

**64 FLRA No. 166**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1367  
(Union)

and

UNITED STATES  
DEPARTMENT OF THE AIR FORCE  
LACKLAND AIR FORCE BASE  
TEXAS  
(Agency)

0-NG-2916

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DECISION AND ORDER  
ON NEGOTIABILITY ISSUES

June 10, 2010

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Before the Authority: Carol Waller Pope, Chairman,  
and Thomas M. Beck and Ernest DuBester, Members<sup>1</sup>

### I. Statement of the Case

This case is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute). It concerns the negotiability of eight proposals. The Agency filed a statement of position (SOP), to which the Union did not file a response.

For the reasons discussed below, we find that the proposals are within the duty to bargain.

### II. Background

The proposals concern housekeepers who clean and maintain rooms at several lodging facilities at Lackland Air Force Base. Record of Post-Petition Conference (Record) at 2. The Union contends that the Agency previously assigned housekeepers to clean eighteen rooms during an eight-hour work day, but that the Agency now assigns them to clean “up to 32 rooms or more” during a seven-hour shift.

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1. Member Beck’s separate opinion, dissenting in part, is set forth at the end of this decision.

Petition at 4. The Agency does not dispute this contention. *See* SOP at 1-2.

### III. Proposals 1 and 2

#### Proposal 1

To the maximum amount possible, the parties agree that Housekeepers, working seven hours a day, will not be required to clean or service more than the reasonable amount of rooms according to the standards in the [Air Force Instruction (AFI)] 34-246.<sup>[2]</sup>

Petition at 3.

#### Proposal 2

To the maximum extent possible, the parties agree that Housekeepers will be assigned a reasonable amount of rooms to be accomplished in a given seven hour shift without foregoing designated breaks or lunch periods.

*Id.*; Record at 3.

#### A. Meaning of the Proposals

The parties explained that AFI 34-246 is an Agency instruction that sets forth guidelines for establishing housekeepers’ productivity standards, which indicate how many rooms the Agency should assign housekeepers to clean during each shift. Record at 2. The parties agreed that Proposal 1, “[t]o the maximum amount possible,” and Proposal 2, “[t]o the maximum extent possible,” Petition at 3, would limit the number of rooms that the Agency could assign a housekeeper to clean to the number set by the AFI 34-246 guidelines. Record at 2-3. In addition, Proposal 2 would require the Agency to ensure that housekeepers not forego designated breaks or lunch periods.<sup>3</sup> *Id.* at 3.

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2. The Agency submits a portion of AFI 34-246 that sets out managerial guidelines for determining how much work to assign to a housekeeper during a shift. *See* SOP, Attach. 3 at 56. This portion of AFI 34-246 does not set forth a precise number of rooms that housekeepers are assigned to clean during each shift. *See id.*

3. As Proposals 1 and 2 are virtually identical in substance, the dissent’s claim that Proposal 2 is “too vague to

## B. Positions of the Parties

### 1. Union

The Union contends that Proposal 1 is an appropriate arrangement for employees who are adversely affected by the exercise of management's right to assign work. Petition at 3. In this regard, the Union contends that the proposal "only requires the Agency to comply with the provisions of its own regulations[.]" *Id.* Additionally, the Union asserts that Proposal 1 leaves the Agency with discretion as to how it "establishes a formula and guide for staffing lodging facilities." *Id.*

With regard to Proposal 2, the Union claims that the proposal would mitigate the "negative impact" that an "excessive amount of rooms" has on "employees' physical condition, morale and productivity." *Id.* at 4. In this connection, the Union claims that the Agency's assignment of "extra rooms" causes "severe hardships related to fatigue and stress" and leaves housekeepers "prone" to suffering "workplace accidents." *Id.*

The Union contends that Proposal 2 is an appropriate arrangement because the proposal "allows for the [A]gency to determine the 'maximum ext[ent] possible[.]" and allows the Agency to "determine 'reasonable amount of rooms' that could be cleaned[.]" Petition at 4. As such, the Union asserts that the proposal's effect on the Agency's right to assign work would be "minimal[.]" *Id.*

In support of its claims, the Union submits several statements from housekeepers, in which the housekeepers assert that the Agency has assigned them to clean thirty-two rooms or more during a shift. *See* Petition, Attachs. (Housekeeper Statements) at 1, 9, 12. Two housekeepers assert that the Agency's assignment of work causes work-related stress and exhaustion. *See* Petition at 1, 15. In addition, one housekeeper claims that the Agency's work requirements are "unattainable[.]" *Id.* at 12.

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constitute an appropriate arrangement[.]" Dissent, slip op. at 1, is unpersuasive. Further, the dissent's reliance on *AFGE, Department of Education Council of AFGE Locals*, 38 FLRA 1068, 1093 (1990) (Member Talkin dissenting as to other matters), *decision on reconsideration*, 39 FLRA 1241 (1991), *enforcement denied on other grounds sub nom. U.S. Dep't of the Interior, Minerals Mgmt. Serv., New Orleans, La. v. FLRA*, 969 F.2d 1158 (D.C. Cir. 1992), is misplaced because, unlike the proposal there, no ambiguity exists with regard to Proposal 2.

### 2. Agency

The Agency contends that "all eight proposals" are "inconsistent" with the right to assign work, and that "none of the eight proposals are appropriate arrangements under [FLRA] case law."<sup>4</sup> SOP at 1-2.

## C. Analysis and Conclusions

Where a union does not respond to an agency argument that a proposal affects a management right under § 7106 of the Statute, the Authority finds that the union has conceded that the proposal affects the claimed management right. *See, e.g., Nat'l Weather Serv. Employees Org.*, 63 FLRA 450, 452 (2009) (*NWSEO*). *See also* 5 C.F.R. § 2424.32(c)(2).<sup>5</sup> As the Union did not respond to the Agency's assertions that Proposals 1 and 2 affect management's right to assign work, the Union concedes the proposals affect that right.

With regard to the Union's claim that Proposals 1 and 2 are appropriate arrangements, the Authority analyzes that claim under the framework set out in *NAGE, Local R14-87*, 21 FLRA 24 (1986) (*KANG*). Under this framework, the Authority first determines whether a proposal is intended to be an arrangement for employees adversely affected by the exercise of a management right. *AFGE, Nat'l Council of Field Labor Locals*, 58 FLRA 616, 617 (2003). To establish that a proposal is an arrangement, a union must identify the effects or reasonably foreseeable effects that flow from the exercise of management's rights and demonstrate how those effects are adverse. *See KANG*, 21 FLRA at 31.

Additionally, the claimed arrangement must be sufficiently tailored to compensate those employees suffering adverse effects attributable to the exercise of management's rights. *AFGE, Local 1164*, 55 FLRA 999, 1001 (1999). In this connection, the Authority has held "that proposals 'intended to eliminate the possibility of an adverse effect, may constitute appropriate arrangements negotiable under

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4. The entire SOP, as to all eight proposals, consists of only two pages of argument, wherein the Agency makes no attempt to explain *how* the proposals (individually or as a whole) affect management's right to assign work or *why* the proposals are not appropriate arrangements. *See* SOP at 1-2.

5. 5 C.F.R. § 2424.32(c)(2) states: "Failure to respond to an argument or assertion raised by the other party will, where appropriate, be deemed a concession to such argument or assertion."

[§] 7106(b)(3).” *AFGE, Council of Prison Locals 33*, 64 FLRA 728, 730 (2010) (Member Beck concurring) (*Prison Locals*) (quoting *NTEU, Chapter 243*, 49 FLRA 176, 191 (1994)). “Prophylactic” proposals will be found sufficiently tailored in situations where it is not possible to determine reliably which employees will be adversely affected by an agency action so as to draft a proposal to apply only to those employees. 64 FLRA at 730. *See also NTEU, Chapter 243*, 49 FLRA at 194 (Member Armendariz dissenting in relevant part) (proposal sufficiently tailored if it “targets a group of employees that is likely to be harmed by the exercise of a management right and seeks to address, compensate for, or prevent the actual or anticipated adverse effects of the exercise of the management right or rights on those employees”). Further, “[a]n arrangement need not ‘target in advance the very individual employees who will be adversely affected.’” *Prison Locals*, 64 FLRA at 730 (quoting *U.S. Dep’t of the Interior, Minerals Mgmt. Serv. v. FLRA*, 969 F.2d 1158, 1163 (D.C. Cir. 1992)).

If the proposal is an arrangement, then the Authority determines whether the arrangement is appropriate or whether it is inappropriate because it excessively interferes with management’s rights. *AFGE, Local 55 FLRA* at 1001. In making this determination, the Authority balances the proposal’s benefits to employees against its burdens on management. *See NTEU*, 62 FLRA 267, 272 (2007) (Chairman Cabaniss dissenting in part).

Proposals 1 and 2 would require the Agency to follow the guidelines set forth in AFI 34-246 when determining how much work to assign housekeepers. Proposals 1 and 2 would thus mitigate the adverse effects -- alleged in the housekeepers’ statements and not disputed by the Agency -- including employee stress, exhaustion, and an increased risk of workplace accidents that are reasonably foreseeable results of the Agency assigning more work than indicated under the AFI 34-246 guidelines.<sup>6</sup> In addition, as it is

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6. Even assuming that the Agency *currently* is complying with AFI 34-246, that does not mean that the Union is precluded from bargaining over appropriate arrangements to apply in the event that, *in the future*, management fails to comply with AFI 34-246 and/or requests or requires housekeepers to forego breaks or lunch periods. *See U.S. Dep’t of the Interior, Minerals Mgmt. Serv., New Orleans, La., v. FLRA*, 969 F.2d 1158, 1162-63 (D.C. Cir. 1992) (court rejected interpretation of § 7106(b)(3) that “use of the past tense in the phrase ‘adversely affected’ creates a temporal wall forbidding any negotiability except as to harm that has already occurred”). Further, even assuming

not possible to determine reliably which housekeepers will be adversely affected, Proposals 1 and 2 are prophylactic proposals that are sufficiently tailored to benefit those housekeepers who experience those adverse affects. *See Prison Locals*, 64 FLRA at 730. Further, the Authority has found that a proposal that sought to mitigate employee fatigue and work-related injury that results from such fatigue constituted an arrangement. *See AFGE, Local 3157*, 44 FLRA 1570, 1596-97 (1992). Consistent with the foregoing, we find that Proposals 1 and 2 are arrangements.

With regard to whether the arrangements are appropriate, the Union asserts that Proposals 1 and 2 would provide several benefits to housekeepers, including a decreased amount of stress and exhaustion, and a reduced risk of workplace accidents. In support of these assertions, the Union submits housekeeper statements that indicate that housekeepers suffer work-related stress and exhaustion.<sup>7</sup> *See Housekeeper Statements* at 1, 15. By contrast, the Agency asserts only that “none of the eight proposals are appropriate arrangements under [FLRA] case law[,]” without providing any arguments that apply specifically to Proposals 1 and 2, any explanation as to *why* Proposals 1 and 2 are not appropriate arrangements, or any explanation as to *how* the proposals would burden management rights. SOP at 2. Weighing the demonstrated benefits to employees against the absence of asserted or demonstrated burdens on the right to assign work,

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that, as the dissent claims, there are existing statutory protections for affected employees, it is well established that “[p]roposals that require an agency to exercise its management’s rights in accordance with applicable laws are within the duty to bargain.” *NAGE, Local R1-203*, 55 FLRA 1081, 1086 (1999) (Chairman Segal concurring).

7. With regard to Proposal 2, one housekeeper’s statement indicates that at least one housekeeper has found it necessary to work through a lunch period, and another housekeeper’s statement indicates that employees have had to work off the clock in order to finish their work assignments. *See Housekeeper Statements* at 10, 15. As such, it is reasonably foreseeable that, depending on the number of rooms assigned, some housekeepers may find it necessary to forego designated lunch periods and breaks in order to complete their work. We note, in this regard, that although one housekeeper statement indicates that a supervisor told at least one housekeeper not to work through lunch breaks, *see id.* at 10, the Agency does not claim, and there is nothing in the record to indicate, that the Agency provided a general directive to housekeepers not to work through designated breaks or lunch periods. *See SOP*, 1-2; *Housekeeper Statements* 1-16, 18-21.

we find that Proposals 1 and 2 are appropriate arrangements under § 7106(b)(3) of the Statute.

#### IV. Proposal 3

To the maximum extent possible, the parties agree that should additional rooms be added to a Housekeeper's workload, that the quantity will be increased, therefore the quality of cleanliness may be sacrificed and employees will not be disciplined due to the increase in rooms.

Petition at 4; Record at 3.

##### A. Meaning of the Proposal

The parties agree that the proposal would prevent the Agency from disciplining a housekeeper for a decrease in the quality of his or her cleaning if the Agency has assigned the housekeeper to clean more rooms than indicated under AFI 34-246. Record at 3.

##### B. Positions of the Parties

###### 1. Union

The Union claims Proposal 3 is an appropriate arrangement for employees adversely affected by the exercise of management's right to assign work. Petition at 4. The Union contends that, by limiting housekeepers' exposure to discipline in some circumstances, Proposal 3 would mitigate the adverse effect of the Agency assigning housekeepers to clean more rooms than indicated under AFI 34-246. *See id.*; Record at 3.

###### 2. Agency

As set forth above, the Agency contends only, and without elaboration, that "all eight proposals" are "inconsistent" with the right to assign work, and that "none of the eight proposals are appropriate arrangements[.]"<sup>8</sup> SOP at 1-2.

##### C. Analysis and Conclusions

As the Union did not respond to the Agency's claim that Proposal 3 affects management's right to

assign work, the Union concedes that the proposal affects that right. *See, e.g., NWSEO*, 63 FLRA at 452. Therefore, we consider whether Proposal 3 constitutes an appropriate arrangement.

Proposal 3 would limit housekeepers' exposure to discipline for declining work quality when housekeepers have been assigned to clean more rooms than indicated under AFI 34-246. As such, the proposal would mitigate the adverse effect that the Union cites and, thus, provide a significant benefit to housekeepers. *See AFGE, Nat'l Council of Field Labor Locals, Local 2139*, 57 FLRA 292, 294 (2001) (*AFGE, Local 2139*). In this regard, the record shows that housekeepers are inspected for work quality, *see Housekeeper Statements* at 3, 5-7, that Agency work requirements can be "unattainable[.]" *id.* at 12, that work assignments have exceeded housekeepers' capacity to complete work, *id.* at 3, and that this has led, in at least one instance, to a supervisor "writ[ing] . . . up" a housekeeper. *Id.* Thus, the record supports the Union's contention that discipline is a reasonably foreseeable adverse effect of the Agency assigning housekeepers to clean more rooms than indicated under AFI 34-246. *Cf. NTEU*, 45 FLRA 339, 370 (1992) (Member Armendariz concurring in part and dissenting in part as to other matters) (Member Talkin dissenting as to other matters) (discipline a reasonably foreseeable adverse effect of agency's refusal to reassign injured employees). In addition, consistent with precedent, the proposal is sufficiently tailored to benefit those housekeepers who are adversely affected by the increase in the number of room cleaning assignments. *See Prison Locals*, 64 FLRA at 730. As a result, we find that Proposal 3 constitutes an arrangement. *Cf., NFFE, Local 1974*, 46 FLRA 1170, 1171, 1173 (1993) (*Local 1974*) (proposal that, in appraising employees, "allowances shall be made for factors beyond the employee's control[.]" constituted an arrangement.

The benefits that the Union claims with regard to Proposal 3 are supported by Authority precedent, *see AFGE, Local 2139*, 57 FLRA at 294, and are not disputed by the Agency. *See SOP* at 1-2. Conversely, the Agency makes no attempt to demonstrate how Proposal 3 would burden management. *See id.* at 2. As such, the Agency does not assert how Proposal 3 would burden the Agency's "right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned." *SSA*, 64 FLRA 199, 203 (2009) (Member Beck dissenting in part as to other matters).

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8. We note that the Agency does not claim that Proposal 3 affects management's right to discipline under § 7106(a)(2)(A) of the Statute.

Weighing the benefits to employees against the absence of asserted or demonstrated burdens on the right to assign work, we find that Proposal 3 is an appropriate arrangement under § 7106(b)(3) of the Statute.<sup>9</sup>

## V. Proposal 4

To the maximum extent possible, the parties agree that there will be times when position vacancies occur. The remaining housekeepers will be unable to meet the quality standards if they have too many rooms to clean. To the extent possible, the parties agree that the Employer will attempt to fill the vacancy in a reasonable amount of time in order to diminish the impact of additional rooms being assigned to the Housekeepers.

Petition at 4-5; Record at 4.

### A. Meaning of the Proposal

The parties agree that the proposal would require the Agency to fill vacant positions so that employees will not be required to clean more rooms than indicated under AFI 34-246. Record at 4.

### B. Positions of the Parties

#### 1. Union

According to the Union, Proposal 4 is an appropriate arrangement that seeks to mitigate adverse effects that flow from the exercise of management's right to assign work. Petition at 5. Specifically, the Union asserts that the Agency's failure to fill vacancies leaves the Agency "short-staffed[.]" and thus increases housekeepers' workload, which the Union claims causes housekeepers to suffer "fatigue, accidents, absence from work due to injuries, overwork and stress[.]" *Id.* Additionally, in support of these assertions, the Union submits housekeepers' statements that claim the Agency assigns housekeepers an "[e]xcessive workload[.]" resulting in housekeepers'

9. As the Authority found that the proposal in *Local 1974*, 46 FLRA at 1174, constituted an appropriate arrangement, the dissent's reliance on that decision is misplaced. The dissent's reliance on *NTEU*, 40 FLRA 570, 574, 577 (1991), also is misplaced because the Authority found both proposals at issue in that case negotiable as appropriate arrangements.

work-related stress and exhaustion. Housekeeper Statements at 1, 15.

## 2. Agency

As set forth above, the Agency contends only, and without elaboration, that "all eight proposals" are "inconsistent" with the right to assign work, and that "none of the eight proposals are appropriate arrangements[.]"<sup>10</sup> SOP at 1-2.

### C. Analysis and Conclusions

As the Union did not respond to the Agency's claim that Proposal 4 affects management's right to assign work, the Union concedes that the proposal affects that right. *See, e.g., NWSEO*, 63 FLRA at 452.

Proposal 4 would benefit housekeepers by decreasing the stress, fatigue, and risk of work-related injuries that may result from reduced staffing. *See NFFE, Local 2192*, 59 FLRA 868, 871 (2004). Additionally, consistent with precedent, Proposal 4 is sufficiently tailored to benefit those housekeepers who are adversely affected by reduced staffing. *See Prison Locals*, 64 FLRA at 730. In this regard, as noted above, the Authority has found that a proposal that sought to mitigate employee fatigue and work-related injury that results from such fatigue constituted an arrangement. *See AFGE, Local 3157*, 44 FLRA at 1596-97. Based on the foregoing, we find that Proposal 4 is an arrangement.

With regard to whether the arrangement is appropriate, the Union asserts that Proposal 4 would benefit employees by decreasing the stress, fatigue and risk of work-related injuries that may result from reduced staffing. Additionally, the housekeepers' statements support the Union's claim that housekeepers suffer stress and exhaustion, in part as a result of their workload. *See Housekeeper Statements at 1, 15.* By contrast, the Agency does

10. The Agency does not claim that Proposal 4 affects management's right to hire under § 7106(a)(2)(A) of the Statute, or that it involves the numbers, types and grades of employees under § 7106(b)(1) of the Statute. Thus, *Nat'l Weather Serv. Employees Org.*, 61 FLRA 241, 243 (2005), *rev'd and remanded sub nom., Nat'l Weather Serv. Employees Org. v. FLRA*, 197 Fed. Appx. 1 (D.C. Cir. July 17, 2006), *decision on remand*, 64 FLRA 569 (2010) -- which involved a proposal's excessive interference with management's rights under § 7106(b)(1) and on which the dissent relies -- is inapposite.

not address the housekeepers' assertions or the Union's claims that the proposal would benefit housekeepers. *See* SOP at 1-2.

Further, the Agency does not demonstrate the extent to which Proposal 4 would burden the right to assign work. In this regard, the Agency does not demonstrate, and the record does not show, that Proposal 4 would burden the Agency's "right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned." *SSA*, 64 FLRA at 203. Weighing the benefits to employees against the absence of demonstrated burdens on the right to assign work, we find that Proposal 4 is an appropriate arrangement under § 7106(b)(3) of the Statute.

## VI. Proposals 5 and 6

### Proposal 5

To the maximum extent possible, the parties agree that when there is a need to assign additional rooms to the Housekeepers that the Employer will agree to offer overtime to the Housekeepers in order to maintain the quantity and quality of the rooms in the lodging facilities.

Record at 4.

### Proposal 6

To the maximum extent possible, the parties agree that when there is a need to assign additional rooms to the Housekeepers that the Employer will agree to offer compensatory time in lieu of overtime.

*Id.* at 5.

#### A. Meaning of the Proposals

The Union asserts that Proposal 5 seeks "overtime for housekeepers who are assigned to clean more rooms than the productivity standard established by AFI 34-246. . . should the employee have to work beyond the employee's regular work day in order to clean the additional rooms." Record at 4-5. The Union also asserts that Proposal 6 "addresses the same concerns as Proposal 5" but would require "compensatory time instead of overtime should an employee have to work beyond his or her regular work day[.]" *Id.* at 5.

## B. Positions of the Parties

### 1. Union

The Union asserts that Proposal 5 would ensure that housekeepers are "compensated for working after their assigned duty time in order to meet management's . . . assigning additional work to employees." Petition at 5. Similarly, the Union asserts that Proposal 6 would ensure that housekeepers "will be given compensatory time when they . . . have to stay after their assigned duty hours to meet [the] [A]gency's" increased number of work assignments. *Id.* at 6. The Union contends that Proposals 5 and 6 are appropriate arrangements that would ameliorate the adverse effect of working through breaks, lunch periods, or after assigned duty hours. *See id.* at 5-6. In support of this assertion, the Union submits housekeeper statements alleging that housekeepers are working through their lunch breaks, and that housekeepers are working "off [the] clock[.]" in order to finish their work assignments. Housekeeper Statements at 10, 15.

### 2. Agency

The Agency claims only, and without elaboration, that Proposals 5 and 6 affect management's right to assign work, and that Proposal 6 affects management's right to determine its budget. SOP at 1. Further, the Agency contends that Proposals 5 and 6 are not appropriate arrangements.<sup>11</sup> *Id.* at 2.

## C. Analysis and Conclusions

As the Union did not respond to the Agency's claim that Proposals 5 and 6 affect management's right to assign work, or to the Agency's claim that Proposal 6 affects management's right to determine its budget, the Union concedes that the proposals affect those rights. *See, e.g., NWSEO*, 63 FLRA at 452.

With regard to whether Proposals 5 and 6 are arrangements, Proposals 5 and 6 would mitigate the adverse effect of housekeepers who find it necessary to work through their breaks or lunch periods in order to complete their assigned work. *Cf. Overseas Educ. Ass'n*, 39 FLRA 153, 163 (1991) (teachers assigned

11. Additionally, the Agency argues that Proposals 5 and 6 do not constitute procedures. SOP at 1-2. As the Union does not claim that Proposals 5 and 6 are procedures, we do not address this argument further.

to monitor lunchroom adversely affected by exercise of right to assign work). Further, the proposals are tailored to benefit those housekeepers who are required to clean an additional number of rooms. *See Prison Locals*, 64 FLRA at 730. Thus, we find that Proposals 5 and 6 constitute arrangements.

With regard to whether the arrangements are appropriate, Proposals 5 and 6 would benefit housekeepers by ensuring that housekeepers would be compensated for overtime work that housekeepers claim to not receive because, they assert, they are working “off [the] clock[.]” Housekeeper Statements at 15. *Cf. NFFE, Local 2192*, 59 FLRA at 871 (increase in overtime opportunities a benefit to employees). The Agency does not address these allegations or dispute the Union’s claim that the proposals would benefit housekeepers as the Union claims. *See SOP* at 1-2.

Consistent with the foregoing, the proposals require only that the Agency provide overtime or compensatory time for work already assigned. Viewed as such, the Agency does not explain how Proposals 5 and 6 excessively interfere with management’s rights to assign work and determine its budget. With particular regard to the right to determine the Agency’s budget, the Agency does not explain how the proposal “prescribes either the particular programs to be included in the Agency’s budget, or the amount to be allocated in the budget,” and does not “make[] a substantial demonstration that an increase in costs is significant and unavoidable and is not offset by compensating benefits[.]” *AFGE, Locals 3807 & 3824*, 55 FLRA 1, 4 (1998).

Weighing the benefits to employees against the unexplained and undemonstrated burdens on management, we find that Proposals 5 and 6 do not excessively interfere with the Agency’s right to assign work, and that Proposal 6 does not excessively interfere with the Agency’s right to determine its budget. Accordingly, we find that Proposals 5 and 6 are within the duty to bargain as appropriate arrangements under § 7106(b)(3) of the Statute.

## VII. Proposal 7

To the maximum extent possible, should there be a time that additional rooms be assigned to the Housekeepers due to an unforeseen emergency, the parties agree that

the rooms will be assigned on a fair and equitable basis.

Petition at 6; Record at 5.

### A. Meaning of the Proposal

The parties agree that Proposal 7 would require the Agency to assign additional work assignments fairly and equitably. *Id.* at 5. The Union stated that “unforeseen emergency” means when employees call in sick. *Id.* The Union stated that the proposal pertains to the distribution of work assignments among employees on regular schedules, flex schedules, and employees who are work leaders. *See id.* The Agency explained that employees on flex schedules work four days a week while employees on a regular schedule work five days a week. *Id.* at 6. The Agency stated that a work leader is a bargaining-unit employee who works within the quality control staff. *Id.*

### B. Positions of the Parties

#### 1. Union

The Union asserts that additional work is not being assigned evenly between flex employees, regular employees, and work leaders. *Id.* at 5. In this regard, the Union claims that “[f]lex employees are not being held to the same standards” as the regular employees when the flex employees are given additional work assignments. Petition at 6. Further, the Union asserts that not all employees are “pulling their fair share of work requirements.” *Id.* In support of these assertions, housekeepers assert that the Agency does not manage housekeepers equitably. *See Housekeeper Statements* at 1 (alleging “favoritism” for some types of employees over others), 6 (alleging unfair inspection standards), 7 (alleging that the Agency assigns some employees more work than others).

The Union contends that Proposal 7 is an appropriate arrangement that seeks to mitigate the adverse effects of the Agency’s allegedly inequitable assignment of work. Petition at 6.

#### 2. Agency

As set forth above, the Agency contends only, and without elaboration, that “all eight proposals” are “inconsistent” with the right to assign work, and that “none of the eight proposals are appropriate arrangements[.]” *SOP* at 1-2.

### C. Analysis and Conclusions

As the Union did not respond to the Agency's claim that Proposal 7 affects management's right to assign work, the Union concedes that the proposal affects that right. *See, e.g., NWSEO*, 63 FLRA at 452.

With regard to whether the proposal is an arrangement, the proposal would mitigate the adverse effects of inequitable assignment of work by ensuring that extra work assignments would be distributed to housekeepers on a fair and equitable basis. In addition, consistent with precedent, Proposal 7 is sufficiently tailored to benefit those housekeepers who are adversely affected by the Agency's assignment of work in such circumstances. *See Prison Locals*, 64 FLRA at 730. In this regard, the Authority has found similar proposals to be arrangements. *See AFGE, Local 3258*, 48 FLRA 232, 235-36 (1993) (Member Armendariz concurring) (proposal that workload adjustment be redistributed in a fair and equitable manner). Based on the foregoing, we find that Proposal 7 is an arrangement.

With regard to whether the arrangement is appropriate, Proposal 7 would benefit employees by ensuring them that work will be distributed on a fair and equitable basis. *See id.* The housekeepers' statements that the Agency does not treat them fairly support the Union's claim that the proposal would benefit housekeepers in this regard. *See Housekeeper Statements* at 1, 6-7. The Agency does not address the housekeepers' statements, and does not dispute that the proposal would benefit employees as the Union claims. *See SOP* at 1-2. Moreover, nothing in the Agency's SOP, and nothing in the record, explains the extent to which Proposal 7 would burden the Agency's right to assign work. Even assuming that Proposal 7 would impose some administrative burden on the Agency to ensure that supervisors assign work in a fair and equitable basis, the Authority has found such a burden to be minimal. *See AFGE, Local 3258*, 48 FLRA at 236. Therefore, we find that the benefits to employees outweigh the burdens on management and thus, that Proposal 7 is within the duty to bargain as an appropriate arrangement under § 7106(b)(3) of the Statute.

### VIII. Proposal 8

Employees are expected to perform additional rooms assigned. However, an employee shall not be required to perform

the additional work if it will impair his/her health.

Record at 6.

#### A. Meaning of the Proposal

The parties agree that the proposal seeks to prevent the Agency from assigning additional work to an employee if that employee provides medical documentation indicating that such additional work would impair his or her health. *Id.*

#### B. Positions of the Parties

##### 1. Union

The Union contends that Proposal 8 is an appropriate arrangement that would mitigate adverse effects that result from the Agency assigning an increased workload to housekeepers with medical conditions. Petition at 6.

##### 2. Agency

As set forth above, the Agency contends only, and without elaboration, that "all eight proposals" are "inconsistent" with the right to assign work, and that "none of the eight proposals are appropriate arrangements[.]" SOP at 1-2.

#### C. Analysis and Conclusions

As the Union did not respond to the Agency's claim that Proposal 8 affects management's right to assign work, the Union concedes that the proposal affects that right. *See, e.g., NWSEO*, 63 FLRA at 452.

With regard to whether the proposal is an arrangement, the proposal would mitigate the adverse effects of housekeepers being assigned an increased workload in situations where that increased workload would impair their health. In addition, consistent with precedent, Proposal 8 is sufficiently tailored to benefit those housekeepers who experience these adverse effects. *See Prison Locals*, 64 FLRA at 730. In this regard, consistent with precedent, the Authority has held that proposals that would prohibit the assignment of duties to employees who are unable to perform them constitute arrangements. *See, e.g., NFFE, Local 405*, 42 FLRA 1112, 1136-40 (1991) (*Local 405*) (proposal that employees not be required to work overtime if unable to do so for



medical reasons). Based on the foregoing, we find that Proposal 8 is an arrangement.

With regard to whether the arrangement is appropriate, Proposal 8 would benefit employees by reducing work-related health problems. *See Local 405*, 42 FLRA at 1138-39. Further, the Agency does not explain the extent to which Proposal 8 would burden the Agency's right to assign work. *See* SOP at 1-2. Moreover, any burden would be reduced by the fact that housekeepers would be required to produce medical documentation demonstrating that performing the additional work would impair their health. *See Local 405*, 42 FLRA at 1139. Balancing the benefits to housekeepers and the burden to the Agency, we find that Proposal 8 is within the duty to bargain as an appropriate arrangement under § 7106(b)(3) of the Statute.

## IX. Order

The Agency shall, upon request, or as otherwise agreed to by the parties, negotiate over the proposals.<sup>12</sup>

## Member Beck, Dissenting in Part:

I agree with my colleagues that proposals 1, 5, 6, 7, and 8 are negotiable. I do not agree, however, that proposals 2, 3, and 4 are negotiable because they do not constitute appropriate arrangements.

Proposal 2, unlike Proposal 1, is too vague to constitute an appropriate arrangement. *AFGE, Dep't of Educ. Council of AFGE Locals*, 38 FLRA 1068, 1093 (1990) (proposal that is not sufficiently specific and delimited is not sufficiently tailored). The record does not establish that the Agency has requested or required the housekeepers to forgo breaks or lunch periods.<sup>13</sup> The Agency also asserts that it has complied with AFI 34-246 and the Housekeeping Productivity Standards established in accord with the Instruction. Agency SOP at 2 & Attach. 3.<sup>14</sup> As such, the proposal is not sufficiently tailored and does not mitigate the adverse effects that flow from the exercise of management's right to assign work. *PASS*, 60 FLRA 609, 612 (2005) (citing *U.S. Dep't of the Treasury, Office of the Chief Counsel, IRS v. FLRA*, 960 F.2d 1068, 1073 (D.C. Cir. 1992) (*Dep't of the Treasury*)).

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1. Petition, Attach. 8 (dated August 30, 2004) indicates that employees were instructed to not work through lunch and breaks.

2. I disagree with my colleagues' reliance on *U.S. Dep't of the Interior, Minerals Mgmt. Serv., New Orleans, La. v. FLRA*, 969 F.2d 1158, 1162-63 (D.C. Cir. 1992) (*Dep't of the Interior*). Majority Op. at 5, n.6. The Majority implies that Proposal 2 mitigates adverse effects that may occur should the Agency fail to comply with AFI 34-246 at some unspecified time in the future. In *Dep't of the Interior*, the Court noted that an Agency may be required to negotiate over proposals that will mitigate anticipated adverse effects "before" the Agency implements a pending policy. *Id.* at 1163 (citing *Dep't of the Treasury*, 960 F.2d 1068, 1072 (D.C. Cir. 1992)) (agency required to negotiate over a union proposal that management furnish evaluative recordations to employees before using them in personnel decisions). However, as in the record before us, the court found that the mere possibility that an Agency may not comply or violate a policy in the future is not sufficient to demonstrate that a proposal mitigates adverse effects (that may or may not occur). Specifically, the court determined that the proposal at issue in that case (permitting employee challenges to any action stemming from the implementation of an Agency drug program) was not sufficiently tailored because it permitted a "plethora of challenges" that went beyond the actual adverse effects suffered by any employee. *Dep't of the Interior*, 969 F.2d at 1162.

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12. In finding the proposals within the duty to bargain, we make no judgments as to their merits.

Furthermore, the housekeepers have statutory and regulatory protections (i.e., Fair Labor Standards Act) that provide for breaks and lunch periods and corresponding remedies for violations of those provisions.

Proposal 3 restricts the Agency's ability to establish and maintain specific performance standards pertaining to work quality. The Authority has found that similar proposals (that restrict an agency's ability to determine performance standards) directly interfere with management's rights to direct employees and assign work. *NFFE, Local 1974*, 46 FLRA 1170, 1172 (1993). The proposal in *NFFE, Local 1974* was found to be an appropriate arrangement because it suggested that employees should be evaluated only "on matters over which they have control" and to make allowance "for matters which are outside their control." 46 FLRA at 1173.

Unlike the proposal in *NFFE, Local 1974*, Proposal 3 does not suggest any objective methodology that could be used to hold an employee accountable for quality if the Agency exercises its right to increase the number of assigned rooms. The proposal requires the Agency to adapt its performance expectations to some unspecified degree -- essentially at the sole discretion of the employee. In other words, if an employee's workload is increased by ten percent, or even one room, the employee is inoculated from discipline even if his/her work quality suffers a disproportionate decline of 70, 80, or 90 percent. That is not a sufficiently tailored arrangement. *See AFGI, Local 3172*, 35 FLRA 1276, 1290 (1990) (a proposal that does not demonstrate how quality will be measured, used, or defined is not sufficiently tailored to be considered an appropriate arrangement).

Similarly, Proposal 3's negative impact to the right to assign work is disproportionate to any benefits derived from the arrangement. *See also NTEU*, 40 FLRA 570, 574, 577 (1991).

Proposal 4 is not an appropriate arrangement because it mandates that the Agency "will attempt to fill the vacancy in a reasonable amount of time[.]" Petition at 5; Record at 4. The proposal not only mandates that the Agency must fill the position, but that it must do so within a particular time frame. Telling the Agency that it will fill a vacancy and, as in this case, when it will fill the vacancy, excessively interferes with management's right to determine staffing levels. *Nat'l Weather Serv. Employees Org.*, 61 FLRA 241, 243 (2005).

Accordingly, I would conclude that proposals 2, 3, and 4 are not negotiable.