing service, upon approval of the supervisor. The Union also notes that while the office is open from 5:15am to 1:00am, this Center provides no public intake of passport applications; the Center is closed to the public⁹. The employee could continue to perform services in the que beyond their normal work hours, with no benefit of overtime or night differential.

Discussion

In accordance with OPM guidance, an agency may implement for its employees varying work hours, including credit hours. While the Agency has agreed to make this option available at the national level, through the CBA, the parties at the local level are free to assess the viability of making that flexibility available at the local level. The Agency argues that the credit hour - flexibility cannot be made available to the CPC because that flexibility would cause an adverse agency impact - increased cost and reduction of productivity and service to the public.

The Agency argues that this scheduling flexibility would reduce the productivity and diminish the level of service to the public by slowing down the ability of the CPC to report its availability to the MAC and causing its reporting of availability to be inaccurate. The Agency has presented a compelling case to demonstrate the schedule flexibility provided through the offering of credit hours could adversely impact the Agency's ability to report its staffing capacity weeks in advance. The flexibility could cause the CPC to inaccurately report its availability, impacting the production across the nation-wide system.

⁸ Night Pay - Premium pay for night work is not paid to a General Schedule (GS) employee solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time when night pay is authorized. However, agencies must pay night pay to GS employees for those hours that must be worked between 6 p.m. and 6 a.m. to complete an 8-hour tour of duty.

⁹ Neither party made it clear if the Passport Specialist engages with the public on services such as follow up on incomplete cases.

The Agency also argues that this scheduling flexibility would increase cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule). The Agency offers that it will cost the Agency \$200,000 to establish an automated system to track the accrual and use of credit hours. That cost is an administrative cost related to the establishment of the schedule. Therefore, that cost does not qualify as an agency adverse impact under the Act. The Union argues that the Agency currently provides some employees in other centers the opportunity to work credit hours, and that time is tracked using sign-in/sign-out sheets; the Agency has not secured a new IT system to support that time keeping option. Those centers that were discussed in the Informal Conference are not comparable to the CPC, a "supercenter," because they have a much smaller workforce to manage or do not have both day and night shift operations.

The Agency also argues that the administrative personnel would need to input the credit hour data into the time keeping system. The Agency estimates that administrative personnel would work an additional 25 hours per pay period on tracking credit hours at a financial cost of \$42,607.50 annually to the Agency. This figure assumes that for the limited community of BUEs that will be approved to use this flexibility, it will take 5 Administrative Assistants (at the GS-11, step 5-pay level) an additional 25 hours per pay period of overtime to perform the data entry. This cost is certainly significant. Given these costs and challenges presented in implementing this proposed schedule, the Panel determines that the Agency met the burden of demonstrating the adverse agency impact in implementing the Credit Hours schedule.

2. Gliding Schedule

A Gliding schedule is a schedule in which there are established core hours and a basic work requirement of 8 hours each day and 40 hours in each week for a full-time employee (or a predetermined daily and weekly schedule for a part-time employee), and the employee may select arrival and departure times each day, and may change arrival and departure times daily within the established flexible hours. Within this flexibility, the employee must work 8 hours each day and 40 hours each week.

Union Proposal:

A gliding schedule allows you to change your starting and stopping time each day within the established Flexible Work Schedule hours within these local agreements. At present PPT/CPC has a start time and end times from 5:45am to 1:00am, five days a week, Monday thru Friday, in which one hour of the 5-day work week enters into Saturday.

On a gliding schedule, you can choose your start time on a daily basis (and therefore your stop time as well).

Example: If your start time is 7:45am you can choose to come in between 7:45am to 8:00am, or 7:30am to 8:00am.

On days you decide to glide, your start and stop time will change accordingly. So if you come in 0.25 hours earlier, you would leave 0.25 hours earlier. Likewise, if you glided forward and come in 0.25 hours later you would leave 0.25 hours later.

The gliding schedule is not available for BUE(s) on the Standard Work Schedule (7:15am to 4:00pm with a 45-minute lunch, and 4:00pm to 12:45am with a 45-minute lunch), and not available for BUE(s) gliding in earlier than 5:30am, and gliding out with a departure time after 1:00am.

If any BUE wishes to enter into a Gliding Schedule, then he or she must email his supervisor, and/or the appropriate management official no later than 10 days before the start of each month for concurrence. Responses to requests will be timely, but no later than 5 days before the quarter begins. AWS Gliding schedules elected by BUE(s) will not be less than the prescribed times within the Master Agreement Article 26 (three months).

Agency Position

The Agency argues that the option of having a gliding schedule would interfere with accurate and timely reporting of workload availability to MAC (discussed above). The Agency also argues that the availability of a gliding schedule would impact CPCs ability to assess workload distribution across the Day and Night shifts within the CPC. The Agency argues that providing for a gliding schedule would impact the wait/turnaround time for customers - production. Further, the Agency argues that a gliding schedule would increase the shift differential/overall operational expenses for employees that work anytime between 6:00 p.m.-6:00 a.m. For example, there are currently 54 BUEs

that begin work at or before 6:00 a.m. If these employees choose to arrive at work 15 minutes early, they move into night differential pay costing CPC up to \$46.98 per day or up to \$11,745 annually. Similarly, for Night Shift BUEs that choose to glide their arrival time 15 minutes later, night differential pay would increase because of the 15-minute shift in their departure time. There are currently 31 BUEs on Night Shift schedules that end at least 15 minutes before 1:00 a.m. closing. If these BUEs glide their arrival time 15 minutes later, they would increase their night differential pay up to \$26.97 per day or \$6,742.50 annually per employee.

The Agency also argues, discussed above, that there is an additional administrative cost for tracking the daily changes for as many as 180 BUEs' work schedules, both with regard to developing a new tracking system and increased administrative support costs estimated at \$42,607.50 annually.

Union Position

The Union argues that a similar contract provision was agreed to in the local agreement in the San Diego and the Boston Passport Centers, and has been implemented without issue. The parties in the Philadelphia Center are in the midst of negotiating such a provision.

Discussion

The record demonstrates that most of the BU employees are on a standard work schedule at CPC: 7:15 a.m. to 4:00 p.m. with a 45-minute lunch, and 4:00 p.m. to 12:45 a.m. with a 45-minute lunch. Under the Union's proposal, most employees would not even be eligible to participate in the gliding scheduling flexibility. As for the employees that would be eligible, the Agency demonstrated that the cost to the agency would be significant. As for the Union's comparison to other CPCs, the Panel believes they are not comparable because the CPC is a much larger Center with two shifts. The Panel determines that the Agency met the burden of demonstrating an adverse impact under the Act in implementing the Gliding schedule.

3. Split 8s/9s/10s Schedule Plans: Maxi-Flex

The split schedule maxi-flex the Union proposes would allow a BUE on a flexible work schedule to work half of his/her scheduled workday within the established hours of operation at

CPC, leave the workplace, and return to complete the second half of his/her scheduled workday at a later time. That schedule would have to be agreed to with the supervisor and would normally be consistent and approved on a monthly basis.

Union's Proposal:

A "Split" schedule allows you to work half of your scheduled Flexible Hours, or CWS hours each day within the established hours of operation at CPC and return to CPC at a later time to complete the remaining other half of the employee's flexible/CWS schedule.

On a "Split" Schedule Plan, you can choose your start time at any time of the day when CPC opens to work half of your flexible/CWS schedule provided that you complete your other half of your flexible/CWS schedule before the close of CPC. The "Split" can be elected and practiced by the BUE on multiple days of the week, or monthly, regardless of shift.

Example: The BUE works a Flexitour from 5:45am to 2:30pm 5 days a week, and then one Wednesday the BUE chooses to work 10:00am to 2:00pm for 4 hours and returns to work at CPC at 7:00pm to 11:00pm to complete the 8 hour Flexitour shift, and returns to the Flexitour from 5:45am to 2:30pm for the rest of the work week.

A "Split" schedule elected by BUE(s) will not be less than the prescribed times within the Master Agreement Article 26 (three months). If any BUE wishes to enter into a "Split" Schedule, then he or she must email his supervisor, and/or the appropriate management official no later than 10 days before the start of each month for concurrence.

BUE requests for a "Split" Schedule Plan to Management shall include a monthly schedule of each month from the BUE indicating the "Split" day(s)/hours. Management's responses to "Split" schedule requests will be timely, but no later than 5 days before the month begins. When concurred by Management, the BUE's "Split" Schedule Plan will automatically expire after three months (in which the BUE will return back to his/her Flexitour/CWS), unless the BUE indicates a longer expiration date within his/her request for a "Split" schedule plan. Once concurred for a "Split" schedule, also, the BUE can choose to submit a "Spilt" schedule each month at a time, provided that the request is

received to Management no later than 10 days before the start of each month, as prescribed in this provision. BUEs can choose to extend his/her "Split" Schedule Plan before the expiration of their plan, provided that the request is received 10 days before his/her original request expires.

BUEs on a Flexible Schedule may combine this Plan to his/her Gliding Schedule, after concurrence with Management and under the provisions of the Gliding Schedule, including times which would exclude the Gliding Schedule.

Agency Position

The Agency argues that the maxi-flex proposal poses significant burdens to the Agency and would adversely impact productivity, service to the public, and cost. The Agency relies on a "line of sight" argument; arguing that the supervisor must be able to see the BUE when they are performing their work in order to determine that employee's and the rest of the assigned team's productivity throughout the day. The Agency argues that the workspace is configured to allow the supervisor to oversee their team members. The supervisor is there to provide timely advice and guidance, but they are also there to gauge productivity. When the employee is in service at odd hours, the supervisor cannot see them, and therefore, cannot gauge their productivity. The Agency argues that the lack of oversight will have a direct impact on productivity on the CPC office and its teams and also on the overall productivity in the national system.

As background to support their lack of support for the flexibility, the Agency explained that the Department of State considered a mid-day flex option, like the one described by the Union, when it was revising its policies on alternative work schedules several years ago. Ultimately, the then Director General of the Foreign Service and Director of Human Resources rejected¹⁰ this flexibility because of the adverse impact on the overall work of the Department and the potential negative impact under the Fair Labor Standards Act (FLSA) regarding non-exempt employees. As a result, maxi-flex is not included as one of the Department's sanctioned flexible schedules in the FAM. However, the Agency does recognize that Article 26, Section 5k of the CBA provides for "Maxi-Flex".

¹⁰ This option has been made available in the national CBA and is not prohibited by the FAM (Department policy).

The Agency argues that the Union's proposal is unfeasible for several reasons. First, it negates the agreed to CPC core hours of operation set at 9:15 a.m. to 2:15 p.m. for the Day Shift and 4:30 p.m. to 10:45 p.m. for the night shift. Core hours are the daily hours when employees on a flexible work schedule must be present for work. The Union is proposing that the BUE can work outside of the core hours on a maxi-flex day.

Second, the Union's proposal would increase night differential costs for the Agency. The Union's example increases the BUE's pay from 15 minutes of night differential to 4 hours of night differential at \$13.76 per specialist. There are 125 Day Shift BUEs who could move to add four hours of night differential for a possible daily cost of \$1,740 or \$435,000 annually.

Third, the proposed maxi-flex schedule negatively impacts supervisory and team controls over a BUE's assigned workload. Managing the production schedule is contingent upon having appropriately-staffed teams working generally on the same schedule. A maxi-flex schedule would negate working with the team and could allow for a BUE to work without the benefit of supervision from his/her team supervisor. And, as discussed earlier, the Agency argues it could add approximately \$42,607.50 in administrative support costs for inputting these schedules into the time keeping system.

Union Position

The Union offers that its proposal is intended to be read in compliance with department policy (e.g. core hours) and will serve as a tool for social distancing during the current pandemic (i.e., Coronavirus). As for the Line of Sight concerns, the Union offers that there are numerous times when the supervisor does not have the BUE in their line of sight (e.g., some employees don't work on the same floor as their assigned team lead; supervisor isn't always present when employees work overtime). The Union also argues that production is established and tracked in the system. Whether the supervisor can see the BUE or not, the production numbers continue to be available to the supervisor.

Discussion

The Agency presents a compelling argument that production and service to the public is compromised when the supervisor

cannot have direct oversight of every employee on the team. While much of the work is accomplished independently and production standards are in place to provide oversight, the availability of the supervisor to support the workforce goes beyond production oversight. These BUEs work closely as a team, and support one another in accomplishing significant productivity. The supervisor is a part of that team, including providing advice and counsel throughout the adjudication process.

The Agency also argues that the flexibility will result in increased cost through night differential pay. Using the Union's example, the cost could increase by as much as close to a half million dollars per year. That figure is substantial and was unrefuted by the Union. The Panel determines that the Agency met the burden of demonstrating an adverse impact (i.e., cost) under the Act in implementing the Split 8s/9s/10s Schedule Plans: Maxi-Flex schedule.

4. Variable Week (for BUE on FWS)

A variable week schedule is a schedule in which there are established core hours on each workday in the biweekly pay period and a basic work requirement of 80 hours for the biweekly pay period for a full-time employee (or a predetermined biweekly schedule for a part-time employee), but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established by the bureau/post.

Union Proposal:

A bargaining unit employee (BUE) participating in a flexible work schedule may elect to vary their start and stop time during the work week, provided that the BUE has already established a start and stop time on a Flexitour.

BUE(s) electing to choose this plan shall choose the respective hours that apply to his/her Flexitours Shift.

For example: a BUE works the Nightshift and has a Flexitour Schedule of 3:15pm-11:45pm five days a week, then the BUE requests for one week to work 3:15pm-11:45pm for Monday - Wednesday, and on Thursday - Friday the BUE works from 4:15pm-1:00am.

BUEs electing to choose this plan shall email his/her supervisor/or appropriate management official no later than 5 days before this Plan is requested for a concurrence, and Management shall respond timely, but no later than 3 days before the start of the request. The email from the BUE shall indicate the day(s) & the time(s) for the week(s) modified, and how long this Plan will last.

Agency Position

The Office of Inspector General for the Department has determined that a Passport Office's core hours must conform with the FAM. Like the gliding schedule proposal, the Agency argues that a variable week schedule would interfere with daily staffing ultimately impacting CPCs ability to assess workload distribution across shifts and thereby increase customer wait times, and would increase the shift differential/overall operational expenses for employees that work anytime between 6:00pm-6:00am: adverse impact on production and cost. For example, six BUEs currently work the schedule in the Union's proposal. If these BUEs elect a variable week schedule shifting their end times on Thursday and Friday from 11:45 p.m. to 1:00 a.m. CPC will have to pay an additional 1.25 hours of night differential per BUE, per night for a total of \$104.40 per pay period or \$2,714.40 annually. There are an additional 25 BUEs on the Night Shift with 8-hour schedules ending before 1:00 a.m. whose night differential could increase by varying amounts and there are Day Shift BUEs who could choose to come in prior to 6:00 a.m. and, therefore, shift into night differential pay if the variable week proposal were implemented. The cost to Agency could be well over \$15,000 annually. There is also the attendant \$42,607.50 annual administrative cost for tracking the variable week changes.

Union Position

The Union explains that its proposal is meant to align with the policy guidance and current agreement in which core hours, and the 8 hour and 40 hours per week were already negotiated by the parties in a local work schedule agreement. Additionally, the Union offers that a similar proposal is currently being negotiated between the Parties at the Philadelphia Passport Center. In that case, the Agency has not asserted an adverse agency impact defense to bargaining over the schedule.

Discussion

The Agency argues that offering a variable work week will result in increased cost of over \$15,000 annually through night differential pay. That figure was unrefuted by the Union. The Panel determines that the Agency met the burden of demonstrating an adverse impact (i.e., cost) under the Act in implementing the Variable schedule for BUEs on FWS.

5. Variable Week (for BUE on CWS)

A compressed work schedules (CWS) is a fixed work schedule in which an employee's basic work requirement of 80 hours in a biweekly pay period is scheduled in less than 10 workdays. The Department policy offers the following compressed work schedules to eligible employees: 4/10 and 5/4/9.

Union Proposal:

A bargaining unit employee (BUE) participating in a CWS may elect to vary their start and stop time during the work week, provided that the BUE has already established a start and stop time on a CWS which does not conflict with his/her regular day-off (RDO) and his/her respective CWS Plan.

BUE(s) electing to choose this plan shall choose the respective hours that apply to his/her CWS Shift.

For example: a BUE works the Nightshift and has a CWS 5/4/9 Plan of 2:30pm-12:00am five days a week, then the BUE requests for one week to work 2:30pm-12:00am for Monday - Wednesday, and on Thursday - Friday the BUE works from 3:15pm-1:00am.

BUEs electing to choose this plan shall email his/her supervisor/or appropriate management official no later than 5 days before this Plan is requested for a concurrence, and Management shall respond timely, but no later than 3 days before the start of the request. The email from the BUE shall indicate the day(s) & the time(s) for the week(s) modified, and how long this Plan will last.

Agency Position

Like the previous proposals, the Agency argues that the CWS variable week schedule would interfere with daily staffing ultimately impacting CPC's ability to assess workload distribution across shifts and thereby increase customer wait

times. Further, a CWS variable week schedule would increase the shift differential/overall operational expenses for employees that work anytime between 6:00pm-6:00am. Currently 16 BUEs work the CWS in the Union's proposal. If they elect a CWS variable week schedule shifting their end times from 12:00 a.m. to 1:00 a.m. twice weekly, CPC will have to pay an additional hour of night differential per BUE, per night at an annual cost of \$5,790.72. Dayshift BUEs who attempted to utilize this schedule could find themselves working additional times before 6am, again contributing to the greater cost of night differential pay. There is also the attendant \$42,607.50 annual administrative cost for tracking the CWS variable week changes for up to 40 BUE work schedules.

Union Position

The Union explains that their proposal is intended to be read in conformance with the agency policy on core hours. The intention of this proposal is to expand the procedures and details for an employee to request to use this as a combination with other AWS options with supervisory approval, as agreed upon in the parties Master Agreement, and then to include this proposal to be included within a locally negotiated agreement.

Discussion

The Agency argues that offering a variable work week will result in increased cost of over \$5,790.72 annually through night differential pay. That figure was unrefuted by the Union. The Panel determines that the Agency met the burden of demonstrating an adverse impact (i.e., cost) under the Act in implementing the Variable schedule for BUEs on AWS.

6. 5:30am Start Time

Currently, the earliest start time for BUEs is 5:45am, with the supervisory staff and contractor staff starting as early as 5:15am. This start time provides the supervisors 30 minutes to prepare the work for the BUE before their arrival. The Union is proposing that BUEs begin as early as 5:30am.

Union Proposal:

Day Shift Flexitour:

- Employees assigned to the day shift may choose a schedule with a start time between 5:30AM and 9:30AM and ending no later than 6:00 PM.

Night Shift Flexitour:

- Employees assigned to the night shift may choose a schedule with a start time between 2:15PM and 4:15PM and ending no later than 1:00AM

Agency Position

CPC already offers substantial flexibility in BUEs' start times, with 15 different start times for Dayshift Employees and 14 different start times for Nightshift Employees. Adding an additional 5:30am start time would adversely impact the Agency for numerous reasons. First, this early start time would further narrow the nightly window for computer system updates performed by the Technology office. These patches and updates are generally pushed out at times that provide for minimal to no disruption to productivity. Second, this start time would push employees to end their work day 15 minutes outside of the core hours. This proposal causes an increase cost by moving start time before the end of the night differential hour of 6 AM. Currently, 52 BUEs begin work at 5:45 a.m. If these BUE shift their start time to 5:30 a.m. they would increase their night differential pay by 15 minutes per day at an annual cost of \$11,310 to the Agency. And finally, this earlier start time would impact contract employees and non-BUE supervisors that are required to have work available for BUEs at the start of each shift (which is currently no sooner than 5:45 am).

Union Position

The Union argues that its proposal for an expanded start time for 5:30 am five days a week does not create an adverse agency impact because the CPC already opens for supervisors/managers and contract staff at 5:15 am. The Union offers that another Passport Center, the National Passport Center (NPC) opens at 5:00am for bargaining unit employees to begin work. The Union's proposal at CPC for a 5:30 am will allow at least an extra 15 minutes of production for passport issuance instead of 30 minutes of no passport production since the supervisors/managers and contractors are not producing until BUEs begin work at 5:45am. The Union argues that this earlier start time for BUEs can actually decrease the loss of production and can assist with nationwide backlogs, such as matching the workloads and hours at the National Passport Center. The Union

also argues that the proposal does not impact IT work because supervisors and contractors already begin their start time at 5:15am.

Discussion

The Agency argues that offering a 5:30 am start time will result in increased cost of over \$11,310 annually through night differential pay. That figure was unrefuted by the Union. The Panel determines that the Agency met the burden of demonstrating an adverse impact (i.e., cost) with the start time shift to 5:30 a.m.

CONCLUSION

Under § 6131(c) (3) (C) of the Act, the Panel is required to take final action in favor of the agency's determination to terminate [AWS] if the finding on which the determination is based is supported by evidence that the schedule has caused (or will cause) an adverse agency impact. The evidentiary standard, under the plain language of the Act, is whether the agency's decision regarding AWS termination is "supported by evidence," and if so, the Panel is required by law to take action "in favor" of that determination. The legislative history of the Act is clear that 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."¹¹

The Panel determines that the Agency has presented sufficient evidence that all six (6) of the remaining proposed schedules would cause: (1) a reduction of productivity, (2) a diminished level of service furnished to the public, and (3) an increased cost in Agency operations.

ORDER

¹¹ 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).

Pursuant to the authority vested in the Federal Service Impasses Panel under the Federal Employees Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6131(c), the Panel hereby orders the Union to withdraw its proposals regarding the six (6) compressed work schedules in the Charleston Passport Center.



Mark A. Carter
FSIP Chairman

April 3, 2020
Washington, D.C.