In the Matter of

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PHILADELPHIA REGIONAL OFFICE
PHILADELPHIA, PENNSYLVANIA

and

LOCAL 2032, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 10 FSIP 67

ARBITRATOR'S OPINION AND DECISION

Local 2032, American Federation of Government Employees (AFGE), AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of Housing and Urban Development, Philadelphia Regional Office (PRO), Philadelphia, Pennsylvania (Employer or HUD).

After an investigation of the request for assistance, which arises from bargaining over the Employer's decision to relocate approximately 55 unit employees from the 12th floor to newly-acquired space on the 10th floor of the Wanamaker Building in downtown Philadelphia, the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on May 20, 2010, a mediation-arbitration proceeding was held in Philadelphia, Pennsylvania, with representatives of the parties. During the mediation phase, the parties discussed alternative approaches but were unable to voluntarily resolve the outstanding issues. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and post-conference statements of position.[1/]

1/ Email messages from both sides received after the record was closed on May 28, 2010, have not been considered.

BACKGROUND

The Employer's mission is to increase home ownership, support community development and increase access to affordable housing free from discrimination. The Union represents 260 professional and non-professional employees in the PRO who are part of a nationwide consolidated bargaining unit consisting of approximately 6,300. At the national level, the parties are covered by a master collective-bargaining agreement (MCBA) that was implemented in 1996 and remains in effect by virtue of an annual rollover provision. A national level telework agreement, negotiated in 1998, and National Supplement 69, negotiated in 2006, are two of about 120 supplemental agreements that have been appended to the MCBA.[2/] In addition, the local parties agreed to a Memorandum of Understanding (MOU) on November 13, 2008, addressing a previous realignment of the PRO involving some of the same employees and HUD divisions involved in the instant dispute.

ISSUES AT IMPASSE

The parties disagree over: (1) The size and location of the training room; (2) Whether management should permit affected employees to telework 3 days per week and share workstations; and (3) Whether management should permit affected employees to work out of the Wilmington, Delaware, and Camden, New Jersey, satellite HUD offices.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union's final offer on the issues at impasse is as follows:

> 1. That a bigger training room (accommodating at least 150) be located in the space currently occupied by the F[air]H[ousing]/E[qual]O[pportunity] division,

---

2/ On May 11, 2010, the Deputy Secretary of HUD announced "the development of a new and comprehensive Departmental Telework Policy." The announcement stated that "all non-bargaining unit employees will need to reapply to participate in the telework program within 30 days. Bargaining unit employees may continue to work under their current agreement until this policy is negotiated with the Unions."

if management moves said division. If FHEO remains in its currently negotiated space, the training room can be located on the 10th floor "new" space.

2. That before management proposes to move bargaining unit employees due to space considerations, they solicit volunteers: (1) to share workstations (hoteling), (2) increase teleworking opportunities, and (3) should the program area have responsibilities in Camden, New Jersey or Wilmington, Delaware and space exists in those offices, work from those remote locations. Only where eligible employee volunteer numbers fall short of the needed space, will management expend additional resources in acquiring space and relocating and inconveniencing bargaining staff.

The Union questions management's need to acquire new space on the 10th floor that costs approximately $350,000 annually. In the Union's view, the Employer's justifications for relocating various HUD divisions are simply not supported by the facts. For example, the Employer claims that it must relocate the FHEO division to make more room for contract employees but the parties' tour of the contractor space during mediation demonstrated that "only about half the space is currently being used." Throughout the past 6 years, the Employer has reached agreements with the Union regarding the relocation of unit employees in the building but has repeatedly violated those agreements, asserting that "space is a management right" that essentially permits it to do whatever it wants.[3/] The Employer also repeatedly has violated the Union's statutory and contractual rights by, among other things, acquiring the new 10th floor space without notice and ignoring National Supplement 69 concerning changes in space occupied by unit employees.

It is the Union, not the Agency, "which has been legitimately concerned with cost and has sought to save both the Agency and the taxpayer's money." In this regard, the Union's membership "voted to share cubicles if they could get more

---

3/ The Union cites American Federation of Government Employees, Local 1698 and Naval Aviation Supply Office, Philadelphia, 38 FLRA 1016 (1990) and American Federation of Government Employees v. FLRA, 785 F.2d 333 (D.C. Cir 1986) to support its belief that the Employer has "violated applicable Federal law in its invocation of management rights and management discretion."

telework" but management dismissed this cost-saving proposal by stating that the matter is within its sole discretion. In addition, permitting employees whose program areas have responsibilities in Camden, New Jersey or Wilmington, Delaware to work from those remote locations also could avoid the need for acquiring new space and preserve the terms of the MOU the Union reached with the Employer that management ignored "almost as soon as the ink [was] dry." In its view, the Employer should be ordered to "live up to the placement of the divisions, here specifically FHEO, until such time as it produces credible, factual evidence to the Union on the need for a change . . . a change not born out of their own inability to plan or follow existing policy." Finally, if management moves the FHEO division to the 10th floor, the training room should be placed in the 12th floor space FHEO currently occupies. Contrary to the Employer's position, the parties' site visit to that area during mediation showed that all of the columns (except for one) and fire wells were along the walls and not protruding excessively. If the Employer is ordered by the arbitrator to leave FHEO in its currently negotiated space on the 12th floor, however, the Union "would be amenable to moving the training room to the 10th floor area."

2. The Employer's Position

On the training room issue, the Employer proposes to "construct a conference/training room on the 10th floor. The size of the conference/training room will be approximately 2,200 square feet." For the reasons provided below, it alleges that the Union's proposals on telework and permitting affected employees to work out of the Camden, New Jersey and Wilmington, Delaware satellite offices are outside its duty to bargain. The Employer also proposes the following wording:

> Affected employees who are approved for telework under the existing telework policy may use space in the Camden, New Jersey and Wilmington, Delaware offices as an alternate work site for telework provided such space is available. Employees approved for telework shall be responsible for obtaining the necessary equipment to work at these alternate work sites under the existing telework policy. If such equipment is not available, employees may not use these offices as alternate work sites.

The Employer agrees that "a larger conference/training room is desirable," but the 12th floor space proposed by the Union

does not provide adequate flexibility "to size and shape the room appropriately" and "is obstructed by too many columns . . . a critical factor in the design process for a large conference room." Its proposal, on the other hand, incorporates management's estimate that the room should be approximately 2,200 square feet, and meets all of the other necessary requirements.

The Union's final offer, which essentially would require that employees affected by management's decision to acquire new space be permitted to telework 3 days per week and share workstations, "is not negotiable because it is governed by the existing [MCBA]." In this regard, the parties at the national level negotiated a telework policy that is part of the MCBA, and Article 34 of the MCBA "expressly disallows the parties at the local level from altering [its] terms." While the existing national policy permits employees to telework up to 3 days per week, unlike the Union's proposal, it preserves supervisory discretion to determine if that amount of telework "is feasible for any individual employee." Therefore, the Union's proposal is not negotiable "because it is covered by the existing [MCBA]." Moreover, the sharing of workstations is not permitted under Article 45 of the MCBA, which obligates management to provide workstations for 100 percent of its positions. The provision "clearly benefits employees, and the Agency is not willing to waive it."

The portion of the Union's final offer that would allow affected employees to work out of the Wilmington, Delaware and Camden, New Jersey satellite offices infringes on management's right to determine the duty station of its employees.[4/] Permitting employees to work 5 days per week in offices other than Philadelphia, where their units are located, without changing their official duty station administratively "would merely be a ruse to hide the fact that the employees are in fact stationed in Camden and Wilmington," and is inconsistent with the Employer's determination that the affected employees' duty station is in Philadelphia. On its merits, this portion of the Union's final offer is "clearly impractical." Employees would be separated from the resources of their units and their supervisors, technical experts, and support staff. Even if the

---

4/ The Employer cites American Federation of Government Employees, Local 3509 and U.S. Department of Health and Human Services, Social Security Administration, Greenwood, South Carolina, 46 FLRA 1590 (1993) in support of its position.

Employer permitted employees to work full time in those satellite offices the need for additional space in Philadelphia would not be alleviated. Nevertheless, the Employer agreed during mediation to allow affected employees to use the Camden and Wilmington offices as alternate worksite locations under the existing telework policies provided sufficient space was available, and the Union concurred. Its final offer on the issue is consistent with the understanding the parties' reached during those discussions, and should be adopted by the Arbitrator.

CONCLUSION

Having carefully considered the arguments and evidence presented in this case, I conclude that the impasse should be resolved on the basis of the Employer's final offers. Although the Union strongly disagrees with the Employer's decision to acquire additional space on the 10th floor of the PRO, that decision involves the exercise of a management right. Moreover, based on the Employer's arguable claims that the Union's proposals to expand existing telework practices and permit employees to work from the satellite offices are not within its duty to bargain, I do not have the authority to impose them even if they had merit. Given these legal limitations, I am persuaded that permitting employees who are approved for telework under the existing telework policy to use the Camden and Wilmington offices as alternate work sites for telework, if space is available, provides a reasonable approach that addresses the Union's concerns. On the training room issue, I conclude that the 12th floor area proposed by the Union is less desirable that a 10th floor location, provided that the Employer uses space that avoids, as much as possible, any columns or other obstructions. Accordingly, I shall order the adoption of the Employer's proposal with the addition of that proviso.

DECISION

The parties shall adopt the following wording to resolve their impasse:

> The Agency will construct a conference/training room on the 10th floor that avoids, as much as possible, any columns or other obstructions. The size of the conference/training room will be approximately 2,200 square feet.

Affected employees who are approved for telework under the existing telework policy may use space in the Camden, New Jersey and Wilmington, Delaware offices as an alternate work site for telework provided such space is available. Employees approved for telework shall be responsible for obtaining the necessary equipment to work at these alternate work sites under the existing telework policy. If such equipment is not available, employees may not use these offices as alternate work sites.

Marvin E. Johnson
Arbitrator

June 29, 2010
Silver Spring, Maryland