

66 FLRA No. 172

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL OF PRISON LOCALS 33
LOCAL 506
(Union)

and

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
COLEMAN, FLORIDA
(Agency)

0-NG-3126

DECISION AND ORDER
ON NEGOTIABILITY ISSUES

August 30, 2012

Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester, Member

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) and concerns the negotiability of five proposals relating to the Agency's decision to reduce the number of escort officers carrying firearms. The Agency filed a statement of position (SOP), to which the Union filed a response (response). The Agency did not file a reply to the Union's response.

For the reasons that follow, we find that Proposals 1-4 are outside the Agency's duty to bargain and that Proposal 5 is within the Agency's duty to bargain.

II. Background

The Agency is a prison with five facilities, including one facility for high-security prisoners. SOP at 2. Officers occasionally escort these prisoners to local hospitals for medical-related visits. *See id.* More than one officer usually escorts the prisoners, and one officer is responsible for directing prisoners through physical

contact. *Id.* at 3. The warden determined that, because of safety concerns, the officer physically directing prisoners could not carry a firearm during the escort trip. *Id.* Specifically, the warden was concerned that prisoners could take that officer's firearm and use it to harm the officers or other civilians. *Id.* The other officer(s), however, could carry a firearm during the escort trip. *Id.*

III. Proposal 1

A. Wording

Mobile Phone/GPS

The Agency will provide each officer on an escort trip with equipment which has [GPS] features and enables two-way communication with other officers, emergency response agencies, and FCC Coleman. The escort officers will be provided with the means to recharge the equipment while driving and while on location.

Record of Post-Petition Conference (Record)
at 2.

B. Meaning

The Union asserts that the proposal requires the Agency to give officers a reliable phone to use when escorting prisoners. *Id.* According to the Union, the proposal is intended to allow officers to contact emergency responders if they are ambushed and to enable officers to deviate from their original route if they encounter roadblocks. *Id.* The Union notes that the term "[GPS]" means "global positioning system" and the term "'FCC Coleman'" refers to a Federal Correctional Complex consisting of four institutions where the officers are stationed." *Id.* Additionally, "[t]he Agency agree[s] with the Union's explanation of the" proposal's intended meaning, operation, and impact. *Id.*

C. Positions of the Parties

1. Agency

The Agency contends that the proposal affects its right to determine internal security practices. SOP at 4-8. Specifically, the Agency argues that it has established a link between its security objective, namely protecting employees, physical property, and operations, and its policy of providing "only the Officer [i]n Charge (OIC) . . . with a telephone and/or a radio for communication" purposes. *Id.* at 6; *see also id.* at 5, 7. According to the Agency, its policy is in accordance with

its escort instructions.¹ *Id.* at 6. The Agency also claims that providing a communications device with GPS to all officers could increase the likelihood of a breach in the confidentiality of the escort team's movement times and routes. *Id.* Additionally, the Agency asserts that, because the proposal limits its ability to determine "the mode of communication used to accomplish its security function," the proposal interferes with its right to determine internal security practices. *Id.* at 7.

The Agency also argues that the proposal affects its rights to determine the methods and means and the technology of performing work. *Id.* at 8-10. Moreover, the Agency claims that its mission is to protect society from inmates and that requiring it to provide a phone with GPS capabilities to all officers would interfere with that mission. *Id.* at 8-9.

The Agency maintains that the proposal is not an appropriate arrangement under § 7106(b)(3) of the Statute. *Id.* at 10-13. The Agency asserts, for various reasons, that the proposal does not constitute an arrangement for employees adversely affected by the exercise of a management right. *Id.* at 11. Furthermore, the Agency claims that, even if the proposal is an arrangement, it is not appropriate because it excessively interferes with its ability to exercise its management rights. *Id.* at 11-13. Specifically, the Agency argues that the Union's alleged benefits are speculative and that it already provides officers with a means of communication to contact emergency responders and with pre-established routes approved by the operations lieutenant. *Id.* at 12. Moreover, according to the Agency, the proposal burdens its right to determine internal security practices because the decision concerning whether to supply a phone with GPS to every officer "rests solely with the [w]arden or his designee" and "relies on . . . security-related considerations[,] [namely] limiting the opportunities inmates have to eavesdrop on confidential communications." *Id.*

¹ The Agency's escort instructions provide:

The escort OIC will determine pre-established routes with the review/approval of the operational lieutenant. Unless there are unexpected situations, the pre-established routes will be followed. Changes to the pre-established routes must be approved by the operations lieutenant. The means of communication between the OIC and the institution (radio, cellular telephone, or calling card) will be established by the [w]arden or designee. For security reasons, movement times and routes shall remain confidential.

SOP at 6 (emphasis omitted) (quoting Exceptions, Attach. B, Escort Instructions BP-A0939 at 1).

2. Union

The Union claims that the Agency's contention that the proposal affects its right to determine internal security practices constitutes a bare assertion. Response at 5. The Union also contends that the Agency's escort instructions do not state that communications can occur only between the OIC and the Agency. *Id.* at 5-6. According to the Union, if the OIC was the only officer able to communicate with the Agency during emergencies, then the other officers and the public would be in jeopardy. *Id.* at 6. Moreover, the Union asserts that providing a communications device with GPS to all officers would assist them in deviating from a pre-established route when necessary and would not increase the likelihood of a breach in the confidentiality of the escort team's movement times and routes. *Id.*

The Union contends that the Agency's claim that the proposal would affect its methods and means, as well as technology, of performing work is a bare assertion because the Agency has not satisfied the standard required by the Authority. *Id.* at 8-9.

Furthermore, the Union asserts that the proposal constitutes an appropriate arrangement. *Id.* at 9-12. The Union argues that the proposal is an arrangement because it is related directly "to the number of escort officers carrying firearms." *Id.* at 10. In this regard, the Union claims that, by allowing only one officer to be armed on escort trips, the level of danger associated with these trips has risen for both officers and the general public because only one officer would be able to confront a potential threat. *Id.* The Union maintains that a potential threat would be an ambush while en route to a hospital. *Id.* at 10-11. According to the Union, providing a communications device with GPS to every officer would be beneficial because, during an ambush, an "unarmed officer would be able to call outside emergency responders and FCC Coleman for assistance" and to give their exact location, using GPS, to those responding while the armed officer is engaged in gun battle. *Id.* at 10; *see also id.* at 11 (indicating that, if an unarmed officer is dropped off at a hospital entrance with an inmate, and "an escape [is] attempted by outside means, the unarmed officer [would have] no means of communicating with the other officer, emergency responders, or FCC Coleman" unless the Agency gave that officer a phone with GPS capabilities). Moreover, the Union asserts that an ambush is likely to occur because inmates know the Agency's escort procedures and family members of inmates live in "areas where there are hospitals that the Agency" uses for inmate care. *Id.* at 11. Finally, the Union contends that the arrangement is appropriate because the benefits to the officers are not speculative and those benefits outweigh the alleged burden on the Agency. *Id.* at 11-12.

D. Analysis and Conclusions

1. Proposal 1 affects management's right to determine internal security practices.

The Agency claims that Proposal 1 affects its right to determine internal security practices under § 7106(a)(1) of the Statute. SOP at 4-8. The right to determine internal security practices includes the authority to determine the policies and practices that are part of an agency's plan to secure or safeguard its personnel, physical property, or operations against internal and external risks. *AFGE, Fed. Prison Council 33*, 51 FLRA 1112, 1115 (1996). The Authority has concluded that where an agency shows a link or reasonable connection between its security objective and a policy or practice designed to implement that objective, a proposal that conflicts with the policy or practice affects management's right under § 7106(a)(1). *E.g., AFGE, Local 723*, 66 FLRA 639, 643 (2012). Once a link has been established, the Authority will not review the merits of an agency's plan in the course of resolving a negotiability dispute. *E.g., AFGE, Local 2143*, 48 FLRA 41, 44 (1993) (Member Talkin concurring) (citations omitted). Further, the Authority has recognized that federal correctional facilities are different from other types of facilities and that, at a correctional facility, internal security practices are of paramount importance. *AFGE, Local 171, Council of Prison Locals 33*, 64 FLRA 275, 277 (2009) (*Local 171*).

Here, the warden, in accordance with the Agency's escort instructions, has determined that, during an escort trip, only an OIC should be "provided with a telephone and/or a radio for communication" purposes. *See* SOP at 6 (indicating that the instructions provide that "[t]he means of communication between the OIC and the institution (radio, cellular telephone, or calling card) will be established by the [w]arden or designee") (emphasis omitted)). The Agency has decided to provide only the OIC with such equipment to reduce the risk of a breach in the confidentiality of the escort team's movement times and routes. *Id.* Moreover, the Agency has decided that allowing every officer on an escort trip to have a communications device with GPS would pose a security risk because movement times and routes are confidential. *Id.* Consistent with Authority precedent, we find that the Agency has established a reasonable link between its policy of providing only the OIC with a communications device and its internal security objectives. *See Nat'l Air Traffic Controllers Ass'n*, 64 FLRA 161, 163 (2009) (*NATCA*) (finding that the agency established a link between its objectives of securing or safeguarding its personnel, property, or operations and its practice of prohibiting employees from carrying wireless

communication devices while on duty in operational areas when the agency demonstrated that prohibiting employees from carrying and using such devices prevented the disruption of air traffic communications).

The Union's arguments do not lead to a different conclusion. In this regard, the Union contends that, if the OIC was the only officer able to communicate with the Agency during emergencies, then other officers and the public would be in jeopardy. Response at 6. Moreover, the Union asserts that providing a communications device with GPS to all officers would assist them in deviating from a pre-established route when necessary and would not increase the likelihood of a breach in the confidentiality of the escort team's movement times and routes. *Id.* These arguments concern the merits of the Agency's chosen policy. As noted above, the Authority does not review the merits of an agency's policy once it has established a reasonable link between its policy and its internal security objectives. *See AFGE, Local 3937*, 66 FLRA 393, 396 (2011) (*Local 3937*) (Member DuBester dissenting in part as to other matters); *AFGE, Local 221*, 64 FLRA 1153, 1157 (2010) (*Local 221*). Therefore, because the Agency has established a reasonable link between its policy and its internal security objectives, the Union's arguments challenging the merits of the Agency's policy are unavailing. *See Local 221*, 64 FLRA at 1157 (concluding that, while the union contended that the testing method proposed by the agency did not detect or prevent tuberculosis and that a blood test was more reliable, the Authority would not review the merits of the agency's testing policy because it had established a link between its policy and its expressed security concern); *Int'l Fed'n of Prof'l & Technical Eng'rs, Local 25*, 33 FLRA 304, 307 (1988) (*Local 25*) (finding that, although the union challenged the agency's determination that the new weapons policy was necessary to safeguard its installations, it would not review the agency's determination that its practice was necessary because it had established a link between its practice and its expressed security concern).

Moreover, by requiring the Agency to provide a communications device with GPS to every officer, the Union's proposal prohibits the Agency from providing only the OIC with a telephone or radio; as such, we find that it conflicts with the Agency's policy. *See* Record at 2 (noting that the proposal states that "[t]he Agency will provide each officer on an escort trip with equipment which has [GPS] features and enables two-way communication"). Accordingly, we find that Proposal 1 affects management's right to determine internal security practices under § 7106(a)(1) of the Statute. *See NTEU*, 53 FLRA 539, 581 (1997) (*NTEU I*) (finding that, because a provision required the agency to use an electronic access system to protect the security of its property and personnel, it affected management's right to

determine internal security practices under § 7106 of the Statute); *AFGE, Nat'l Border Patrol Council, Local 2544*, 46 FLRA 930, 959-60 (1992) (determining that, because the first sentence of the proposal required management to provide an intelligence officer with a secure phone line to ensure the security of the agency's communications, that sentence directly interfered with management's right to determine internal security practices).

2. Proposal 1 is not an appropriate arrangement.

The Union asserts that Proposal 1 is an appropriate arrangement. Response at 10. The test for determining whether a proposal is within the duty to bargain under § 7106(b)(3) is set out in *NAGE, Local R14-87*, 21 FLRA 24 (1986) (*KANG*). Under that test, the Authority initially determines whether a proposal is intended to be an "arrangement" for employees adversely affected by the exercise of a management right. An arrangement must seek to mitigate adverse effects "flowing from the exercise of a protected management right." *U.S. Dep't of the Treasury, Office of the Chief Counsel, Internal Revenue Serv. v. FLRA*, 960 F.2d 1068, 1073 (D.C. Cir. 1992). To establish that a proposal is an arrangement, a union must identify the effects or reasonably foreseeable effects on employees that flow from the exercise of management's rights and how those effects are adverse. *KANG*, 21 FLRA at 31. Proposals that address speculative or hypothetical concerns do not constitute arrangements. *E.g.*, *NFFE, Local 2015*, 53 FLRA 967, 973 (1997). The alleged arrangement must also be sufficiently tailored to compensate or benefit employees suffering adverse effects attributable to the exercise of management's rights. *E.g.*, *AFGE, Local 1687*, 52 FLRA 521, 523 (1996).

If a proposal is an arrangement, the Authority then determines whether it is appropriate, or whether it is inappropriate because it excessively interferes with the relevant management rights. *KANG*, 21 FLRA at 31-33. The Authority makes this determination by weighing "the competing practical needs of employees and managers" to ascertain whether the benefit to employees flowing from the proposal outweighs the proposal's burden on the exercise of the management right or rights involved. *Id.* at 31-32. We find that, even assuming Proposal 1 constitutes an arrangement, it excessively interferes with the Agency's right to determine internal security practices. *See Int'l Fed'n of Prof'l & Technical Eng'rs, Local 1*, 49 FLRA 225, 244 (1994) (*Local 1*) (finding that, even assuming the proposal constituted an arrangement, it was not an appropriate arrangement because it excessively interfered with the exercise of management's right to determine internal security practices).

Focusing first on the proposal's benefits to unit employees, the proposal is intended to minimize the impact of the Agency's decision to reduce the number of escort officers carrying firearms. Response at 11. According to the Union, providing a communications device with GPS to all officers would enable them to contact the Agency or emergency responders and to provide their exact location in the event of an ambush while en route to a hospital. *Id.* The Agency challenges the Union's claim that officers will benefit from the proposal. As noted by the Agency, it already provides officers with a means of communication to contact emergency responders and with pre-established routes approved by the operations lieutenant. *See SOP* at 12.

With regard to the burden on management's right to determine internal security practices, the proposal would force the Agency to provide a communications device with GPS to every officer. *Id.* The Agency has established a policy to provide only the OIC with a means of communication to "limit[] the opportunities inmates have to eavesdrop on confidential communications." *Id.* Moreover, as argued by the Agency, requiring it to provide a communications device with GPS to all officers would increase the likelihood of a breach in the confidentiality of the escort team's movement times and routes. *See id.*

Although Proposal 1 allegedly would have benefits for employees, these alleged benefits come at the expense of forcing the Agency to provide all officers with a means of communication and compromising the confidentiality of the escort team's movement times and routes. Assuming those benefits exist, and weighing them against the significant burdens on the Agency's right to determine internal security practices, we find that the proposal excessively interferes with the Agency's right to determine internal security practices and, thus, is not an appropriate arrangement. *See NATCA*, 64 FLRA at 163-64 (finding that, on balance, a proposal permitting employees to carry wireless communication devices while on duty in operational areas under certain circumstances excessively interfered with management's right to determine internal security practices). Accordingly, we conclude that Proposal 1 is not within the duty to bargain. *See Local 3937*, 66 FLRA at 397, 400 (finding that two proposals were outside the duty to

bargain because they excessively interfered with the agency's right to determine internal security practices).²

IV. Proposal 2

A. Wording

Video/Intercom at Hospital

The [A]gency will provide portable video and intercom equipment which will allow escort staff to secure the inmate's hospital room and both see, and communicate, with anyone attempting to enter the room.

Record at 2.

B. Meaning

The Union maintains that the proposal is intended to lessen "the increased risk of ambush associated with having only one armed officer" by enabling officers to "identify[,] and communicate with[,] persons attempting to enter the hospital room where an inmate is located." *Id.* The Union also clarifies that the term "'hospital' refers to five or six outside hospitals that" the Agency uses for inmate care. *Id.* Moreover, "[t]he Agency agree[s] with the Union's explanation of the" proposal's intended meaning, operation, and impact. *Id.*

C. Positions of the Parties

1. Agency

The Agency maintains that the proposal affects its right to determine internal security practices. SOP at 13-14. In this regard, the Agency contends that the right to determine internal security practices "includes the authority to determine the policies and practices that are part of [its] plan to secure or safeguard its personnel, physical property or operations against internal and external risks." *Id.* at 14. The Agency claims that the proposal would require it to provide officers with portable video and intercom equipment to secure hospital rooms where inmates are housed and that proposals that require an agency to take certain actions to protect its

personnel and operations affect management's right to determine internal security practices. *Id.* Moreover, the Agency argues that its decision concerning how to safeguard hospital rooms where inmates are housed "is clearly a measure related to its internal security practices." *Id.*

The Agency also contends that the proposal affects its rights to determine the methods and means and the technology of performing work. *Id.* at 14-16. The Agency asserts that the proposal interferes with such rights because it "requires the Agency to provide video/intercom equipment to secure an inmate's hospital room – a particular type of communications technology – for use in correctional work." *Id.* at 15-16.

The Agency argues that the proposal is not an appropriate arrangement. *Id.* at 16-18. Specifically, the Agency claims that the proposal is not an arrangement because it is not related to the reduction in the number of escort officers carrying firearms and it does not attempt to mitigate adverse effects flowing from the Agency's exercise of a protected management right. *Id.* at 16. In addition, the Agency contends that, even if the proposal is an arrangement, it is not appropriate because it excessively interferes with its ability to exercise its management rights. *Id.* at 17-18. In this regard, the Agency argues that the Union's alleged benefits are speculative because "the taking away of a firearm from one officer in no way increases the risk of an ambush." *Id.* at 17. The Agency also asserts that the proposal forces it to provide officers with portable video and intercom equipment to secure hospital rooms where inmates are housed. *Id.* at 18. Moreover, according to the Agency, requiring it to provide officers with "video equipment could cause a potential security risk [because] there is a possibility that[,] if an inmate in a hospital room were to overtake [that] room, he/she could use the equipment to see who is outside the room and [potentially] could . . . use it to escape or harm others." *Id.* at 17.

2. Union

The Union asserts that the Agency's claim that the proposal affects its right to determine internal security practices is a bare assertion. Response at 13-14. According to the Union, the proposal is consistent with the Agency's current practice concerning "mounted [cameras] within inmate housing units," and it offers better protection to officers than the Agency's current security practice because it allows officers to more easily identify and communicate with individuals attempting to enter a hospital room where an inmate is housed. *Id.* at 14 & n.8.

² Based on our decision, we find that it is unnecessary to address the Agency's assertion that Proposal 1 affects its rights under § 7106(b)(1) of the Statute. See *NTEU*, 62 FLRA 267, 271, 272 & n.11 (2007) (*NTEU II*) (Chairman Cabaniss dissenting in part) (finding it unnecessary to address whether proposal excessively interfered with the agency's right to determine the means of performing work after finding that the proposal affected the agency's right to determine internal security practices and was not an appropriate arrangement).

Also, the Union maintains that the Agency's claim that the proposal would affect its rights to determine the methods and means, as well as technology, of performing work constitutes a bare assertion because the Agency has not satisfied the standard required by the Authority. *Id.* at 16.

The Union claims that the proposal is an appropriate arrangement. *Id.* at 16-20. In this regard, the Union argues that the proposal constitutes an arrangement because it "is clearly related to the Agency's decision to arm only one officer on escort[] trips." *Id.* at 17. According to the Union, by leaving only the armed officer to address any threats, the Agency has raised the level of danger associated with escorting inmates. *Id.* at 18. The Union asserts that it is reasonably foreseeable "that family members or associates of an inmate might . . . attempt to assist [that] inmate in" escaping from the hospital and that, if the Agency provided officers with video and intercom equipment, then the likelihood that a family member or associate would be able to storm the hospital room and allow the prisoner to escape would be drastically lowered. *Id.*

Finally, the Union contends that the arrangement is appropriate. *Id.* at 19-20. The Union argues that the Agency's assertion that an ambush by outside means is speculative "makes no sense from a law enforcement position" because "officers can[not] know when or if an ambush will occur." *Id.* at 19. The Union contends that the proposal benefits officers because it would allow them to "identify and communicate with [individuals] attempting to enter [a] hospital room where an inmate is" housed. *Id.* at 18. The Union further claims that the proposal's benefits to the officers are not speculative because inmates and family members or associates presumably are aware that only one escort officer is armed and that those benefits outweigh the alleged burden on the Agency. *Id.* at 19; *see also id.* at 20. Moreover, the Union asserts that it is unlikely that inmates would overtake their hospital rooms and use the video equipment against officers because inmates are secured by handcuffs or leg irons and are secured to their hospital beds while they are in their rooms. *Id.* at 19-20.

D. Analysis and Conclusions

1. Proposal 2 affects management's right to determine internal security practices.

The Agency asserts that Proposal 2 affects its right to determine internal security practices under § 7106(a)(1) of the Statute. SOP at 13-14. The standards for assessing whether a proposal affects management's

right to determine internal security practices are set forth above.

Here, the Agency's current practice is to not provide escort officers with video and intercom equipment. *See id.* at 14. The Agency asserts that it established its current practice to better secure hospital rooms that house inmates. *See id.* Moreover, the Agency argues that, to secure hospital rooms where inmates are housed, it must be able to determine the measures "necessary to safeguard its physical property against internal or external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of [its] activities or operations." *Id.* Thus, we find that the Agency has established a reasonable connection between its decision not to provide officers with portable video and intercom equipment and its internal security objectives. *See Int'l Bhd. of Police Officers*, 46 FLRA 333, 337 (1992) (finding that the agency established that its policy of monitoring and controlling access to its property through closed circuit surveillance was linked to its internal security needs).

The Union's arguments do not lead to a different conclusion. The Union asserts that the proposal is consistent with the Agency's current practice concerning "mounted [cameras] within inmate housing units," and that it offers better protection to officers than the Agency's current security practice. Response at 14 & n.8. These arguments concern the merits of the Agency's chosen practice. As discussed previously, the Authority does not review the merits of the practices adopted by an agency once it has established a reasonable link between its practices and its internal security objectives. *See Local 171*, 64 FLRA at 277. Therefore, because the Agency has established a reasonable link between its current practice and its internal security objectives, the Union's arguments challenging the merits of the Agency's practice fail. *See Local 221*, 64 FLRA at 1157; *Local 25*, 33 FLRA at 307.

Furthermore, because this proposal requires the Agency to provide officers with portable video and intercom equipment to secure hospital rooms where inmates are housed, we find that it conflicts with the Agency's current security practice. *See Record* at 2 (noting that the proposal states that "[t]he [A]gency will provide portable video and intercom equipment which will allow escort staff to secure the inmate's hospital room and both see, and communicate[] with[,] anyone attempting to enter the room"). Accordingly, we find that Proposal 2 affects the Agency's right to determine internal security practices under § 7106(a)(1) of the Statute. *See NTEU I*, 53 FLRA at 581 (concluding that, because a provision required the agency to use an electronic access system to protect the security of its property and personnel, it affected management's right to

determine internal security practices under § 7106 of the Statute); *NFFE, Local 2050*, 36 FLRA 618, 652 (1990) (determining that, because the proposal would impose an internal security practice on the agency, it directly interfered with the agency's right to determine internal security practices).

2. Proposal 2 is not an appropriate arrangement.

The Union claims that Proposal 2 constitutes an appropriate arrangement. Response at 18. The standards for assessing whether a proposal is an appropriate arrangement are set forth above. We find that, even assuming Proposal 2 constitutes an arrangement, it is not appropriate because it excessively interferes with the Agency's right to determine internal security practices. *See Local 1*, 49 FLRA at 244 (finding that, even assuming the proposal constituted an arrangement, it was not an appropriate arrangement because it excessively interfered with the exercise of management's right to determine internal security practices).

Focusing first on the proposal's benefits to unit employees, the proposal is intended to minimize the impact of the Agency's decision to reduce the number of escort officers carrying firearms. *See* Response at 18. According to the Union, the proposal benefits escort officers who guard inmates in their hospital rooms because inmates and family members or associates presumably are aware that only one escort officer is armed, and there is a reasonable likelihood that an inmate's family members or associates would assist that inmate in escaping from his or her hospital room. *See, e.g., id.* at 19.

With regard to the burden on management's right to determine internal security practices, the proposal prohibits the Agency from maintaining its internal security practice by forcing it to supply officers with portable video and intercom equipment to secure hospital rooms where inmates are housed. SOP at 18. As argued by the Agency, requiring it to provide officers with "video equipment could cause a potential security risk" because an inmate could use such equipment to escape or to harm others. *Id.* at 17.

Assuming Proposal 2 would have the benefits for employees described by the Union, these benefits come at the expense of forcing the Agency to change how officers secure hospital rooms where inmates are housed. Weighing the alleged benefits to employees against the significant burdens on the Agency's right to determine internal security practices and taking into account the Union's undisputed assertion that an inmate's confinement in a hospital room is merely an extension of the inmate's confinement in a maximum security prison,

see Response at 14 n.8, we find that the proposal excessively interferes with the Agency's right to determine internal security practices and, thus, is not an appropriate arrangement, *see AFGF, Council of Prison Locals 33, Local 506*, 66 FLRA 819, 833 (2012) (*Local 506*) (taking into consideration that the agency was a maximum-security prison in finding that the proposal excessively interfered with the agency's right to determine internal security practices). Accordingly, we conclude that Proposal 2 is not within the duty to bargain. *See Local 3937*, 66 FLRA at 397, 400 (concluding that two proposals were outside the duty to bargain because they excessively interfered with the Agency's right to determine internal security practices).³

V. Proposal 3

A. Wording

Non-lethal technology for officers

Escort officers will be armed with some sort of less than lethal technology, e.g., pepper spray and/or taser, when escorting inmates on an escorted trip to include extended stays away from FCC Coleman.

Record at 3.

B. Meaning

The Union explains that Proposal 3 would grant officers access to non-lethal technologies, such as pepper spray, when they escort prisoners. *Id.* The Union asserts that the proposal is intended to compensate officers for the loss of one of their firearms. *Id.* The Agency agrees with the Union's explanation of the intended meaning, operation, and impact of the proposal. *Id.*

C. Positions of the Parties

1. Agency

The Agency first argues that the proposal is outside the duty to bargain because it is contrary to

³ Based on our decision, we find that it is unnecessary to address the Agency's assertion that Proposal 2 affects its rights under § 7106(b)(1) of the Statute. *See NTEU II*, 62 FLRA at 271, 272 & n.11.

28 C.F.R. § 552.25,⁴ which the Agency asserts “is a government-wide regulation governing use of chemical agents or non-lethal weapons.” SOP at 19. According to the Agency, this regulation authorizes the issuance of non-lethal weapons only when a prisoner is “armed and/or barricaded.” *Id.*

The Agency next contends that the proposal affects management’s right to determine internal security practices because the decision to reduce the number of armed escort officers is an “inherent internal security decision.” *Id.* at 21. It argues that providing officers with a non-lethal weapon creates the same risk that allowing officers to have a firearm creates because a prisoner still could place the officers or public at risk if the prisoner obtains a non-lethal weapon. *Id.* at 20.

Additionally, the Agency argues that the proposal interferes with management’s rights to determine the methods and means and the technology of performing work under § 7106(b)(1) of the Statute. *Id.* at 21. Moreover, it contends that Proposal 3 is non-negotiable because it directly interferes with the Agency’s right to determine “the technology of performing its law enforcement mission.” *Id.* at 22 (citation omitted).

Finally, the Agency asserts that proposal is not a “sufficiently tailored appropriate arrangement” because the Union’s contention that the proposal is an appropriate arrangement is a bare assertion. *Id.* Further, it contends that the proposal is insufficiently tailored and excessively interferes with management’s right to determine internal security practices. *Id.* In this regard, the Agency argues that the determination of the practices and policies used to accomplish an agency’s security function “is directly related to the determination of an agency’s security practice.” *Id.* at 23 (citation omitted). The Agency contends that the “judgment as to . . . the type of equipment to be used by security personnel to maintain the security of [a] facility” belongs to management. *Id.* (citation omitted). The Agency reiterates its concerns

that prisoners could use an officer’s non-lethal weapon to harm others and argues that the proposal would overrule its “internal security judgment.” *Id.* at 23-24.

2. Union

With respect to the Agency’s assertion regarding 28 C.F.R. § 552.25, the Union argues that, because the warden can authorize firearms for officers on escort trips, “there is nothing in policy, rules, or regulations” that would preclude him from authorizing non-lethal weapons for such trips. Response at 21 n.11.

The Union disputes the Agency’s claim that the proposal affects its right to determine internal security practices. The Union argues that the Agency had a long-standing policy that allowed officers to carry firearms during escort trips and that the Agency’s fear that an inmate could harm someone else with non-lethal weapons “is only speculation and not grounded in reality or facts.” *Id.* at 23. It also contends that the proposal would give officers an ability to defend themselves and others. *See id.* at 23-24. Moreover, the Union asserts that the Agency still retains the discretion to authorize the use of non-lethal weapons and that it still has the discretion to determine what type of non-lethal weapons to use. *Id.* at 24. The Union contends that the Agency’s assertion that the proposal would affect the Agency’s methods and means, as well as technology, of performing work is a bare assertion. *See id.* at 24-26.

The Union argues that it has established that the proposal is an appropriate arrangement. According to the Union, the Agency’s decision to reduce the number of armed officers places the officers and the public at risk. The Union contends that providing unarmed officers with a non-lethal weapon provides employees with an obvious benefit because officers will be able to protect themselves and others and that this benefit outweighs any burden on management’s right to determine internal security practices. *Id.* at 28-29.

D. Analysis and Conclusions

1. Proposal 3 affects management’s right to determine internal security practices.

The standards for assessing whether a proposal affects management’s right to determine internal security practices are set forth above. The Agency asserts that it decided to reduce the number of escort officers carrying weapons because it was concerned that a prisoner could obtain an officer’s weapon and use it to harm the officers and civilians. SOP at 20. The Agency contends that the Union’s proposal would not eliminate this concern because a prisoner still could obtain a weapon from an

⁴ 28 C.F.R. § 552.25 states:

(a) The Warden may authorize the use of less-than-lethal weapons, including those containing chemical agents, only when the situation is such that the inmate:

- (1) Is armed and/or barricaded; or
- (2) Cannot be approached without danger to self or others; and
- (3) It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage.

officer and use it against others. The parties do not dispute that armed prisoners could pose a risk to the Agency's personnel and others. Accordingly, we find that the Agency has established a reasonable connection between its decision to reduce the number of escort officers carrying weapons and its concern for the safety of the officers and the public. *See NTEU*, 59 FLRA 978, 981 (2004) (*NTEU III*) (agency showed reasonable link between its decision to use a specific firearm holster and its internal security practices because agency established that union's proposed holster could cause safety issues for personnel).

The Union argues that the Agency has not established a reasonable link between its policy and its security objectives because the Agency still has the authority to authorize non-lethal weapons and still may decide what type of non-lethal weapons to authorize. Response at 24. However, the Union's argument does not demonstrate that there is no reasonable connection between the Agency's decision to reduce the number of escort officers carrying any type of weapon and the Agency's concern for the safety of its officers and the public. Thus, the Union's argument is unavailing.

The Union also contends that the Agency's claim that a prisoner could obtain control of an officer's non-lethal weapon "is only speculation and not grounded in reality or facts." *Id.* at 23. However, this argument concerns the merits of the Agency's chosen policy. As explained previously, the Authority does not consider such arguments once an agency has established a reasonable connection between its policy and its internal security objectives. *See, e.g., Local 221*, 64 FLRA at 1157 (citations omitted). Because the Agency has established such a connection with respect to its policy of reducing the number of armed escort officers, the Union's argument is unavailing. *See id.*

Furthermore, because this proposal requires the Agency to provide unarmed escort officers with non-lethal weapons, we find that it conflicts with the Agency's current security practice of prohibiting these officers from carrying any type of weapon. Accordingly, we find that the proposal affects the Agency's right to determine internal security practices. *See, e.g., id.* at 1156-57; *NTEU III*, 59 FLRA at 981.

2. Proposal 3 is not an appropriate arrangement.

The standards for assessing whether a proposal is an appropriate arrangement are set forth above. Even assuming Proposal 3 constitutes an arrangement, we find that it is not appropriate because it excessively interferes with the Agency's right to determine internal security practices. *See Local 3937*, 66 FLRA at 397 (assuming

proposal constituted an arrangement, Authority nevertheless concluded that proposal was inappropriate because it excessively interfered with management's right to determine internal security practices).

With respect to benefits, the Union argues that Proposal 3 would give unarmed officers access to a weapon to defend themselves and/or others. Response at 23-24, 28. The Union asserts that this access is necessary because the Agency's decision to reduce the number of armed escort officers "raised the inherent level of danger." *Id.* at 28. In response, the Agency argues that it is burdened by the Union's proposal because the Agency has "legitimate concerns about limiting the opportunity inmates might have to seize non-lethal weapons and use them against correctional staff." SOP at 23-24.

Although Proposal 3 provides officers with a benefit, on balance, we find that the proposal significantly burdens the Agency's ability to safeguard its personnel and other members of the public. As the Agency asserts, the purpose of its decision to reduce the number of escort officers carrying firearms was to eliminate the possibility that a prisoner could gain control of a weapon and use it to harm officers or civilians. The Union's proposal, however, would require the Agency to arm an officer notwithstanding the Agency's determination that any type of weapon could cause a safety risk. *See id.* at 20. Thus, Proposal 3 would prohibit effectively the Agency from carrying out its chosen internal security practices. Moreover, the proposal effectively would eliminate a safeguard that the Agency has adopted to protect the safety of its personnel and others. Consequently, we find that the Agency has established that the proposal excessively interferes with management's right to determine internal security practices and that Proposal 3 is, therefore, not an appropriate arrangement. *See, e.g., Local 221*, 64 FLRA at 1157 (citation omitted) (proposals that made agency's annual tuberculosis tests optional rather than mandatory excessively interfered with management's ability to protect its personnel); *NTEU III*, 59 FLRA at 982 (proposal requiring certain firearm holsters excessively interfered with management's right to determine internal security practices because they deprived agency of its discretion regarding holster safety). Accordingly, we further find that Proposal 3 is outside the duty to bargain. *See id.*⁵

⁵ Based on our decision, we find that it is unnecessary to address the Agency's contention that Proposal 3 is contrary to 28 C.F.R. § 552.25. Also, we find that it is unnecessary to address the Agency's assertion that Proposal 3 affects its rights under § 7106(b)(1) of the Statute. *See NTEU II*, 62 FLRA at 271, 272 & n.11.

VI. Proposal 4

A. Wording

Designated weapon for training/qualifying and while on escort trips

Staff performing prisoner transports will practice/qualify with the same gun (by serial number) that they use during escort trips.

Record at 3.

B. Meaning

The Union explains that Proposal 4 would allow officers to practice and qualify with the firearms that they use during escort trips and that the words “practice” and “qualify” have the same meaning. *Id.* The Union also asserts that, because no two firearms fire the same, the proposal would allow officers to become familiar with their equipment. *Id.* The Agency agrees with this explanation of the intended meaning, operation, and impact of the proposal. *Id.*

C. Positions of the Parties

1. Agency

The Agency argues that Proposal 4 affects its right to determine internal security practices. According to the Agency, the effect of the proposal is to require the Agency to assign a specific weapon to each officer. The Agency contends that, if an officer is assigned a specific weapon, then he would be required to transport the weapon back to the prison after his shift ends, which would create “scheduling issues and economic issues including the potential use of overtime.” SOP at 26. Furthermore, it contends that “the determination of the specific weapon to be used by the staff on escort trips” constitutes the Agency’s determination of internal security practices. *Id.*

Additionally, the Agency contends that the proposal would affect its rights to determine the methods and means and the technology of performing work. The Agency states that its mission is “to protect society by confining offenders in the controlled environments of prisons and community-based facilities.” *Id.* at 27. The Agency contends that Proposal 4 interferes with its rights “to determine the technology, methods, and means of performing its mission to protect society by requiring the Agency” to provide escort officers with specific firearms. *Id.* The Agency asserts that it “must be able to determine the weapons it issues to its officers and the technology

used by those officers.” *Id.*

The Agency further asserts that the proposal is not an appropriate arrangement. It contends that the proposal is not an arrangement because, among other things, the proposal is not “directly related to the reduction in the number of armed escort officers” and that it has no obligation to bargain over proposals that are unrelated to the change that gave rise to the bargaining obligation. *Id.* at 29 (citation omitted). The Agency additionally argues that, even if the proposal is an arrangement, it is not appropriate because it excessively interferes with the Agency’s ability to exercise its management rights. *Id.* Specifically, the Agency asserts that the proposal “poses a question of what happens to the gun at the end of the shift.” *Id.* at 30. Moreover, it contends that the Union’s stated benefits are speculative because the Union has not provided evidence that the proposal would make officers safer, particularly because officers already receive firearms training. *Id.*

2. Union

The Union claims that the Agency’s assertion that Proposal 4 affects its right to determine internal security practices is a bare assertion. Response at 31. The Union also argues that it is only asking for the same firearm privileges that other Agency employees receive. *Id.* at 31-32. It disagrees with the Agency’s assertion that the proposal would result in any storage or economic issues. *Id.* at 32. Additionally, although the Union concedes that officers receive training for the type of firearm that they use on escort trips, the Union asserts that “each particular weapon is different in their overall feel, handling, and trigger pull.” *Id.* at 32 n.17. Thus, the Union contends that officers need training with specific firearms. *Id.* The Union further contends that the Agency’s assertion regarding § 7106(b)(1) management rights is also a bare assertion. *Id.* at 33-34.

The Union disputes the Agency’s claim that the proposal is not an arrangement. The Union argues that the Agency’s decision to reduce the number of escort officers carrying firearms increases the threat of danger for the officers and the public. *Id.* at 35. Thus, according to the Union, officers need to be assigned to one specific firearm and receive training for that firearm so that they can be familiar with how it operates. *See id.* at 35-36.

D. Analysis and Conclusions

1. Proposal 4 affects management's right to determine internal security practices.

The standards for assessing whether a proposal affects management's right to determine internal security practices are set forth above. Additionally, the Authority has held consistently that an agency's determination whether, and to what extent, security personnel should be armed concerns its right to determine internal security practices. *See, e.g., Dep't of Homeland Sec., Bureau of Immigration & Customs Enforcement*, 60 FLRA 131, 133 (2004) (*DHS*) (Member Armendariz dissenting in part and concurring in part) (then-Member Pope dissenting in part as to other matters) (citation omitted).

The Agency argues that the proposal affects management's right to determine internal security practices because it would require the Agency to provide escort officers with a specific firearm. SOP at 26. The Union asserts that this claim is a bare assertion. *See* Response at 31. However, the Union does not dispute that Proposal 4 would require the Agency to provide officers with specific firearms. Moreover, as explained by the Union, the proposal also would require the Agency to allow officers to practice and qualify with that firearm. *See id.* at 30. Because Proposal 4 concerns management's determination regarding the extent it will arm its security personnel, we find that Proposal 4 affects management's right to determine internal security practices. *See, e.g., DHS*, 60 FLRA at 133 (provision that addressed situations when personnel would be armed with firearms, and also addressed type of firearm training personnel received, affected internal security practices).

2. Proposal 4 is not an appropriate arrangement.

The standards for assessing whether a proposal is an appropriate arrangement are set forth above. Even assuming that Proposal 4 constitutes an arrangement, we find that it excessively interferes with the Agency's right to determine internal security practices. *See Local 3937*, 66 FLRA at 397 (concluding that, even assuming the proposal constituted an arrangement, it was not appropriate because it excessively interfered with the exercise of management's right to determine internal security practices).

The Agency argues that Proposal 4 burdens its right to determine internal security practices because the proposal would require the Agency to provide each escort officer with a specific firearm, which would "pose[] a question" regarding how to store the firearm after an

escort officer's shift ends. SOP at 30. In this regard, the Agency contends that, under Proposal 4, an escort officer would have to return a firearm to the prison after his or her shift ends. *Id.* at 26. According to the Agency, this situation would create scheduling issues and would require the Agency to pay these officers overtime. *Id.*

The Union does not identify benefits in response to the above argument; rather, the Union argues that the Agency's claim that Proposal 4 affects management's right to determine internal security practices is a bare assertion. Response at 31. However, as explained above, the Agency has established that Proposal 4 does affect the Agency's right to determine internal security practices.

Weighing the burdens placed on the Agency against the Union's failure to identify any benefits, and taking into account the nature of the institution as a maximum-security prison, we find that Proposal 4 excessively interferes with management's right to determine internal security practices and, thus, is not an appropriate arrangement. *See Local 506*, 66 FLRA at 833 (taking into account that the agency was a maximum-security prison in finding that the proposal excessively interfered with the agency's right to determine internal security practices). Based on this determination, we further find that Proposal 4 is outside the duty to bargain.⁶

VII. Proposal 5

A. Wording

The Agency will encourage the servicing hospitals:

- To have rooms where inmates are housed with doors securable to escort staff.

Record at 3.

B. Meaning

The Union explains that "servicing hospitals" refers to hospitals with which the Agency has contracts. *Id.* The Union further elaborates that Proposal 5 would require the Agency to encourage these hospitals to install a secured door for rooms that house prisoners, and that these doors are intended to provide officers with a greater ability to control access to the room and to monitor activity. *Id.* It also asserts that these doors are intended

⁶ Based on our decision, we find that it is unnecessary to address the Agency's assertion that Proposal 4 affects its rights under § 7106(b)(1) of the Statute. *See NTEU II*, 62 FLRA at 271, 272 & n.11.

to alleviate any problems officers would face associated with securing the room and the prisoner with one firearm. *Id.* at 3-4. The Agency agrees with the Union's explanation of the intended meaning, operation, and impact of the proposal. *Id.* at 4.

C. Positions of the Parties

1. Agency

The Agency asserts that the proposal affects management's right to determine internal security practices. The Agency argues that the proposal would require it to encourage service hospitals to install secured doors for rooms where inmates are housed, and that proposals that require an agency to take certain actions to protect its personnel and operations directly interfere with internal security practices. SOP at 32. The Agency asserts that its decision regarding "how to safeguard the rooms while an inmate is in the hospital is clearly a measure related to its internal security practices." *Id.* (citing *AFGE, Local 12, AFL-CIO*, 17 FLRA 674, 981-82 (1985)).

The Agency argues that the proposal is not an appropriate arrangement. It asserts that the proposal is not an arrangement because it is unrelated to the Agency's decision to reduce the number of armed escort officers. *Id.* at 33. The Agency further argues that the proposal is not an arrangement because it fails to address the adverse effects caused by the Agency's decision. *Id.* The Agency also asserts that, even if the proposal is an arrangement, it is not appropriate because the burdens imposed on the Agency "far exceed" the benefits employees would receive. *Id.* at 34. Specifically, the Agency contends that, "[b]y requiring the Agency to encourage a decision that it does not actually want and disagrees with, the proposal essentially overrules its discretionary judgment on an internal security matter." *Id.*

2. Union

The Union asserts that the Agency's argument regarding internal security practices is a bare assertion. Response at 37-38. Specifically, the Union contends that the Agency "do[es] not thoroughly explain" why the proposal affects management's right to determine internal security practices. *Id.* at 38.

The Union also argues that the proposal is an arrangement because it directly relates to the Agency's decision to reduce the number of escort officers carrying firearms. According to the Union, the Agency's decision leaves only one armed officer to deal with any threats that could arise from a potential ambush or "attempted escape by outside means." *Id.* at 39. Thus, the Union contends

that the Agency has raised the level of danger "drastically" and that secured doors would provide an "extra level of security." *Id.* The Union further asserts that the proposal is appropriate because requiring the Agency to discuss this matter with a hospital does not create an "extraordinary burden." *Id.* at 40.

D. Analysis and Conclusion: Proposal 5 is an appropriate arrangement.

The standards for assessing whether a proposal affects management's right to determine internal security practices are set forth above. For purposes of this decision, we assume, without deciding, that Proposal 5 affects management's right to determine internal security practices within the meaning of § 7106(a)(1) of the Statute and, for the following reasons, conclude that the proposal is within the duty to bargain as an appropriate arrangement under § 7106(b)(3). See *AFGE, Council of Prison Locals 33*, 65 FLRA 142, 145 (2010) (assuming, without deciding, that proposal affected internal security practices because proposal was an appropriate arrangement).

As discussed above, in order to establish that a proposal is an arrangement, a union must demonstrate the effects or the reasonably foreseeable effects on employees that flow from the exercise of management's rights and how those effects are adverse. The Agency argues that the proposal is not an arrangement because it is unrelated to the Agency's decision to reduce the number of escort officers who could carry a firearm. SOP at 33. The Agency further contends that the proposal does not address adverse effects caused by the Agency's decision. *Id.* In response, the Union contends that the proposal is reasonably related to the Agency's decision to reduce the number of armed escort officers. Furthermore, the Union asserts that the proposal would provide officers with better control and monitoring of the hospital rooms and that it also would alleviate problems associated with securing the room with one firearm. Response at 36. Additionally, the Union contends that a secured door would help reduce risks associated with "ambush or attempted escape by outside means." *Id.* at 39.

The Agency does not explain why the proposal does not address any adverse effects. Moreover, the Agency does not contest the specific adverse effects identified by the Union. Consequently, the Agency has conceded that these adverse effects flow from the Agency's decision to reduce the number of armed escort officers. Accordingly, we find that Proposal 5 ameliorates the adverse effects flowing from this decision. See 5 C.F.R. § 2424.32(c)(ii)(2); *AFGE, Local 1770*, 64 FLRA 953, 959 (2010) (proposal was an arrangement because it addressed adverse effects and

agency did not dispute the existence of those effects). Further, because the proposal is intended to benefit officers who cannot carry a firearm during escort trips, we find that Proposal 5 is sufficiently tailored. *See Local 171*, 64 FLRA at 277 (proposal was tailored because it addressed adverse effects for employees affected by agency's exercise of its management rights). Accordingly, we find that the proposal is an arrangement.

The parties next dispute whether Proposal 5 excessively interferes with management's right to determine internal security practices. With respect to the benefits that Proposal 5 would afford, the Union argues that a secured door would reduce the danger officers now face because it would give officers "an extra level of security." Response at 39. It contends that a secured door would give officers a greater opportunity to respond to any threats. *Id.*

The Agency solely argues that the proposal places an "extraordinary burden" on management because it requires the Agency "to encourage a decision that it does not want and disagrees with," thereby "essentially overrul[ing] its discretionary judgment on an internal security matter." SOP at 34. However, the Agency does not explain how this proposal places any sort of burden on the Agency's security objectives. In this regard, the proposal merely requires the Agency to encourage servicing hospitals to place secured doors on hospital rooms that house prisoners. The proposal does not require the Agency or any hospital to install secured doors or take any other action. Accordingly, we find that the Agency has not established that Proposal 5 excessively interferes with management's right to determine internal security practices. *See, e.g., Local 171*, 64 FLRA at 277 (agency prison did not establish that proposal excessively interfered with management's right to determine internal security practices, in part, because it failed to support its assertion that proposal burdened this right).

Based on the above analysis, we find that Proposal 5 is an appropriate arrangement and is, therefore, within the duty to bargain.

VIII. Order

We dismiss the petition for review as to Proposals 1-4. The Agency shall, upon request or as otherwise agreed to by the parties, negotiate with the Union over Proposal 5.⁷

⁷ In finding that Proposal 5 is within the duty to bargain, we make no judgments as to its merits.