

From: Beardall, Bill
Sent: Tuesday, July 01, 2003 7:48 AM
To: Bobotek, Teresa
Cc: CA-PPT-SE-Govt-Staff
Subject: RE: Start Times

Teresa,

The following comments are my own and not necessarily representative of Local 1998, its members, or the bargaining unit employees in Seattle.

I wish to respond to your memo to employees regarding start times. I was pleased to respond to Rob's request to participate in negotiations over the management proposal to change the earliest start time to 7:00 AM. As one who has been in the forefront of encouraging and supporting labor/management relations, particularly through the partnership process, I was disappointed that we could not find a way to resolve this issue to the satisfaction of both sides.

Having spent many weeks in contract negotiations, a significant portion of that time over the issue of work schedules, I would like to pass on my perspective.

As you are aware, Article 26, Section 3b of the current agreement states that "Each location will maintain the status quo unless the Union/Management Council at each location sets the following: (1) The earliest and the latest time an employee may work; The lunch period; and (3) The core time (that time during which each employee must be present for work)." In the union/management council meetings held in May, the council failed to achieve consensus over the start time issue. Section 1 of Article 26 gives either party the option to invoke negotiations over the issues addressed in Article 26, including start times. Local 1998 requested negotiations and proposed retaining the status quo. Mr. Atkins stated during one of our negotiation sessions that had not the union requested negotiations, management would have done so.

Article 12 of the contract addresses negotiations between the parties during the life of the contract. If agreement cannot be achieved between the parties, then Section 7 outlines impasse procedures. This is what happened during negotiations. Management and union representatives could not find an agreeable solution. When an impasse occurs, management **cannot** unilaterally invoke a negotiable proposal that changes the status quo. Section 7 allows the parties to seek the services of the Federal Mediation and Conciliation Service. Apparently, your representatives chose not to do that. If we bypass mediation, then the next step would be to seek resolution through the Federal Services Impasses Panel. It is clear that you have chosen to skip this step and invoke your proposed change, even though making this change without completing the appropriate procedures is a violation of the contract and the Federal Service Labor Management Statute, 5 U.S.C. 71.

As Mr. Arnold and I completed our last negotiation session, Mr. Atkins stated that if we could not reach agreement, then he was told to tell us that our proposals were non-negotiable. Negotiability is addressed in Section 8. Section 8 indicates that if management determines a proposal is non-negotiable, then it mandates that management issue that declaration in the early stages of the process. **This was not done.** In fact, the May 27th memorandum from Mr. Atkins stated that the "negotiable proposal" of the union was to maintain the status quo. Obviously, the management team has not negotiated in good faith. Your negotiators stated that the proposal was negotiable, when in fact you now claim it was not. Your team did not raise the issue of negotiability until the end of negotiations. If you believed that our proposal was non-negotiable then there was no need to meet in negotiations. In addition, your negotiation team refused to accept our proposed ground rules, nor did they offer a counter-proposal. We were told that they

were told by Washington not to accept the ground rules. Again, another demonstration of bad faith negotiations.

Most of the work schedules addressed by your 7:00 A.M. start change are compressed work schedules. According to OPM guidance, management rights under 5 U.S.C. are not a bar to negotiations of compressed work schedules, thus the union proposal is fully negotiable and the appropriate course of action, if you believe change is justified, is through the Impasse Panel. Under 5 U.S.C. 6131, if management finds an "adverse agency impact," then you have a responsibility to seek a change. Adverse agency impact is defined under 6131. It also states, "If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel." Section 6131 indicates that **"such schedule may not be terminated until the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or the date of the Panel's final decision...."**

Based on the above, it is my opinion that negotiability is not an issue based on the statements and action of your negotiation team. The appropriate means for you to resolve this issue would be to re-open negotiations or file for assistance from the FMCS or the Impasse Panel. If you choose to unilaterally invoke the 7:00 A.M. schedule on July 28th, it is my opinion that you will be in violation of the contract and will be committing an unfair labor practice. As a union member, I will encourage and support Local 1998 in filing grievances, unfair labor practice charges, or any other legal means for dealing with this situation.

Just one final thought. In the advanced copy of your memo you indicated that this change will bring the Seattle Agency in compliance with Passport Services internal security and management directives. The issued is not the internal security and management directives. I am in full support of these directives if Washington believes they are necessary. I believe the same can be said for Local 1998. It is possible for management to comply with these directives without disrupting the schedules of 14 other employees. This is not a situation where the building is not accessible or where there is some unusual national security emergency mandating a change. In is clear to me that your management team can fully comply with this directive without disrupting the schedule of other employees.

When we formed the partnership in early 1996, I was pleased to see the positive relationship that developed between the union and management. Many good things came out of that. I hate to see that relationship and trust further diminished by this issue. I would suggest seeking the services of the Federal Mediation and Conciliation Service in an effort to resolve this issue.

Bill

-----Original Message-----

From: Bobotek, Teresa
Sent: Monday, June 30, 2003 5:00 PM
To: CA-PPT-SE-Govt-Staff
Subject: Start Times

This is to notify all government staff at the Seattle Passport Agency about a change in the Agency's earliest start time. This e-mail was sent first to Union Vice President Rob Arnold and Union Stewart Carol Aguilar.

<< File: Start times PPTSE.doc >>