

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE AIR FORCE
628TH CIVIL ENGINEERING SQUADRON
JOINT BASE CHARLESTON, SOUTH CAROLINA

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES
LOCAL, 1869

Case No. 19 FSIP 069

DECISION AND ORDER

This request for assistance concerning the termination of existing Alternative Work Schedules (AWS) was filed by the Department of the Air Force, 628th Civil Engineering Squadron (Agency) on August 22, 2019, under the Federal Employees Flexible and Compressed Work Schedules Act (Act) of 1982, 5 U.S.C. § 6120, *et seq.* Following investigation of the request for assistance, on November 18, 2019, the Panel determined that the dispute should be resolved through a Written Submissions procedure with an opportunity for rebuttal statements. The parties timely submitted their arguments and accompanying documents. 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 Agency is a host unit within the United States Air Force 628th Air Base Wing, Air Mobility Command (628 AMC) at the Joint Force Charleston, an amalgamation of the United States Air Force Charleston Air Force Base and the United States Navy Naval Support Activity Charleston. The Agency's mission is to provide programs, policies, services, and facilities in support of the 628th Air Base Wing's mission and a combined supported population of 90,000 personnel. This matter involves the work schedule of the Agency's Fire Department, which consists of 3

geographically separate locations with seven fire stations manned by approximately 68 military positions and 58 civilian positions.

The American Federation of Government Employees, Local 1869 (Union) represents a bargaining unit of all General Schedule, Wage Grade, Wage Labor and Professional employees of Charleston Air Force Base serviced by the Civilian Personnel Flight, including the 58 civilian firefighters (GS-0081-07 and GS-0081-08), herein referred to as the Bargaining Unit Employees (BUEs), of the Agency's Fire Department. The parties are covered by a Collective Bargaining Agreement (CBA), executed in June 2001, which expired in 2004 and continues to automatically renew on a yearly basis. Specifically, Section 14.13 of the CBA provides for the establishment of AWS provided three requirements are met. The first requirement is that the adoption of AWS will not adversely affect mission accomplishment or customer service, which would be demonstrated by a decrease in productivity, a decrease in the level of service, or an increase in operational costs other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule. Second, the AWS must be developed at the organizational element level. And third, the AWS must be approved by the organizational element's Commander.

In August 2012, the parties entered into their current AWS agreement for the Agency's Fire Department. Under this agreement, the Fire Department BUEs work an AWS, herein referred to as the 48/72 Schedule, of six days on-duty and eight days off-duty within a two-week timeframe. Specifically, an employee works three sets of two consecutive 24-hour days on-duty followed by two to three consecutive days off-duty.¹

On March 8, 2019, 628 CES Installation Fire Chief Dorian A. Dillon, CMSgt, USAF notified the Union of the Agency's update to Flight Management Instruction 32-102, General Instructions, dated March 4, 2019, and his intent to terminate the parties' current 48/72 Schedule. He explained that terminating the current 48/72 Schedule would provide the proper emergency response coverage to support the Fire Department's mission, goals, and objectives while contending with staffing shortfalls. Fire Chief Dillon outlined staffing shortfalls of the civilian and military staffed Fire Department due to several military

¹ In 2017, the Agency removed military personnel and supervisors from the 48/72 Schedule and placed them on a 48/48/3 Schedule (an AWS consisting of two units; A and B).

deployments, civilian position vacancies, and unfunded civilian positions. The Union timely demanded to bargain over the termination of the 48/72 AWS.

On May 30, 2019, the parties met for two hours to bargain the termination of the 48/72 Schedule and the Agency's proposed a new AWS, herein referred to as the 48/48/3 Schedule. The parties met to bargain again five more separate times in June 2019 for one hour each, but were unable to come to an agreement. The Union, on two separate occasions, took the Agency's proposed 48/48/3 Schedule to its bargaining unit, but each time the bargaining unit failed to ratify the new Schedule. Accordingly, the Agency filed this request for Panel assistance and formally declared its intention to seek the termination of existing CWS through a statement of adverse impact. The Agency's adverse impact statement was signed by the Unit Commander. Pursuant to memorandum issued by the Secretary of of the U.S. Department of the Air Force on October 3, 2017, Installation Commanders have been delegated authority to make determinations concerning alternative work schedules for civilian firefighters and to delegate such authority. The Installation Commander further delegated this specific authority to the Unit Commander in a memorandum issued on April 18, 2019.

ISSUE AT IMPASSE

In accordance with §§ 6131(c)(3)(B) and (C) of the Act, the sole issue before the Panel is whether the finding on which the Agency has based its determination to terminate AWS for all Fire Department BUEs is supported by evidence that the schedule is causing an adverse agency impact.²

POSITIONS OF THE PARTIES

1. The Agency's Position

The Agency argues that the 48/72 Schedule has resulted in the Fire Department lacking an operational shift structure that has degraded the Agency's ability to function in an effective and efficient manner. During the course of bargaining, the

² 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).

Agency proposed to the Union that the BUEs within the Fire Department adopt a different AWS to replace the 48/72 schedule. Specifically, the Agency proposed the current AWS that the Fire Department's military personnel and supervisors currently follow, but the Union rejected the Agency's proposal. Ultimately, the Agency identified its interest, above all else, is to terminate the current 48/72 Schedule as it is having an adverse impact on the Agency.

According to the Agency, the 48/72 Schedule construct has had an adverse agency impact through a reduction of productivity due to: (1) the Agency lacking a span of control over the BUEs, (2) reduced supervision of BUEs, (3) breakdown of communication and continuity of operations, (4) failure of Fire Department programs, and (5) deficient training rates.

First, the Agency notes that the 48/72 Schedule is an alternative to the standardized "A and B" shift construct, which the Fire Department's military personnel and supervisors operate under; consisting of employees being assigned to one of two shifts, A or B, and rotating days off with the other employees in their shift.³ Specifically, the 48/72 Schedule is accomplished only through the daily rotation of BUEs assigned to 14 separate workgroups all on different duty cycles. Due to the rotating workgroups and BUEs on different duty cycles (i.e., BUEs on two days or three days off-duty), BUEs potentially work with the same crew once in a two-week cycle with little consistency in BUEs working at the same time as their supervisors. It is this inconsistency in crew assignments that the Agency alleges creates a gap in communication between supervisors and BUEs, thus reducing supervisors' ability to provide critical feedback to BUEs on performance and expectations. The disconnect between BUEs and their supervisors as a result of scheduling, is to the point that the Agency argues it effectively lacks a span of control over the Fire Department's operations.

³ The Agency cites to the Air Force Manpower Standard in support of its categorization of the "A and B" shift construct as being the standard Fire Department schedule construct. It should be noted that the "A and B" shift construct can be accomplished through a 24-hour on, 24-hour off schedule, which the BUEs were under prior to the 48/72 Schedule or through a 48-hour on, 48-hour off schedule, which the Fire Department's military personnel and supervisors currently operate under.

Second, the Agency cites the 48/72 Schedule as resulting in an average of four less days of direct supervision of employees per month than if the BUEs were on standardized "A and B" shifts. This limited direct supervision negatively impacts supervisors' ability to evaluate BUEs' training needs, assess performance, and provide relevant feedback. In turn, the Agency argues this lack of direct contact between supervisors and BUEs impairs both BUEs' professional development as well as the Fire Department's overall performance.

Third, the Agency argues that the 48/72 Schedule, and its resulting constant rotation of BUEs among 14 workgroups, impacts communication between one day to the next; thus, negatively impacting the Fire Department's continuity of operations. It is critical for the Fire Department's operations that all pertinent information, feedback, and expectations are communicated consistently, but the inconsistencies of the 48/72 Schedule permit lapses in such exchanges. Specifically, the Agency cited this communication breakdown resulting in BUEs reporting to incorrect fire stations, failing to report for mandatory occupational physicals, and missing professional development opportunities.

Fourth, the Agency presents evidence that as a result of the Agency's diminished control due to the 48/72 Schedule, the Fire Department's mission critical and life safety programs have, on occasion, failed. Specifically, the Agency cites the challenges that the 48/72 Schedule creates in the Agency's ability to assign program work, ensure completion of assigned tasks, and track individual accountability for program success and failure. The Agency cited examples as evidence.

The Agency's fifth and final argument in support of its position that the 48/72 Schedule has caused a reduction in the Fire Department's productivity is based on the inconsistencies of BUEs schedules resulting in deficient training completion rates. The Agency provided evidence that the Fire Department is currently not meeting the training requirements of the Air Force, Emergency Medical Technicians, and the National Fire Protection Association even though the Agency has conducted a minimum of 8 training sessions each month. The Agency points to the constant rotation of BUEs under the 48/72 Schedule as a reason why BUEs are missing training opportunities.

Next, the Agency claims adverse agency impact in a diminished level of service furnished to the public because of the negative impact of the 48/72 Schedule on crew integrity and

fire operations. In its original position submitted to the Panel with its request for assistance, the Agency cites Air Force Instruction 32-2001, Fire and Emergency Services Program, which defines Emergency Response Coverage (ERC) as the level of services that can be provided with available personnel, equipment, vehicles and fire extinguishing agent. In 2018, the Agency claims that the Fire Department was able to provide an Optimum Level of Service (OLS) to the installation for only 101 days out of the year, specifically due to staffing shortfalls created by the current 48/72 Schedule and due to military personnel deployment. During the remainder of 2018, the Fire Department provided a reduced level of service that includes an increased risk/loss potential due to lack of emergency response coverage to perform rescue and sufficient mitigation tactics simultaneously. The Agency also notes that in that same year, the Joint Force Charleston flew less missions due to the staffing issues created by the current 48/72 Schedule.

Last, the Agency cites the increased cost of Agency operations resulting from the 48/72 Schedule as having an adverse agency impact. The Agency indicates it has utilized over 4,000 hours of overtime, at a cost of approximately \$116,000, in effort to increase the level of service provided by the Fire Department to Joint Base Charleston as a result of the 48/72 Schedule. The Agency ultimately resorted to forcing BUEs to work mandatory overtime on 138 occasions to increase the level service provided to the installation by the Fire Department. The Agency in its original position to the Panel, also claimed that the 48/72 Schedule coupled with the BUEs' current sick leave policy, which does not require medical documentation until after a BUE has been on sick leave for more than 48-hours, has caused excessive use of sick leave and resulted in staffing shortages. Specifically, due to the scheduling of the 48/72 Schedule, a BUE could call in sick for two days, not needing medical documentation, and with scheduled days off could have 8 consecutive days away from work. The Agency claims that BUEs excessively take advantage of the 48/72 Schedule as evidenced by over half of the BUEs using sick leave to the extent of not maintaining a reasonable bank and by an average of approximately two BUEs calling in sick each shift. Thus, requiring the Agency to resort to overtime to maintain staffing requirements.

Additionally, the Agency cites to numerous timekeeping discrepancies among BUEs' time and attendance submissions due to the 48/72 Schedule's constant rotation of BUEs, often resulting in a timekeeping certifying official not working daily with his

BUEs. It is the Agency's argument that there is an increased cost to operations as a result of the Agency having to properly review and address these numerous time and attendance issues. The Agency provided the Panel with a list of 136 timecard discrepancies it discovered between January 1, 2019 and March 16, 2019. To demonstrate the effect of the 48/72 Schedule on the Agency's control over time and attendance, the Agency provided an example of a BUE being charged with AWOL. The BUE worked on one of the 14 workgroups that was supervised by one supervisor for three shifts each pay period and another supervisor for the other three shifts of the pay period. The BUE asked one supervisor for "spot leave" for two days, which he had not projected. As the first supervisor denied the employee's request for spot leave, the employee went to the second supervisor, without informing him that the first supervisor denied his request. The second supervisor told the employee that he would have to check with the first supervisor as the leave requested would take place while the employee was under the supervision of the first supervisor. However, the employee elected to not show up to work or submit leave and was ultimately charged with AWOL.

2. The Union's Position

The Union maintains that the Agency has failed to meet its burden under the Act to demonstrate that the 48/72 Schedule creates an adverse agency impact and, accordingly, should be terminated. Specifically, the Union argues that the Agency has failed to provide any relevant data to support its argument that the adverse agency impacts it has identified are a direct result of the 48/72 Schedule. The Union also argues that the Agency's evidence is insufficient, unfounded, includes convoluted facts, is circumstantial, and relies entirely on subjective opinions. Ultimately, the Union claims that the 48/72 Schedule cannot be reasonably considered the single cause for the issues the Agency has cited in its determination of adverse agency impact.

The Union cited the Agency's 2017 decision to remove military personnel and supervisors from the 48/72 Schedule as causing the Agency's identified deficiencies in productivity, continuity, and span of control. If managed correctly, the Union suggests, the 48/72 Schedule has shown to improve continuity on all levels based on the structure of the schedule. The Union claims that the 48/72 Schedule has been a success as evidenced by the Fire Department receiving multiple awards for its service. According to the Union, the 48/72 Schedule is the

most productive schedule, provides the most professional and personal benefits, and is the preferred schedule for both the Fire Department's BUEs and military personnel, as evidenced by the findings of the Agency initiated "Schedule Working Group." BUEs, as evidenced by their votes, have clearly identified the 48/72 Schedule as their desired schedule, and the Union asserts that they should be allowed to keep the schedule as long as it does not directly interfere with the Agency's mission.

The Union also claims that the Agency has neglected to provide the Panel any relevant data or evidence to implicate the 48/72 Schedule as the direct cause of the numerous issues identified by the Agency. Rather, the Union argues that all of the data and evidence the Agency has submitted to the Panel is from 2017-2019, when the military personnel and supervisors were no longer on the 48/72 Schedule.⁴ The Union provided evidence in its rebuttal that the 48/72 Schedule is the most common AWS employed by the Department of Defense Fire and Emergency Services, which the Union equated to meaning the 48/72 Schedule is the "most popular choice" among Department of Defense agencies and fire fighters. The Union's rebuttal also reiterated that the 48/72 Schedule is the best scheduling option for the Agency, and it provides BUEs with more effective off-duty time with families and a higher degree of department morale.⁵

The Union acknowledges the Agency's identified breakdowns in the chain of command, diminished quality of communication and continuity, and failures of Fire Department programs. However, it is the Union's contention that all of these issues are a result of the Agency removing military personnel and supervisors from the 48/72 Schedule and creating what the Union refers to as a blended AWS. The Union claims that the 48/72 Schedule itself is not to blame for these shortcomings and it is clear that there is no negative impact on the Fire Department because of the 48/72 Schedule. Refuting the Agency's position that the 48/72 Schedule has caused an increase in overtime, the Union provided examples of schedules from the past month in which

⁴ The Union provided a copy of a 2014 Commission on Fire Accreditation compliance report prepared by the Agency, which included data from March 2010 - February 2014. The Union claims that the report confirms that there is no adverse impact from the 48/72 Schedule.

⁵ The Union submitted a letter from a former Assistant Chief of Operations, who has since retired, stating the 48/72 Schedule is the "most beneficial for morale."

little overtime was utilized. The Union argues that overtime is often at the Agency's discretion and is not due to the 48/72 Schedule. The Union also refutes the Agency's training data in that it accounted for employees who were injured, TDY, 8-hour employees, and Agency supervisors. Removing those employees from the data, the Union projects the training competition percentage to be an acceptable 94%. Ultimately, the Union argues that the issues that the Agency has presented to the Panel are not attributed to the 48/72 Schedule, and that the Agency can remedy those shortcomings through better leadership and by placing the military personnel and supervisors back on the 48/72 Schedule.

CONCLUSIONS

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 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."⁶ The plain language of 5 U.S. Code § 6131⁷, demonstrate that the agency must present evidence that "particular" or specific work schedules of each unit involved in a dispute have caused an adverse impact.

⁶ 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).

⁷ See 5 U.S. Code §6131(a) ("[I]f the head of an agency finds that a *particular...compressed* schedule under this subchapter has or would have an adverse agency impact...) (emphasis added);" *id.* at (C) ("The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact." (emphasis added)).

The Agency has presented evidence that the 48/72 Schedule has caused: (1) a reduction of productivity, (2) a diminished level of service furnished to the public, and (3) an increased cost in Agency operations. The Agency's argument largely focuses on the issues created by the constant rotation of BUEs, which is necessary to administer the 48/72 Schedule. The Union ultimately acknowledges the existence of these issues the Agency has presented to the Panel, including diminished fire crew integrity, breakdowns in communication between and among fire crews, and failures of Fire Department programs. As the existence of these issues is largely not in dispute between the parties, the Panel will now determine whether the Agency has provided sufficient evidence to support a finding that the 48/72 Schedule has caused these issues.

While the Union argues that the Agency has failed to prove that the 48/72 Schedule is the **direct and only cause** of the issues having an adverse agency impact, the Act does not require the Panel to make such a specific determination. The Agency has provided evidence that the scheduling challenges unique to the 48/72 Schedule has resulted in fire crews that have little consistency in composition or supervision. And, these fire crews have failed to maintain acceptable levels of service and complete critical tasks imperative to the Agency's mission of providing services to the Joint Base Charleston. As such, the Panel finds that the Agency has provided sufficient evidence to support a finding that the 48/72 Schedule has resulted in a reduction of productivity and a diminished level of service furnished to the public warranting termination.

ORDER

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 termination of the compressed work schedules for personnel in the Agency's Fire Department.



Mark A. Carter
FSIP Chairman

December 19, 2019
Washington, D.C.