

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF HEALTH AND HUMAN)
SERVICES)
SOCIAL SECURITY ADMINISTRATION)
DISTRICT OFFICE)
LAS VEGAS, NEVADA)

and)

LOCAL 2879, AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES, AFL-CIO)

Case No. 88 FSIP 157

DECISION AND ORDER

Local 2879, American Federation of Government Employees, AFL-CIO (Union), filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of Health and Human Services, Social Security Administration, District Office, Las Vegas, Nevada (Employer).

The Panel determined that the impasse should be resolved through written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the impasse. Written submissions were made pursuant to these procedures and the Panel has considered the entire record.

BACKGROUND

The mission of the Employer is to provide service to the public with respect to the administration of Social Security benefit and entitlement programs. Approximately 47 bargaining-unit employees represented by the Union are affected by the dispute, holding positions such as Claims Representative, Data Review Technician, and Service Representative. They are part of a consolidated bargaining unit consisting of approximately 53,500 nonprofessional

employees who have been covered by a master agreement between SSA and the American Federation of Government Employees, AFL-CIO (AFGE).

ISSUES AT IMPASSE

The two issues at impasse arose during negotiations which took place after the Employer's decision to relocate the office. The first stems from the Employer's decision to place computer terminals on counters where initial interviews of claimants occur, thus requiring employees either to stand while using the terminals or sit on stools which would raise them in a seated position to the height of the counter. The dispute is closely related to a previous agreement executed by the parties at the national level concerning the implementation of Claims Modernization Project/Field Office Systems Enhancement (CMP/FOSE) Phase III, a plan to enhance service delivery to the public through the use of computerized systems. The second issue at impasse concerns the allocation of designated-parking spaces.

1. Platform and Counter Redesign

a. The Union's Position

The Union proposes that the Employer construct a 12-inch-high platform behind the interviewing counter, or a two-tier counter, either of which would permit the use of ergonomic chairs with the computer terminals. Its proposal would promote the health and safety of employees by ensuring that the Employer complies with a provision in the CMP/FOSE agreement that ergonomic chairs for sitting at desk-high levels be used. The proposal also is consistent with a previous Panel decision in a similar case, because the installation of computer terminals will significantly change the nature of the work at the reception counters.^{1/} Further, the use of stools has "proven to be inadequate" and they are "seldom used by employees at this location."

^{1/} See Department of Health and Human Services, Social Security Administration, Mesa, Arizona and Local 3694, American Federation of Government Employees, AFL-CIO, Case Nos. 87 FSIP 100 and 87 FSIP 124 (November 20, 1987), Panel Release No. 262.

b. The Employer's Position

The Employer essentially proposes to continue its longstanding practice of conducting initial stand-up interviews of clients by placing computer terminals on top of the counters, while providing employees with the option of using ergonomic stools. Since the counters are already in use and have been designed to accommodate the computer terminals, its proposal would avoid the costly expenditures required if either of the Union's alternatives were adopted. Further, because the installation of the computers will not change significantly the nature of the work at the counters, and, therefore, the health and safety of employees will not be adversely affected, such expenditures are unnecessary. The nature of the work, moreover, involves frequent movement from "work stations to form racks, mail baskets, etc.," so that employees "would not realize the same benefits from an ergonomic chair as those who sit for prolonged periods of time."

Finally, except for minor differences, the newly-acquired ergonomic stools available for employee use "have the same functional requirements" as ergonomic chairs, and the practice of using such stools in conjunction with computer terminals at stand-up counters in work environments throughout the country is widespread.

2. Allocation of Parking Spaces

a. The Union's Position

The Union proposes that, of the seven parking spaces currently under the Employer's jurisdiction, one be allocated to executive personnel and six to bargaining-unit employees for vanpools and carpools. The Union also proposes that the Employer provide evidence that it has brought "maximum influence" to bear on the General Services Administration (GSA) in obtaining as many additional parking spaces as possible. Its proposal is fair because it reflects the current ratio of bargaining-unit employees to management officials at the facility. In addition, providing employees with additional spaces is appropriate as there is no unmetered parking available within a 3-block radius from the facility, and inclement weather and crime could make parking at this distance inconvenient and unsafe. Moreover, the Employer's past practice of giving vanpool and carpool vehicles lower parking-space priority than vehicles driven by field representatives is inconsistent with GSA parking regulations.

b. The Employer's Position

The Employer would allocate its seven parking spaces in the following manner: five spaces to key personnel, i.e., three management officials and two field representatives, and the two remaining spaces to bargaining-unit employees on the basis of procedures which already have been mutually agreed upon. Its proposal fulfills the requirements of the parties' master agreement that it continue to provide secure, adequate, and convenient parking, and also takes into account the facility's operational needs. In this regard, its proposal merely continues the policy in effect at the previous location, while adding two spaces for employee use. It also disagrees with the Union's interpretation of the GSA regulations regarding the allocation of spaces to field representatives, and with the Union's contentions as to the availability and hazards of on-street parking.

CONCLUSION

After considering the evidence and the arguments, we conclude that the Employer's proposals should serve as the basis for settlement in this case. On the first issue, the Employer's approach adequately would protect the health and safety of employees while preserving the effective method of performing work it has used for years. Moreover, employees are afforded the option of sitting on ergonomic stools when interviewing, which should alleviate any discomfort or fatigue associated with prolonged standing. We note that the use of computer terminals and ergonomic stools at stand-up counters is a practice in many work environments throughout the country. The Union's proposal, on the other hand, would require the costly and disruptive construction of a platform or a two-tier counter merely to accommodate the use of ergonomic chairs and might hinder the ability of employees to move about easily.

Turning to the parking issue, we are persuaded that the Employer's proposal reasonably balances the interests of employees with its own operational requirements. In this regard, it would increase by two the number of parking spaces available to employees for carpools and vanpools, while continuing to provide management officials and field representatives the kind of access to the facility required for the effective performance of their work. In addition, that part of the Union's proposal which would require the Employer to provide evidence that it has brought "maximum influence" to bear on GSA in obtaining as many additional parking spaces as possible is vague and would be difficult to administer.

Moreover, there is no evidence in the record to support the Union's contentions concerning the availability and hazards of on-street parking.

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:

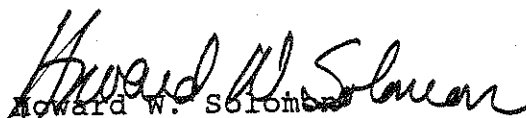
1. Platform and Counter Redesign

The parties shall adopt the Employer's proposal.

2. Allocation of Parking Spaces

The parties shall adopt the Employer's proposal.

By direction of the Panel.


Howard W. Solomon
Executive Director

October 5, 1988
Washington, D.C.

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

VETERANS ADMINISTRATION)

VETERANS ADMINISTRATION)

MEDICAL CENTER)

NORTHPORT, NEW YORK)

and)

Case No. 88 FSIP 176

LOCAL 1843, AMERICAN FEDERATION OF)

GOVERNMENT EMPLOYEES, AFL-CIO)

DECISION AND ORDER

Local 1843, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Veterans Administration (VA), VA Medical Center, Northport, New York (Employer).

After investigation of the request for assistance, the Panel directed the parties to meet informally with Chief Legal Advisor Donna M. DiTullio for the purpose of assisting them in resolving any outstanding issues. If no settlement were reached, she was to notify the Panel of the status of the dispute, including the parties' final offers and her recommendations for resolving the issues. Following consideration of this information, the Panel would take whatever action it deemed appropriate to resolve the impasse, including the issuance of a binding decision.

Ms. DiTullio met with the parties on July 25, 1988, in Northport, New York, but no issues were resolved. She reported to the Panel based on the record developed by the parties, which the Panel has now considered.

BACKGROUND

The Employer is a major medical facility providing in-patient and out-patient care to veterans of the Armed Services. Its employees are part of a nationwide consolidated bargaining unit of which the Union represents approximately 1,209 non-professional General Schedule and Wage Grade employees who

work in the Engineering, Building Management, Medical Administration, Nursing, Radiology, Speech Pathology, Dentistry, Laboratory and Dietetics Services. The latter, which provides nutrition care for patients, consists of a food production and a food service unit where employees prepare and serve meals in the cafeteria and dining room, deliver and retrieve food trays in the wards, and clean up. These employees, like others in the Dietetics Service, work a variety of schedules: 6 to 10 a.m. for part-time workers, 11 a.m. to 7:30 p.m., and an 11:30 a.m. to 8 p.m. shift staffed by 13 employees who receive night differential pay for those hours.*/

The master agreement between the VA and AFGE has been extended until August 22, 1989 and the parties' supplemental agreement runs concurrently with it.

ISSUES AT IMPASSE

The dispute arose during negotiations following the Employer's decision to eliminate the 11:30 a.m. to 8 p.m. shift and modify break periods.

1. The Employer's Position

The Employer proposes that beginning on July 1, 1989, this shift be eliminated and employees' work hours changed to 11 a.m. to 7:30 p.m. with the 1/2 hour meal period to start at 3:30 p.m. and the late break to be scheduled for 6 p.m. Additionally, employees holding positions at the Wage Grade 4 and 8 levels who currently work from 10 a.m. to 6:30 p.m. would have their duty hours changed to 9:30 a.m. to 6 p.m.

The Employer contends that there is no longer a need to have employees work until 8 p.m. because of a decreasing amount of work toward the latter part of the shift. It maintains that the clean-up process following dinner takes less time because the use of disposable plates, cups, and utensils allows employees to finish their duties by 7:30 p.m. The gradual integration of these products in food service over the past 3

*/ The Federal Personnel Manual Supplement 532-1, Subchapter 8 provides that prevailing rate employees, such as those affected by this dispute, are entitled to pay at their scheduled rate plus a differential of 7 1/2 percent of that rate for regularly scheduled nonovertime work when a majority of the work hours occur between 3 p.m. and midnight. Night shift differential is paid for the entire shift when a majority of hours fall within the specified period.

years was to increase the efficiency of operations and reduce costs. The Employer estimates that the elimination of the shift would result in savings of approximately \$19,000 a year, which is the current expense for night differential pay for employees on that shift. A survey of 22 VA hospitals in the region, which do not use disposable products, shows that 15 are able to close by 7:30 p.m. Employees should be able to complete clean up by 7:30 p.m. as the Employer has found that they will finish work within the time frame given. Furthermore, an earlier starting time than 11:30 a.m. is needed in order for the staff to set up the service line in the cafeteria for lunch.

The rescheduling of the lunch period and the late break would allow employees to take them during periods which best fit in with the work flow. Finally, implementation would be delayed until July 1, 1989, to coincide with the annual cost-of-living increase for Wage Grade employees, thus offsetting some of the financial hardship on employees caused by the elimination of night differential pay.

2. The Union's Proposal

The Union proposes that employees currently assigned to the 11:30 a.m. to 8 p.m. shift have their work hours changed to 11 a.m. to 8 p.m., with a 1-hour unpaid lunch break. Changes in the staffing of the shift would take place through attrition.

An 11 a.m. starting time would accommodate the Employer's need to have employees begin work earlier in order to prepare for the noontime meal while allowing employees to retain night differential pay, since the majority of their work hours would be after 3 p.m. The Union contends that the elimination of night differential pay, as proposed by the Employer, would reduce an employee's take-home wages by approximately \$50 per pay period, thus creating a financial burden on them. A need exists for employees to work until 8 p.m. as they do not always complete the clean-up process by 7:30; rather, finishing times vary depending upon when the cafeteria line is set up, how fast patients eat their meals, and how quickly food is served. Thus, the Employer's proposal may result in its having to pay overtime to employees who need to work beyond 7:30 p.m. Finally, the Union maintains that the Employer could accommodate a 1-hour unpaid lunch break by rescheduling afternoon training hours.

CONCLUSION

Having considered the evidence and arguments in this case, we are persuaded that the Employer's proposal provides a reasonable basis for resolving the dispute. In this regard, an earlier starting time is warranted so that employees may begin

preparing for the lunch service in a timely fashion. Moreover, the use of disposable products in food service appears to have the net result of expediting the clean-up process, thus enabling employees to complete their duties prior to 8 p.m. Under these circumstances, the Employer's desire for cost savings through the elimination of night differential pay is understandable. Finally, the delay in implementation of the shift change for 9 months so as to coincide with the annual cost-of-living pay increase for Wage Grade workers will cushion, to some extent, the impact of the reduction in wages on the affected employees.

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 the 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.


Howard W. Solomon
Executive Director

October 4, 1988
Washington, D.C.

In the Matter of an Interest)
Arbitration Between the)
)
DEPARTMENT OF THE AIR FORCE)
WHITEMAN AIR FORCE BASE,)
MISSOURI)
)
and)
)
LOCAL 2361, AMERICAN FEDERATION)
OF GOVERNMENT EMPLOYEES, AFL-CIO)
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)

Case No. 88 FSIP 102

ARBITRATOR'S OPINION AND DECISION

Local 2361, American Federation of Government Employees, AFL-CIO (Union) filed a request with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of the Air Force, Whiteman Air Force Base, Missouri (Employer). The Panel recommended that the dispute be referred to the undersigned for mediation-arbitration. Both parties accepted the recommendation whereby I was vested with authority to mediate with respect to the outstanding issues, and render a decision on any that remained unresolved.

Representatives of the parties convened before me at the Employer's facility in Knob Noster, Missouri, on June 21 and 22, 1988. They were unable to resolve the dispute during mediation and a hearing followed wherein the parties had the opportunity to present in full their respective positions, offer testimony, cross-examine witnesses, and submit other evidence for the record. Post-hearing briefs were filed.

BACKGROUND

Since 1985, the Employer has undertaken a Strategic Air Command (SAC) project to upgrade in three phases the electronic systems at 15 Minuteman II underground launch control facilities. Work crews travel 10 to 110 miles from the base to various sites where they refurbish missile systems. The Union represents approximately 500 skilled service and maintenance

employees at the Employer's Dresden and Knob Noster, Missouri, locations. The dispute herein involves approximately 58 Wage Grade journeymen-level technicians assigned to work teams at the Rivet Mile Project in Dresden some 35 miles from the base. The parties' labor agreement, which was to expire on June 20, 1988, has been extended until a successor is negotiated.

During the first phase of the project, employees were assigned to one of three shifts, day (7:00 a.m. to 3:45 p.m.), swing (3:30 to midnight), or graveyard (midnight to 8:00 a.m.); since April 1985, they generally worked on-site at the launch facilities for 8 hours a day and received overtime compensation for approximately 2 hours each day for time spent traveling between the base and the work site.

Following a decision by SAC Headquarters to modify its work plans at various launch facilities, the Employer, on February 2, 1987, reduced the daily on-site hours worked by employees on the day shift from 8 to 6. The action resulted in a reduction of overtime compensation since travel could be accomplished during the 8-hour workday. Overtime hours on the swing and graveyard shifts remained unchanged for the most part. The Union filed an unfair labor practice charge contending that it had not received adequate notice of the reduction of on-site hours and an opportunity to bargain over its impact. (Jt. Exh. No. 4). Upon investigation of the charge, the Federal Labor Relations Authority's Office of the General Counsel, Denver Region, issued a Complaint and Notice of Hearing alleging that the Employer's actions were in violation of section 7116(a)(1) and (5) of the Statute. (Jt. Exh. No. 5). Prior to a hearing before an administrative law judge, however, the parties entered into an informal settlement agreement wherein, among other matters, the Employer agreed not to implement a reduction in the number of hours worked by employees without first negotiating with the Union over procedures and appropriate arrangements for employees adversely affected by a reduction in hours. (Jt. Exh. No. 6).^{1/} Furthermore, the Employer agreed to

^{1/} The informal settlement agreement contains a so-called "non-admissions clause" stating that "(b)y entering into this settlement agreement, Management does not admit to a violation of the Federal Service Labor-Management Relations Statute."

provide backpay to any employee who suffered a withdrawal or reduction in overtime pay because of the unilateral reduction of the number of hours worked by employees at missile sites from eight (8) to six (6) hours each day on February 2, 1987, to the extent that bargaining eliminates or reduces any withdrawal or reduction in overtime pay which was caused by such reduction in hours and the (Union) does not agree otherwise.

The parties also set forth in the settlement agreement their understanding with respect to the above-quoted paragraph that they

will bargain concerning the procedures and appropriate arrangements for employees adversely affected in connection with the reduction in on-site hours.... If, as a consequence of bargaining, any employees are found to be entitled to compensation had the bargained procedures and arrangements been used (since on or about February 2, 1987), management will make the employees whole for that loss in compensation.

ISSUE

What, if any, procedures and arrangements should there be for day-shift employees assigned to the Rivet Mile Project whose overtime pay was terminated or modified when the Employer reduced on-site work time beginning February 2, 1987.

UNION'S POSITION

The Union contends that the Employer should have provided employees with 2-weeks written notification prior to changing on-site work time from 8 to 6 hours each day resulting in a reduction in overtime pay. It proposes that the Employer provide affected employees with the equivalent of 2 hours of overtime compensation per day for 1 bi-weekly pay period. Furthermore, the Union contends that had it been given an opportunity to negotiate prior to the change, it would have proposed, in essence, that all employees working at the Rivet Mile Project rotate shift assignments every 30 days thereby affording them an equal opportunity to work the swing and graveyard shifts where employees received night differential pay of 7 1/2 and 10 percent respectively, and overtime work was still being performed. Thus, according to the Union, under a rotational plan most employees would have earned an average of 12 hours of overtime pay each bi-weekly period. The Union

proposes that the Employer now provide overtime compensation to employees as if its proposed shift rotation plan had been implemented in February 1987, with a cap set at \$38,250, representing an estimate of overtime pay employees would have earned over a 4-month period since that time. The sum would be divided among employees who suffered a reduction of overtime pay as a result of the Employer's unilateral action.

During the hearing, employees testified on behalf of the Union that their availability to work overtime hours was discussed during pre-employment interviews and several testified that upon being offered a position they were put on notice that overtime would be required. Thus, according to the Union, overtime work was a condition of employment and workers relied on the additional compensation received from it as part of their wages.

Furthermore, the Union contends that all employees assigned to the Rivet Mile Project were equally qualified, at the time of the reduction in overtime hours on the day shift, to carry out the work requirements of their positions on any shift thus making a rotational plan feasible. In this regard, the Union maintains that because the knowledge, skills, and abilities for each position at a particular grade level are uniform, employees would be able to perform the tasks required of their positions on any given shift with little or no training needed.

EMPLOYER'S POSITION

The Employer's proposal does not provide for backpay for employees as a remedy for the February 1987 reduction in overtime hours. Rather, its proposal is prospective, requiring management to give the Union 2-weeks written notification of any future reduction of on-site work time. However, notice would not be required for routine variances in workload or movements between work sites; moreover, in circumstances when higher agency authority, the budget, or workload constraints prevent the Employer from providing 2-weeks notice, no backpay entitlement would arise. Finally, the Employer proposes that employees may "swap" shifts, with supervisory approval, if the employees involved have the same knowledge, skills, and abilities and there are no costs or reduction in productivity as a result of the shift change.

During the arbitration hearing, the Employer stipulated that there was a reduction in on-site hours on February 2, 1987, and thereafter, which resulted in employees earning less overtime pay. However, the Employer argues that overtime work was never guaranteed during pre-employment interviews, and, therefore, it is not a condition of employment. Furthermore, the Employer contends that the undersigned has no authority to award backpay for lost overtime as the legal criteria for such

entitlement has not been met.^{2/} In this regard, it notes that there has not been an administrative determination that the reduction of on-site hours was an "unjustified or unwarranted personnel action," and the settlement agreement which resolved the ULP complaint specifically states that by entering into the agreement, the Employer does not admit to a violation of the Statute. Even assuming, arguendo, that a violation occurred, the Union has failed to establish a nexus between the violation and the amount of backpay claimed since the calculations are based on highly speculative assumptions.

Essentially, the Employer argues that if impact bargaining had occurred prior to the change in on-site hours, the parties would not have reached agreement over the Union's proposal for a mandatory rotation of shifts every 30 days. It contends that a 30-day shift rotation would diminish productivity because employees would need additional

^{2/} 5 U.S.C. section 5596(b)(1) of the Back Pay Act provides, in part, that

An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee--(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect--(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period;...

training in order to become "PAC certified"^{3/} or recertified with respect to the different taskings or work requirements for each shift. In this regard, a management witness testified that the work performed on the three shifts is not always the same. For example, the removal and installation of lock pins, removal of corrosion, and the reduction of surface rings are tasks performed on the swing and graveyard shifts and not the day shift. Thus, in order to accommodate the rotation of shifts, certain employees who worked the day shift in the past would have to undergo training either in the classroom or on the job to obtain a certification of proficiency to perform those duties.

The Employer alleges that for the most part, employees are not interested in rotating shifts; procedures exist under the parties' negotiated agreement for changing shifts, but there have been few instances when employees have initiated shift changes. Finally, the Employer contends that if it is required to compensate employees in the amount proposed by the Union, the money for backpay would have to be offset through furloughs, reductions in force, and further reductions in overtime hours.

OPINION

I agree with the Employer's assertion that the criteria for an award under the Back Pay Act (Act) has not been met in this case. The Act provides for an award of lost pay or differential where there is a finding of an improper personnel action, which may include the violation of a labor agreement or the Statute, and the loss of pay or differential is the direct result of such action. The Employer was charged in a ULP complaint with violations of section 7116(a)(1) and (5) of the Statute by reducing the on-site hours of certain employees, resulting in a loss of overtime compensation, all without providing the exclusive representative with adequate notice and an opportunity to bargain over impact. However, because the parties executed a settlement agreement of the ULP complaint, no "administrative determination" by an "appropriate authority" has been made concerning the allegations. (5 U.S.C. section 5596(b)(1).) Moreover, the inclusion of a non-admissions clause in the settlement

^{3/} Under the Production Acceptance Certification (PAC) program, the competence of an employee to perform a given work task associated with his grade and position is certified by a supervisor through classroom or on the job training. An employee may be decertified with respect to a particular task if he does not perform it for a long period of time, numerous minor discrepancies are found in the work, or SAC quality control personnel disapproves the work.

agreement underscores the Employer's position that there has been no administrative finding that its conduct was violative of the Statute. However, in my view, a basis for an award of backpay exists by virtue of the terms of the ULP settlement agreement executed by the parties. In this regard, the parties agreed to bargain "concerning the procedures and appropriate arrangements for employees adversely affected in connection with the reduction in on-site hours (from 8 to 6 per day) which occurred on or about February 2, 1987. If, as a consequence of bargaining, any employees are found to be entitled to compensation had the bargained procedures and arrangements been used (since on or about February 2, 1987), Management will make the employees whole for that loss in compensation." Thus, the payment of compensation depends upon what the likely outcome of negotiations would have been had the parties engaged in impact bargaining.

As an interest mediator-arbitrator it is not my function to determine whether the Employer's conduct was in violation of the Statute or the terms of the parties' collective bargaining agreement. Rather, it is my duty to assist the parties in reaching a voluntary agreement which represents the likely result of their negotiations had they bargained prior to the reduction in on-site hours, and, if no agreement is forthcoming as a result of mediation assistance, impose a decision which is appropriate for their circumstances. Federal Aviation Administration, Washington, D.C. and Professional Airways Systems Specialists, MEBA, AFL-CIO, 27 FLRA 230, 235 (1987).

In evaluating the merits of the Employer's proposals, the provision for 2-weeks notice to the Union of future reductions in on-site hours does not adequately address the significant impact of the loss of overtime compensation beginning on February 2, 1987, which may have been as much as 2 hours a day for some employees. Under these circumstances, a proposal which merely promises that in the future, with certain significant exceptions, notice of such changes would be made to the Union falls far short of providing an equitable outcome.

With respect to the provision in the Employer's proposal which would allow employees to "swap" shifts with supervisory approval, I find it to be an appropriate arrangement for employees who face the loss of overtime pay and may wish to move to other shifts where there is a greater opportunity to earn overtime compensation or night differential pay. Since the proposal would reserve to management the right to disapprove shift changes where the employees involved do not have the same knowledge, skills, and abilities to perform work, or when a shift change would result in increased costs or a loss of productivity, the risk of having other than equally qualified employees change shifts is minimized. I am persuaded by the testimony of the Employer's witnesses that the work performed on all three shifts is not always the same, and

employees with the same grade and position may not have the required certification needed to perform a particular task on a different shift. In this regard, because the nature of the work on the three shifts varies to some extent, employees who change shifts may require training to become certified to perform a task for which they have lost their proficiency. Thus, unless those employees who change shifts have the same qualifications to perform work, as the Employer's proposal would require, an investment of time and money, with a corresponding loss of productivity during the training period, may be necessary to prepare employees before they can work on other shifts.

Turning next to the Union's proposal which would require employees to rotate shifts every 30 days, while it would provide employees with an equal opportunity to earn night differential and overtime pay, it also would be disruptive to the Employer's mission given that the work performed on the three shifts sometimes differs. Thus, since shift rotation would be mandatory under the Union's proposal, employees may be required to rotate to a shift where they do not possess the requisite certifications or special skills to perform the work. It is important to note that because employees assigned to the Rivet Mile Project deal with nuclear resources the utmost care in their training is needed. In my view, this portion of the Union's proposal would diminish the Employer's ability to determine whether an employee possesses the necessary qualifications to perform a job.

With respect to the Union's proposal for backpay in the amount of \$38,250, representing lost overtime compensation for employees for approximately the 4-month period following the Employer's implementation of its decision to reduce on-site work hours on February 2, 1987, I find that an award of that proportion would be a windfall for employees and a corresponding financial burden on the Employer. The resolution of this impasse should not be punitive in nature, but rather, it should be based upon an equitable outcome of negotiations as if they had taken place in early 1987. In this regard, the Union's proposal goes beyond what is fair under the circumstances of this case. However, a reasonable monetary award representing lost overtime compensation to employees affected by the reduction in on-site hours would be appropriate.

I am persuaded by the testimony of employees at the hearing that their availability to perform overtime work was discussed during pre-employment interviews and that they accepted positions with the knowledge that overtime would be required. In this regard, employees testified that at the time of hiring, management officials advised them that they would spend 8 hours at the work site and that some overtime would be involved depending on the time it took to drive to the site. For nearly 2 years, since the beginning of the first phase of the project,

employees worked overtime and came to rely on the extra income derived from it. Under these circumstances, I find that "an appropriate arrangement for employees adversely affected in connection with the reduction in on-site hours (from 8 to 6 per day) which occurred on or about 2 February 1987" (Jt. Exh. No. 6) would be to provide them with an amount equivalent to overtime compensation for a period of 10 workdays for travel time to and from the work site as if on-site work time had remained 8 hours a day. In my view, this provides employees with a reasonable period of time to make necessary adjustments to their finances to prepare for the ensuing reduction of overtime pay stemming from the Employer's decision to reduce on-site work time.

ORDER

The parties shall adopt the following wording as an appropriate arrangement for employees assigned to the Rivet Mile Project who were adversely affected by the Employer's decision to reduce on-site work hours from 8 to 6 hours a day on February 2, 1987:

Employees shall receive the equivalent of overtime compensation for a period of 10 workdays for travel to and from the work site, as if on-site work time had remained 8 hours a day for that period of time.

When work is performed on more than one shift, employees may volunteer to change to another shift by discussing their request with their supervisor. Requests for changes will be approved if a qualified employee with like knowledge, skills, and ability is interested in a shift swap and costs do not increase or productivity decrease.



Donna M. Di Tullio
Arbitrator

September 16, 1988
Washington, D.C.

