



LOCAL 1998

National Federation of Federal Employees
International Association of Machinists &
Aerospace Workers, AFL-CIO
P.O. Box 2221
Seattle, WA 98111



Date: October 9, 2001
To: Joyce Gunn, Regional Director – Houston Passport Agency
From: Beverly Ellis – Local 1998 Vice President & Butrina Tolbert – Local 1998 Steward
RE: Step 1 – Formal Grievance

Local 1998 requests that the following Step 1 formal grievance be considered in accordance with the provisions of Article 20 of the Agreement Between Passport Services and Local 1998.

On September 21, we filed an informal grievance in response to Assistant Regional Director Eric Botts last revision of the Compressed Work Schedule Agreement for the Houston Passport Agency. On September 24, we received your reply to our informal grievance.

Our concern, as representatives for all bargaining unit employees in the Houston Passport Agency, is to implement a Compressed Work Schedule (CWS) that can benefit those employees that wish to participate. Regardless of past history with the Houston CWS, it is our goal to see a CWS re-instituted within this office at the earliest possible date. Any agreement between the parties should be in compliance with the union/management contract and applicable regulation, laws, and acceptable practice.

The primary issue holding up the institution of the CWS in this office is over the right of management to terminate the CWS. We understand that management has legitimate concerns about the impact of the CWS and we maintain that the negotiated contract, regulation, and law contain sufficient provisions to address management's concerns. We believe that the following provisions of the CWS agreement provided by Mr. Botts on September 4, as addressed in the September 21st informal grievance, are violations of the contract, regulation, or law:

1. *"Pilot Program"*

There are no provisions in the contract that provide for a "pilot" program. Article 26, Section 1, (3rd paragraph) states: "The Employer may not terminate Flexitour and other Alternative Work Schedules without providing the Union the notice and opportunity to negotiate." 5 USC 6131 provides the procedure for terminating a compressed work schedule.

There is no need for a "pilot" program. The CWS has been successfully implemented in this office in the past. Additionally, a majority of regional Passport offices already have successful CWS programs, as does Passport headquarters in Washington, D.C.

2. *"Flexitour and Alternative work Schedules Plans will remain in force under the terms established in this agreement provided the agency meets establish productivity and operational requirements essential to the mission of the agency."*

As noted in #1, Article 26 and 5 USC 6131 provide the procedures for terminating a compressed work schedule.

3. *“Flexitour and other Alternate Work Schedules may be suspended by the Employer under certain emergency situations as provided for in the agreement or at the discretion of the Regional Director in the interest of employee and public safety or national security. Such action can be taken upon written notification to the employees and bargaining unit representative. Additionally, the terms of the suspension will be subject to negotiation.”*

Article 26, Section 1, of the contract provides for a “one pay period” suspension “during emergencies, including workload crisis.” Any proposal to extend that suspension for more than one pay period requires notification to the Union and the opportunity to negotiate as appropriate.

We request the following changes to bring the proposed CWS agreement in compliance with the contract and applicable law and regulation:

1. Dropping reference to the CWS as a “pilot” or “trial” program.
2. Revising the statements noted in items #2 and #3 above to read in conformity with the contract as follows:

“The Employer may not terminate Compressed Work Schedules without providing the Union notice and opportunity to negotiate. However, during emergencies, including workload crises, the Employer may suspend the CWS for one pay period during any calendar year after providing notice to the Union and the employees. If Management then proposes to extend the suspension of an AWS for more than one pay period, it must notify the Union and provide an opportunity to negotiate as appropriate over the issue prior to the extension.”

We would like to add the following additional explanation for your consideration:

In June 2000, during union/management negotiations over the new contract, the issue of compressed work schedules and their suspension and termination was discussed after the New Orleans passport office suspended their CWS over issues related to holidays. These discussions led to a temporary agreement on CWS schedules used throughout Passport Services, and later incorporated into the union/management contract. Concerns by both sides were voiced and discussed over the termination and suspension of the CWS within an office. The provisions in the contract were carefully crafted after reference to appropriate laws and regulations and taking into the consideration the concerns of both parties.

We agree that management has the “right to monitor performance and productivity standards during the program and seek modifications necessary to complete the mission of the agency.” As partners with management in seeking to further the agency mission, we are eager work with management in “fine tuning” the CWS program to best serve the needs of the agency and the employees, but we cannot agree with provisions that reach beyond the contract, an agreement that was carefully crafted by both union and management representatives to protect the rights of both parties.

It may be useful in settling this disagreement to review the process for termination provided by the union/management contract and by law.

1. Article 26 of the contract provides the agency the ability to suspend the CWS for one pay period each year, providing there is an emergency (including workload crises), and the agency gives notice to the union and employees.

It is interesting to note that a definition of an emergency remained in the proposed contract through negotiations, but was rejected by the Department of State legal office during a post-negotiation review. The memorandum stated that "the definition of 'emergency' is not negotiable. As the definition here is more restrictive than 5 U.S.C. § 7106(a)(2)(D), it must be deleted." The union agreed to this deletion even though previous contracts contained such a definition.

2. Article 26 of the contract states that if management proposes to extend the suspension of a CWS for more than one pay period or determines to terminate the CWS, then the Employer must provide the union notice and the opportunity to negotiate. The contract does not address the procedure should the Employer and the Union fail to reach agreement on the suspension or the termination of the CWS.

An OPM bulletin makes the following statement about the termination of flexible or compressed work schedules: "The termination of these schedules must be negotiated. Management rights under 7106 do not extend to the termination of flexible or compressed work schedules" (Labor-Management Relations Guidance Bulletin: Negotiating Flexible and Compressed Work Schedules, July 1995).

3. 5 USC 6131 requires the agency to terminate a CWS if it finds that there is an "adverse agency impact." Adverse agency impact is defined as (see 5 USC 6131(b)):
 - A reduction of the productivity of the agency;
 - A diminished level of services furnished to the public by the agency; or
 - 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).

If the agency seeks to terminate a CWS, "the agency may reopen the agreement to seek termination of the schedule." If the parties reach an impasse, the impasse shall be presented to the Federal Service Impasses Panel for consideration. The Panel will take action in favor of the agency if the finding is supported by evidence that the schedule has caused an adverse agency impact. A CWS may not be terminated until the agreement is renegotiated or until the issuance of the Panel's final decision (see 5 USC 6131(c)).

Thank you for your consideration of this matter.

Beverly Ellis

Butrina Tolbert

Local 1998 Vice President

Local 1998 Steward