

In the Matter of

DEPARTMENT OF THE AIR FORCE  
OFFUTT AIR FORCE BASE  
EHLING BERGQUIST CLINIC  
BELLEVUE, NEBRASKA

and

LOCAL 1486, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 73

ARBITRATOR'S OPINION AND DECISION

Local 1486, 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 the Air Force, Offutt Air Force Base (AFB), Ehrling Bergquist Clinic (Clinic), Bellevue, Nebraska (Employer).

After an investigation of the request for assistance, which arises from mid-term bargaining over the Employer's decision to create a new conference room at the Clinic,<sup>1/</sup> the Panel directed the parties to mediation-arbitration with the undersigned, Panel Chairman Mary E. Jacksteit. I conducted a joint preliminary conference call with the parties on August 11, 2010, and a mediation-arbitration proceeding at Offutt Air Force on August 30 and 31, 2011. During the mediation phase, settlement options were explored but a voluntary agreement was not reached. In reaching this decision, the entire record in this matter has been considered, including the parties' final offers and pre-hearing statements of position.

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<sup>1/</sup> The Employer implemented its decision on April 11, 2011, prior to the completion of bargaining. To create the conference room, the Employer relocated the Union Vice President to a different office, turned that space into an employee break room, and turned the existing employee break room into a conference room.

## BACKGROUND

The Ehrling Bergquist Clinic's primary mission is to train Air Force family medicine specialists. It offers a range of outpatient services to about 7,200 patients coming from active duty and retired families.<sup>2/</sup> The Union's bargaining unit consists of approximately 1,000 Wage Grade and professional and non-professional General Schedule employees including the staff at the Clinic. The parties are governed by the terms of a 3-year master collective bargaining agreement (MCBA) that originally was to have expired on December 20, 2005. Pursuant to Section 2 of Article 38, Duration of the Agreement, the MCBA was extended for a second 3-year term and the parties have continued to live under the terms and conditions of their current MCBA while they negotiate a successor agreement. The Pediatrics Unit, where this case arises, has about 20 staff members.

This impasse results from a disagreement between the Union and management over an Employer decision to move the Pediatrics Unit employee break and lunch room into the office (Room 1E24) occupied by Union Vice President Julie Sheehan, and turn the longstanding location of the break/lunch room into a conference room (removing the previous furnishings and installing a conference table and chairs). To effectuate the break/lunch room move Ms. Sheehan was required to relocate to a smaller office.

For at least 20 years Room 1E18 has served as the break/lunch room for the Pediatrics Unit. Sparked by the desire of the Medical Director to have a space other than his office for thrice weekly, 1-hour instructional meetings with Residents (three to four at any one time),<sup>3/</sup> the decision was made to turn 1E18 into a conference room and create a new break/lunch room in Room 1E24.

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2/ Offutt AFB is the host of the 55<sup>th</sup> Wing, the largest wing of the Air Force's Air Combat Command. The base is also home to a number of other significant associated units, including the United States Strategic Command Headquarters, the Air Force Weather Agency and the Defense Finance and Accounting Service Omaha location.

3/ A slight increase in the number of Residents (from two to four, to three to five) and the addition of another provider (doctor) were described as contributing to this need.

Room 1E18, the former break room and now conference room, is comparatively large at 280 square feet (comparative because most offices in the Clinic are small). Although the need is rare it can accommodate the whole staff. As a break/lunch room it was furnished with a couch and comfortable chairs (well worn, it appears) along with a refrigerator, microwave, shelves for a snack supply and a sink. There was no table. With a small window high on the wall there is a glimpse of the outdoors and a bit of natural light. The location of the room puts it a little away from patient populated hallways.

The room chosen as the new break room (1E24) is about one-third the size of its predecessor, and has the same appliances and the snack supply, but no sink (and no sink capability). The seating is two to three straight-back chairs that go with a small table appropriate for that number. The furnishings are "tight" enough that a person cannot access the microwave, etc. without disturbing anyone sitting at the table. The floor is linoleum unlike in Room 1E18. The room sits on a hall with regular patient traffic. Employees are free to take their lunches down the hall to the conference room now in Room 1E18 if the room is not in use. By the testimony offered, this is not a particularly common occurrence. The other choices are to eat out, or at one's desk.

As indicated, Room 1E24 at the time of the change was assigned to Julie Sheehan. Ms. Sheehan, through an agreed upon past practice had been afforded a private office (these are rare) so that she could, in addition to her nursing responsibilities, conduct Union representation activities in a confidential space, avoiding her using time to travel to the Union office on Offutt AFB a few miles away. To make way for the relocated break room Ms. Sheehan was ordered to move to Room 1E12a, a smaller private office with fewer chairs and less room for storage.<sup>4/</sup>

On the same floor as the Pediatrics Unit are other medical units some of which have designated conference rooms that are within a few minutes walk of the Pediatrics Unit. These other

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<sup>4/</sup> The Union put on evidence concerning conditions of the room (size, noise, ventilation, and lighting) which it alleges make it a difficult and even demeaning work place. The room has been used as an office by other Clinic staff (one and sometimes two people). The Arbitrator offers no opinion about these conditions since it is unnecessary for this decision.

units also have break rooms, some quite small and none as large as the former Pediatrics break room. It appears not to be the practice of either management or staff to utilize facilities in the other units though this is officially permissible. Conference room use is handled by an open on-line reservation system.

Pediatrics Unit staff have an hour for lunch and fairly recently the unit began closing from 11:30 a.m. - 12:30 p.m. (no new entrants during that time but patients already in the Clinic complete their visit). There is no cafeteria inside the Clinic (though there was one when the facility was a hospital, up to 7 or so years ago). Because of the Clinic's location the Offutt AFB food court is not an immediate option for eating. The Arbitrator's impression is that some staff regularly go out for lunch and they typically patronize fast food eateries in the vicinity of the Clinic or in at least one case, go home if they live nearby.

#### ISSUES AT IMPASSE

The parties disagree over: (1) the location of the employee lunch and break room; and (2) the location where Ms. Sheehan will conduct Union representational activities within the Clinic.

#### POSITIONS OF THE PARTIES

##### 1. The Union's Position

The Union's proposal submitted to arbitration is as follows:

Issue 1 - Employee Break/Lunch Room.

The former employee break room/lunch room 1E18 will be converted back to its former capacity as the Pediatric employees' break/lunch room. The room will be open for use by employees as previously available except that with 1 week's notice the room may be reserved for training and lunch and learn and/or other special events.

Issue 2 - Office Space for Ms. Sheehan

The Union proposes that Room 1E24 (or equivalent space) be converted back to a dual office space for Ms. Sheehan.

The Union's rationale is that Ehrling Bergquist Clinic Pediatric bargaining unit employees have long enjoyed an employee break/lunch room that provided sufficient space for their breaks and lunch. The Agency has directed that this break/lunch room be replaced with a room that is insufficient in size and accommodations for the approximately 20 employees for which it is intended.

With regard to the second issue, Room 1E24, now being used as the break/lunch room, was previously assigned as a dual purpose office space for Ms. Sheehan, Vice President, AFGE Local 1486. The space was used for performance of official Agency functions and, by mutual agreement, a location for completion of Union representation functions. This arrangement was the result of a mutual understanding that with sufficient privacy and space for such functions, the parties could eliminate the wasting of time that had occurred when Union representatives were required to travel from the Clinic to the Union office on Offutt AFB to perform representation functions.

## 2. The Employer's Position

The Employer's proposal submitted to arbitration is as follows:

1. The Pediatric Breakroom in Room 1E24 will continue to exist in the present form.
2. The training room in the Pediatric Clinic (Room 1E18) will be reserved as an employee lunchroom from 11:30 to 13:00 unless notice of another event is provided in advance.
3. Ms. Julie Sheehan will continue to be assigned to Room 1E12a to meet with bargaining unit employees as approved by management in compliance with the labor agreement.

The Employer maintains that there was a mission-related need to turn Room 1E18 into a conference room for instruction, training and other purposes; and that Room 1E24 is well suited as a break/lunch room, and has been the subject of no complaints from employees. As for Ms. Sheehan's new work space, it is

fully adequate for the continued conduct of her official duties and Union representational activities. The Employer offers its proposal as the best utilization of space.

### CONCLUSION

The Agency initiated the changes that led to this impasse and thus, consistent with longstanding Panel practice, has the burden of justifying a need for the change and demonstrating through evidence the substantive reasons it offers.

After carefully considering the evidence, viewing the spaces at issue, and weighing the arguments presented, the Arbitrator concludes that the Agency has not justified changing in significant ways a longstanding employee amenity, the employee break/lunch room. Because the sole reason offered for moving Ms. Sheehan's office (and the site of her Union representational duties) was to make way for a relocated break room, she should be returned to Room 1E24.

Comparing (and viewing) the current and former break room it is impossible not to conclude that the former space offered considerably different and enhanced amenities compared to the new room. It provided enough space for several - even many - employees to take breaks and eat together. It was a place not only to retrieve and eat food, but also to relax in a comfortable setting. The new room accommodates only a few people. It lacks privacy. Use of the room's appliances are constricted when people are seated. The furnishings are functional, not comfortable.

The new set-up undoubtedly works well for in-and-out access to snacks and lunches but not as a place to sit with ease on a break, or while having lunch with others. It seems the Agency regarded this functionality of the room - socializing, resting, relaxing - as unimportant. But this has been a feature of the Pediatrics break/lunch room for a very long time. No evidence of any kind was offered to show that in fact the room has not been used this way, or was underutilized in any respect.<sup>5/</sup>

Given the substantial change in the nature of the break/lunch room, it was up to the Employer to establish a sufficiently strong justification. What was presented was not

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5/ The Employer spent some time talking about the Sunshine Club snacks. These were available in the old break/lunch room as they are in the new one.

persuasive to this Arbitrator. Repeatedly the Employer explained that the instigation of this change was the Medical Director's wish for a larger space for his 3 hours a week of Resident instruction. The notion of a conference room in every Unit seems to have arisen only then, and not because of any pressing need. In fact, there is reason to imagine that Resident meetings can be accommodated in Room 1E18 restored as a lunch/break room, if other locations are not preferred. Beyond these meetings, the need is even more thin.

The most frequently cited other rationale for turning 1E18 into a conference room is accommodating outside vendors offering "lunch and learns" for Unit staff. This happens perhaps once every 3 weeks. But these functions have in fact been held in the employee lunch/break room for years (with everyone coming in to take advantage of the free food). The only "problem" has been the lack of a table. It did not require shifting the use of three rooms, moving Ms. Sheehan's office and reducing the break/lunch space by two-thirds to meet that need especially when the Arbitrator assumes these are not even official "on-the-clock" events.<sup>6/</sup>

Other than the described Resident instruction and "lunch and learns" no other specific regular use of the new conference room was described. There is nothing to indicate that whatever other uses there are cannot continue to be handled as they were before the changes made to Room 1E18. It was not problems arising with these other uses that led the Agency to fix its mind on a conference room.

Concluding that the break/lunch room should be returned to Room 1E18,<sup>7/</sup> the Arbitrator has no other basis - and the Employer offered none - for leaving Ms. Sheehan in a new space rather than returning her to her former office.

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6/ The Arbitrator asked if it was ever suggested to vendors that they bring their own folding table, or that the Agency purchase an inexpensive folding table. The answer was "no."

7/ The location of the furniture that was formerly in the break room (other than the kitchen appliances moved to the new site) is unknown but the Arbitrator would be surprised if it is still around. In reinstating the break room the Employer needs to provide comfortable seating. It is possible that some sort of table can be included. These are matters the parties can discuss.

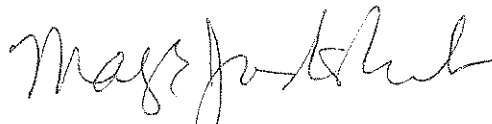
There is no reason to think that this decision leaves the Employer short of venues for meetings and trainings. The Clinic building reportedly has 15 to 25 conference rooms, several being a few minutes walk from the Pediatrics Unit and available to be reserved. The small office to which Ms. Sheehan was "bumped," which is now to be vacated, may in fact serve the Employer's need for a small meeting area for Resident instruction (with the desk removed).

DECISION

The parties shall adopt the following wording:

Room 1E18 will be returned to use as the employee break room/lunch room with continuation of the past practice of the room being available for "lunch and learn" and other special or training events.

Ms. Sheehan's office will be returned to Room 1E24 consistent with the parties past practice of permitting her to conduct Union representational activities in this space in addition to her official duties until or unless the parties agree to some other arrangement for the performance of Union representational activities in the Clinic.<sup>8/</sup>



Mary E. Jacksteit  
Arbitrator

September 15, 2011  
Takoma Park, Maryland

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<sup>8/</sup> As made clear to the parties, it is the Arbitrator's perception that their mutual interests would be best (and strongly) served by creating a dedicated Union office space in the Clinic eliminating the need for Ms. Sheehan (or any other Union officer) to make regular use of their work space for Union representation activity.