United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF HEALTH AND HUMAN SERVICES SOCIAL SECURITY ADMINISTRATION LANSING DISTRICT OFFICE LANSING, MICHIGAN and LOCAL 3272 OF COUNCIL 220 AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case No. 88 FSIP 248

DECISION AND ORDER

Local 3272 of Council 220, American Federation of Government Employees, AFL-CIO (Union), filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of Health and Human Services, Social Security Administration, Lansing District Office, Lansing, Michigan (Employer).

After investigation of the request for assistance, the Panel initially directed the parties, pursuant to section 2471.6(a)(2) of its regulations, to meet informally with Panel Member Daniel H. Kruger for the purpose of assisting them in resolving any outstanding issues concerning their dispute over the relocation of the Employer's facilities. If no settlement were reached, he was to notify the Panel of the status of the dispute, including the parties' final offers and his recommendations for resolving the issues. Following consideration of this information, the Panel would take whatever action it deemed appropriate to resolve the impasse.

Member Kruger met with the parties a number of times between late 1988 and early 1989 in Lansing, Michigan, but no settlement was reached. Thereafter, he notified the Panel of the status of

the dispute, including the fact that an unfair labor practice charge had been filed by the Union against the Employer relating to the relocation. After due consideration of his recommendations, the Panel informed the parties that it would take no further action, but retained jurisdiction of the case, until certain obligation-to-bargain questions were resolved and an impasse was reached on the underlying substantive issues.

On September 21, 1990, an Administrative Law Judge issued a Decision and Order finding that the Employer had engaged in unfair labor practices and recommended remedial action. No exceptions to the Decision and Order were filed within the applicable time limits, and on November 5, 1990, the Federal Labor Relations Authority (FLRA) ordered the Employer to comply with the Judge's order. Subsequently, the parties resumed negotiations pursuant to the Judge's order, but reached impasse on a number of issues. The Panel was informed of these developments and, following consultations with Member Kruger, determined that the parties should submit their final offers and supporting statements on the subject areas still in dispute to the Panel, and it would issue a binding decision **based upon the final offers of either party, to the extent they are otherwise lawful**, on each of them. Submissions were made pursuant to these procedures and the Panel has considered the entire record.

BACKGROUND

The Employer's mission is to administer retirement, disability, Medicare, and Supplemental Security Income entitlement programs for the public. The Union represents approximately 45 employees who are part of a nationwide consolidated bargaining unit consisting of about 48,000 employees. The parties' national level agreement expires on August 25, 1993.

ISSUES AT IMPASSE

The following subject areas remain in dispute: (1) Work/Breakroom Areas; (2) Interview Area/Procedures; (3) Health, Safety, and Environment; (4) Union Facilities; (5) Floorplan.[1]

1. Work/Breakroom Areas

a. The Union's Position

The Union's first proposal, in essence, is that: (1) the Employer be required to provide bargaining-unit employees with access to a private-interviewing room (PIR) with an FTS telephone

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[1]After receiving the Panel's latest procedural determination, the Union withdrew its proposals in connection with a sixth subject area concerning Union Rights.

for conducting sensitive, "private" interviews, for meetings with management, Equal Employment Opportunity (EEO) counselors, Union representatives, etc.; (2) a partitioned-off part of the PIR, with desk, phone, and chairs, be kept clear so that it may be used primarily for such purposes; (3) "when a private use of this type is needed, it [will] take precedence over other room uses;" (4) a scheduling sheet be posted on the door; and (5) if there is a scheduling conflict for its use involving one of these primary purposes that cannot be avoided, the Employer "provide equivalent additional/alternat[ive] facilities." Its second proposal in this subject area is that: (1) break and lunchroom space be provided by the Employer which is well lighted and ventilated, enclosed, quiet, nonpublic, and secure; and (2) in addition to amenities already provided, the Employer assume "responsibility for maintaining, and when necessary, replacing the current refrigerator and microwave oven."

Its first proposal should be adopted because accommodations for the private use of the PIR by employees at the new location are inferior to what they were prior to the move, and such a room "exists in name only at the new site." It also would prevent the recurrence of a recent situation where an EEO counselor and a Union representative had to conduct a meeting in a training room where office files are kept, and were interrupted throughout the day. The Union's request is consistent with what the Panel ordered in a recent case involving a Cleveland office of the Social Security Administration (SSA),[2] and "is a more than reasonable blending of the [A]gency's and the employees' needs." The Employer's offer to provide space for confidential discussions only "as available" is unacceptable because "at most times and under most circumstances in the new office there is no space available."

In addition to providing a continuation of past and current practices regarding breakroom facilities, the Union's second proposal would provide future maintenance and/or replacement of the refrigerator and microwave oven to address the overall adverse impact of the move to the new office, and the overall reduction of office space, on employees.

b. The Employer's Position

On the issue of the PIR, the Employer proposes that, consistent with relevant sections of the parties' national agreement:

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[2]The Union cites Department of Health and Human Services, Social Security Administration, Cleveland Teleservice Center and Local 3448, American Federation of Government Employees, AFL-CIO, Case No. 88 FSIP 154 (November 14, 1988), Panel Release No. 274, in support of its position.

> [M]anagement will continue to provide space, as available, for confidential discussions between bargaining-unit employees and designated Union representatives and between management and bargaining-unit members. Management reaffirms the right of employees to privacy for telephone calls in accordance with higher level agreements and applicable Agency guidelines, e.g., EEO, ECS.

It also proposes that "break and lunch space will be provided by the Employer. The area will be in a well lighted and ventilated, enclosed, quiet, nonpublic, and secure location."

Its first proposal "guarantees employees a reasonable expectation of privacy when that expectation flows from a contractual or legal right." The Union's proposal, on the other hand, takes away from management its right "to determine how and when facilities" under its control would be used, and mistakenly assumes that the primary purpose of the PIR is for private employee discussions, rather than private interviewing of the public. The Union also has failed to demonstrate that its proposal "addresses an existing need." In this regard, the only situation cited by the Union was a recent incident, which was quickly rectified, when an EEO investigator arrived unannounced. The Employer "is aware of no time" when a request that a discussion or telephone call be held in a more private setting has been denied.

With respect to the break and lunchroom issue, the Employer, through the lessor, provides an adequate amount of such space, as well as equipment. Moreover, it has no duty to bargain over the part of the Union's proposal dealing with the refrigerator and microwave oven because it conflicts with higher level Governmentwide policy. In this regard, these "are considered personal convenience items and are prohibited purchases for the [A]gency."

CONCLUSIONS

Under the final-offer selection procedure being used in this case, we are limited to selecting either party's final offer in this subject area, as well as the others before us, to resolve their impasse. Having considered the evidence and arguments, we conclude that, on balance, the Employer's final offer provides a more reasonable basis for settlement. The record indicates that the total amount of space allocated to the Lansing District Office was reduced by approximately 23 percent as a result of the relocation, in accordance with the General Services Administration's (GSA) Governmentwide guidelines. Given these circumstances, we believe that the Employer's position with respect to the PIR realistically addresses both the operational requirements of the office and employees' entitlement to personal privacy while at work. Further, the Union has failed to persuade

us on the basis of the evidence presented that the adoption of its proposal would rectify an existing problem with respect to appropriate employee requests that they be permitted to hold discussions in private. We find that the Union also has provided insufficient justification for requiring the Employer to maintain and, if necessary, replace the current refrigerator and microwave, particularly where it is not apparent how employees were adversely affected in this area by the relocation. Accordingly, we shall order the adoption of the Employer's final offer.

2. Interview Area/Procedures

a. The Union's Position

The Union has six proposals under this subject area. In essence, they are that: (1)(a) the office floorplan, and any variations allowed under it, provide that members of the public (other than those at interviewing windows) be seated sufficiently distant from Claims Representatives' (CR) interviewing windows so that interviews with claimants would not be overheard, and (b) if, for reasons of emergency or office design, interview privacy is jeopardized, the Employer provide attorney representation, to the extent allowable under law, regulation, and controlling higher level agreements, for any action or liability to which an employee is subjected for interviewing under such circumstances; (2) "within Agency guidelines, members of the public will not be routed to interviewing windows until the interviewer is ready for the interview;" (3) "the interview posting/notice system in Appendix C will be implemented as soon as possible" (Appendix C essentially describes a procedure for directing claimants to workstations where CRs conduct interviews; it specifies how the privacy and security of CRs' desks temporarily being used for interviews is to be maintained, and would require the installation of a light/switch system); (4) work areas where computers are used conform fully with the ergonomic requirements specified in higher level negotiated agreements; (5) the Employer install a fatigue mat at the office reception window of specified dimensions, and ensure that the inside of the remodeled reception counter have two heights for writing, and that the mid-counter keystation support surface be adjustable upwards and downwards from a median height of 36 inches; and (6)(a) an employee who feels fatigued when conducting stand-up interviews "or has other good reason for moving the interview to a sit-down setting normally may do so," and (b) appropriate office back-up plans be followed if this causes undue interruption of normal reception/interviewing procedures.

The first proposal is reasonable because it would provide relief to employees from the inadequate office arrangements they currently are forced to endure when interviewing claimants. In this regard, the public waiting room is so small that "on many busy days employees must violate the privacy of the public they are interviewing if they are to get any interviewing done at all"

(emphasis in original). The case in favor of its proposal is buttressed, moreover, by the fact that the current floorplan was implemented illegally. While adoption of its proposal, as well as the other elements of its floorplan, would be more costly than the continuation of the current arrangement, it "should now be accepted as the **first and only legal construction** for the move of the Lansing SSA office" (emphasis in original). The second part of the first proposal would afford some "minimal protection for employees who may be charged or become subject otherwise to a personal-liability action as a result of the intolerable conditions in which management has placed them."

The adoption of Appendix C, as required by its third proposal, would eliminate the inconveniences experienced by employees under the Employer's current interview notice system, where receptionists now must walk "upwards of hundreds of feet" in attempting to find appropriate interviewers. The fourth proposal would require management to implement locally the terms of a national level memorandum of understanding (MOU), which "it has steadfastly avoided doing," by providing ergonomic corrections to the modular furniture it has installed in connection with ongoing computer modernization. It is "one of the most crucial proposals in this bargaining" because "workers are suffering in increasingly greater numbers due to poorly designed, non-adjustable workstations," and its adoption would go a long way toward improving the health and safety of employees. Proposal 5 is integrally related to its proposed floorplan design, and, among other things, would provide a remodeled reception counter that accommodates employees' needs better than the Employer's counteroffer.

b. The Employer's Position

The Employer would have the Union withdraw its first proposal. In this regard, the Union "still is negotiating for the privacy of the public." One of the Union's chief concerns, that employees may be charged by members of the public with violations of the Privacy Act, is unfounded. The Privacy Act "does not apply in this situation," and, therefore, "an employee has no liability if a caller is overheard." Regarding the part of its proposal that would require the Employer to provide attorney representation, Governmentwide policy prohibits it from doing so in the case of an employee "willfully and knowingly" disclosing information contrary to the Privacy Act.

Concerning the Union's proposed interview posting/notice system, in general "management elects not to engage in bargaining on this proposal since it dictates the technology, methods, and means of performing work." In this regard, the Union's Appendix C would not allow the use of various options for handling the overflow of interviews, thereby restricting management's ability to serve the public effectively. Moreover, the proposed light/switch system "is costly and complex" and "any subsequent relocation of

any of the wired workstations would require the relocation of the wiring, switches, and lights."

The Union also should withdraw its proposal requiring each workstation where computer equipment is used to be "ergonomically functional" because the same issue currently is before a third party at the national level. This should result in a decision that "will apply to all offices including Lansing." Finally, the Employer is willing to install "effective fatigue mats" at the office reception window, as requested by the Union, and to remodel the inside of the reception counter by providing two writing heights and installing a keyboard drawer. Adjustable stools also would continue to be provided.

CONCLUSIONS

After carefully examining the evidence and arguments provided by the parties in support of their final offers, we conclude that the Employer's position should be adopted. In this regard, we believe that the status quo regarding the placement of interviewing windows and the interview-distribution system should be maintained primarily because: (1) the Employer's discretion to use various options for handling the overflow of interviews would be preserved, and (2) this would be far less costly than the alternatives proposed by the Union. Since the Employer's final offer includes provisions for the installation of a fatigue mat, and a reception counter and keyboard drawer with adjustable heights, the comfort of employees working there also should be enhanced.

One of the Union's main arguments in connection with this subject area is that its floorplan "should now be accepted as the **first and only legal construction** for the move of the Lansing SSA office" (emphasis in original). Although we are of course aware that the current floorplan was implemented prior to reaching agreement with the Union, in our view this fact has little bearing on the merits of the final offers before us. Other entities within the Federal sector labor-relations program are responsible for remedying violations of the Statute. The Panel's decisions, on the other hand, generally are based on an assessment of the impact of the parties' proposals on the workplace, and whether they would provide feasible and cost-effective solutions to the problems being addressed for the duration of the agreement.

With these factors in mind, the Union's final offer would require the installation of a relatively expensive electronic system for routing claimants to interview windows, as well as fundamental changes in the current floorplan. While its goal of eliminating the inconveniences experienced by employees under the current interview-distribution system is laudable, the alternative it proposes unacceptably would restrict the Employer's flexibility in determining the most effective means of serving the public. We encourage the Union, however, to consult with management concerning

a more efficient method of distributing interviews, an approach welcomed by the Employer in its latest submission.

We also find that the Union's concerns regarding the potential privacy problems that may arise when employees conduct interviews are speculative. Further, the part of its proposed solution in this regard requiring the Employer to provide attorney representation appears to be inconsistent with Governmentwide regulations. Finally, because enforcement of the MOU on ergonomic furniture is currently the subject of proceedings at the national level, we believe it is both unnecessary and inadvisable to address the matter at this time. For all of the reasons stated above, we shall order the adoption of the Employer's final offer.

3. Health, Safety, and Environment

a. The Union's Proposals

The Union's proposals in this subject area basically are that: (1)(a) water piped into the office be tested for the five most likely contaminants, as identified by an appropriate state or county public health agency; and (b) if contaminants above safe-threshold limits are found, corrections be made as soon as possible and/or other mutually acceptable arrangements be implemented; (2) the Union be provided with a copy of each Incident Alert form, and any other report of incident, within 24 hours of the time it is received, or generated, by the Employer, and be timely advised of the actions taken by the Employer concerning same; (3) in the event that anyone suffers an adverse reaction to any "chemical, fume, particulate or other contaminant" in the office: (a) if the person is a bargaining-unit member, all reasonable steps be taken to "separate the employee from the affecting agent;" if the employee is removed from the workplace, there be no loss of pay or leave suffered; and if the workplace connection is not readily apparent, any leave taken by the employee be restored "upon submission of reasonable documentation of workplace connection;" (b) as soon as the priority of caring for the person allows, the Union and management consult concerning protections for the bargaining unit generally, including the possibility of closing the workplace; (4) to the extent possible, the Employer continue to provide automatically closing doors in the teletype room and at all entrances to nonpublic areas of the office, and have a lobby/vestibule at each door that "is not for emergency use and that provides egress directly to the outdoors;" (5)(a) written certification be provided by an accredited testing source of the adequacy of the office's Heating, Ventilation, and Air Conditioning (HVAC) system, to be served on the parties concurrently; (b) if the HVAC system is reported inadequate "for all expected uses and external weather conditions, appropriate corrections will be implemented;" and (c) in the interim, employees' health and safety be fully protected; (6)(a) the parties consult in the event of power outage or other failure to the HVAC system; (b) employees

experiencing discomfort as a result be considered for reassignment or release from duty in accord with policy and practice, and a liberal leave policy be followed; and (c) any employee who becomes ill due to extremes of heat, cold, etc., be considered for reassignment outside the danger area; if employees are temporarily relieved of duties, this be done without loss of pay or personal leave; and if the workplace connection to the illness is not readily apparent, any leave taken by the employee be restored "upon submission of reasonable documentation of workplace connection;" and (7)(a) the Employer provide samples of various types of glare-reducing devices for employees, "including at least one optical-coated glass screen filter and one polarizing" filter, for experimentation by employees with glare problems, and the type chosen by each employee be furnished; (b) the candlepower in ceiling lights be reduced where it would prove beneficial; and (c) for unresolved ceiling light-glare problems, the Employer install glare-reducing lenses or baffles to the ceiling lights, "after experimentation and Union-mediated feedback from the employees."

Although the office's water supply has been tested for lead, Proposal 1 would provide, at minimal cost, some level of assurance to employees that it does not contain other dangerous contaminants. The proposal is reasonable "given the uncertainty that increasingly pervades informed awareness of what we as a society are doing to our most crucial liquid resource." Regarding its second proposal, requiring the Employer to provide the Union with Incident Alert, and other report-of-incident forms, would enable it to police contractual health and safety provisions better than under the Employer's proposal. Moreover, it is consistent with the reporting requirements contained in the parties' national agreement.

Proposal 3 should be adopted because it provides a reasonable procedure for addressing hazardous workplace situations. In this regard, it guarantees that employees not be required to use their own leave "when the workplace makes [them] sick," while leaving to management any decisions as to how to best protect employees' health and safety. With respect to the issue on automatically closing doors and entrance vestibules, while the parties have offered virtually identical wording on the issue, because it is closely related to their final offers concerning the floorplan, the Union urges that its version be ordered into the agreement "with a consistent decision also on the (yet-to-be-discussed) floorplan's northwest-corner outer door(s)."

Its fifth proposal would require independent testing of the office's HVAC system, and is justified because of numerous employee complaints of building-related health problems, which are supported by the results of a recent Union survey, and on-going problems employees have experienced with temperature fluctuations at the new location. Union Proposal 6 would provide a procedure for addressing power outages or failures of the HVAC system, and guarantees that employees not be required to use their own leave in

such circumstances, while once again leaving to management any decisions as to how best to safeguard employees' health and safety. Finally, its last proposal would provide employees with glare-reducing devices for their Video Display Terminal (VDT) screens, which has been a continual concern of SSA employees in Lansing as well as nationally.

b. The Employer's Position

The Union should withdraw its first proposal under this subject area because "the water delivery system has been tested for lead and no problems were found." Moreover, the city of Lansing "tests the water from their wells and at random sites throughout the city on a daily basis to check for contaminants that would cause health problems." No employees have complained of any ill effects from the office water, and "no problem has been uncovered in the 2 1/2 years since the move." The Union's second proposal also should be withdrawn because it violates management's right to determine its internal security practices, and the issue of obtaining access to Incident Alert forms "was fully covered and compromised at a higher level." In this regard, the Employer's counteroffer is that, "in accord with the Regional MOU, item 2, dated April 17, 1987, agreed to by the Regional Vice President, management will provide the on-site representative with monthly data on the frequency of incident reports within the office." Since the MOU requires management to inform it of any hazardous situation, "the Union does not need to receive the actual incident alert form."

Concerning the third issue of hazardous workplace situations, the Employer proposes that: (1) if any employee suffers discomfort due to "chemical, fume, particulate or other contaminant" in the worksite, management "will take all reasonable steps to separate the employee from the affecting agent;" should the employee decide that removal from the workplace is necessary, he/she "will be considered for release from duty per existing regulations;" and "a liberal leave policy will be followed for affected employees;" (2) if the office area becomes hazardous to employees' health, the parties "will immediately consult concerning resolution," with management to give "appropriate consideration, if the situation warrants, to closing the office and releasing employees without charge to personal leave;" and (3) "management agrees to counsel any employee who suffers any job-related illness or injury in accordance with Article 34 of the National Agreement." Its proposal "is fully responsive to the Union's concerns." The Union's proposal, on the other hand, "seeks to establish the entitlement of individual employees to administrative leave for illness." As such, it is contrary to Governmentwide regulations. Moreover, local management is under no obligation to bargain over the issue because it is covered by Articles 9 and 34 of the parties' national level agreement.

The Employer agrees with the Union's fourth proposal, provided there is "an understanding that the door in the [northwest] corner of the office that leads directly to the outside is an emergency door." Such an understanding, in conjunction with the Panel's adoption of management's floorplan, would prevent the construction of a second door, thereby decreasing "the likelihood of cold air discomfort" to both employees and claimants. The Union should withdraw its fifth proposal on outside certification of the adequacy of the office's HVAC system. In this regard, management twice has provided the Union with a copy of the Certificate of Occupancy issued by the City of Lansing Department of Building Safety, which ensures that the HVAC system "meets all local codes and is adequate for the space it covers." This was further confirmed by the results of an indoor air quality study of the office conducted at the expense of the GSA which reached the conclusion that the air quality "appeared to be adequate." The GSA again recently had an outside contractor inspect the air quality. If the Union does not agree with the findings of the contractor's report, it can pursue the matter under Article 9 of the national level agreement.

The Employer's counteroffer to the Union's sixth proposal is essentially that: (1) the parties consult in the event of a power outage or other failure to the HVAC system, employees experiencing discomfort as a result be considered for release from duty per existing regulations, and a liberal leave policy be followed; (2) if the office area becomes hazardous to employee health, the parties "will immediately consult concerning resolution," with management to give "appropriate consideration, if the situation warrants, to closing the office and releasing employees without charge to personal leave;" and (3) "management agrees to counsel any employee who suffers any job-related illness or injury in accordance with Article 34 of the National Agreement." Its offer is "fully responsive to the Union's concerns." The Union's position should be rejected for the same reasons that were provided in connection with its proposal on the third issue under this subject area.

Finally, with respect to the seventh and last issue, "the Agency will provide glare-reducing devices for all monitors where the employee indicates a need. Where it would prove beneficial, candlepower in ceiling lights will be reduced." Its proposal demonstrates its commitment to providing a healthy work environment for all employees. The Employer must, however, "retain control of the type of equipment that will be purchased." In this regard, it has looked into various kinds of filters and discovered as much as a $40 variance "for what appeared to be the same amount of glare reduction."

CONCLUSIONS

Based on the evidence and arguments presented by the parties

with respect to this subject area, we conclude that the Employer's final offer should serve as the basis for settlement. Preliminarily, we note that some of the issues in dispute involve matters previously negotiated by the parties' representatives at the national and regional levels. As we have stated elsewhere in similar circumstances,[3] unless there are clear and convincing reasons to do so, it is important for the maintenance of sound labor-management relations that the results of such bargaining not be undercut through local negotiations. Thus, on a number of issues, the record shows that the Employer's final offer, which refers to pertinent sections in these previously-negotiated agreements, adequately should accommodate employees' health and safety requirements, and represents a reasonable response to the needs of employees and management as a result of the relocation.

Conversely, for the most part the record fails to support the adoption of the Union's position through clear and convincing reasons. For example, there appears to be no factual basis for the Union's concerns with respect to the office's water supply or HVAC system, so the portions of its final offer addressing these matters are unnecessary. Finally, we favor the Employer's position with respect to glare-reducing devices because it properly balances the interests of employees and management. In this regard, the health and safety of employees should be protected by guaranteeing that such devices will be provided where employees indicate a need, at the same time as management's ability to contain costs is ensured.

4. Union Facilities

a. The Union's Position

The Union essentially proposes that: (1)(a) it receive "adequate and equitable workspace and facilities, in accord with the national agreement, past practices from local carryovers, and other past practice;" (b) there be no loss of the use of equipment or facilities for the Union; and (c) no Union official suffer any loss in privacy or convenient access to confidential space and facilities because of the relocation; (2)(a) the Employer provide a private room with a minimum of 200 square feet of floor space, as shown on the Union's floorplan, with ceiling-to-floor walls and lockable door, for exclusive Union use; (b) all keys to the Union office be in the Union's control, except for one retained by Employer for security reasons; (c) management be prohibited from entering its office without prior Union approval, except where "management has a reasonable belief that an emergency situation

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[3]See Department of Health and Human Services, Social Security Administration, Aurora District Office, Aurora, Illinois and Local 1395, American Federation of Government Employees, AFL-CIO, Case Nos. 90 FSIP 154 and 235 (March 18, 1991), Panel Release No. 308.

exists;" (d) the privacy and security of the office's contents be protected to the extent possible during and after such entry, with management to notify the Union as soon as possible of the emergency entry, its reasons, and results; and (e) the Employer continue to provide the furnishings, equipment, and supplies being used by or provided to the Union, including an FTS telephone with current numbers, and working electric typewriter, and maintenance for all equipment and furnishings, including janitorial service; (3) the Employer obtain, and/or otherwise act to the limit of its discretion to obtain, additional space, "equal to the space allotted for the Union office," to be added to the existing District Office floor space; (4) at all times, it have access to its office, and "full benefit of the HVAC system as well as access to other facilities normally available in the District Office," including, "but not limited to, photocopiers, manuals, breakroom, restroom, etc;" (5)(a) if the Employer implements a security plan that excludes the Union from after-hours access to facilities in the District Office, its "rights and benefits will be maintained," i.e., the Employer provide the Union with an office outside of the security perimeter that is secure and environmentally adequate, including access to all equipment and furnishings previously provided, including access to all facilities, such as photocopiers, office manuals, restrooms, breakrooms, etc.; (b) continuations "of pre-existing Union facilities rights will be implemented as quickly as possible, and in the interim the status quo will be maintained, with no loss to the Union of access rights;" and (c) there be no waiver of any rights the Union may have concerning the Employer's implementation of such a security plan; and (6) neither party intends any change to the Union's rights under the national agreement, past practices from local carryovers, and other past practices, "of the access to the Lansing D[istrict] O[ffice]. on nonduty time for Union meetings. Any change to the procedures for this access will be proposed to the Union in advance and bargained as appropriate."

Preliminarily, the Employer's proposals under this subject heading attempt to restrict the Union's access to its own office and necessary District Office facilities. As such, they "are contrary to the master labor agreement and there is therefore no duty, and in fact **no ability**, to bargain over them" (emphasis in original). This is because Article 11, Section 3.A., of the national agreement states that "the administration will provide the Union with the use of facilities to the extent and under the circumstances in effect on March 12, 1988," and the Union has had unlimited access to its office at the two previous District Office sites at Lansing.

The Panel is urged to adopt its first proposal "as an accurate and appropriate overall statement of how the Union facilities-and-access issues should in general be resolved." As to the second proposal, 200 square feet "is reasonable and necessary, given the current extreme congestion in the Union office," and "appropriately

melds the Union's need for security . . . with management's desire to be able to access in an emergency all of the space that the Government has under lease in the D[istrict] O[ffice]." Other parts of the proposal would "reduce the chance of misunderstandings and therefore of future litigation," whereas management's final paragraph on janitorial service "is somewhat vague."

Union Proposal 3 "would benefit the employees, the Union and, presumably, the [A]gency in Lansing" by requiring the Employer to endeavor to obtain additional floor space, thereby "making life here less crowded." Its fourth proposal concerns access by the Union to its own office, and "is the most contested issue between the parties in this whole bargaining." In this regard, the Union had unlimited access to the office, as well as to other District Office facilities at the prior two sites and, "under the national agreement (both prior and present), that access must continue." Any change to this past practice can occur only through a reopening of the national agreement. Moreover, "security" cannot be used as a justification for changing the Union's unlimited access to its office because the time to enforce such an "alleged" management right was during agency-head review of the national agreement.

For various reasons, it is clear that the Employer has no real security concerns on this issue, and its "security emphasis" is a "mere pretext for denying to the Union what it grants to other employees and to nonemployees." The Union's proposal, on the other hand, has been and continues to be at least an appropriate arrangement for the adverse impact of management's exercise of its security rights, and is the only one on the table consistent with the national agreement. The Employer's counteroffer is "tortured, inadequate, self-contradicting and at several points certifiably crazy," as well as in violation of the national agreement. Its real intention is to allow the Union access to its own office during nonduty hours, while locking the Union out of the rest of the District Office, and the "accommodations" it offers are completely unacceptable.

Union Proposal 5 would require the Employer to provide an off-site Union office and equipment if it implements a security plan that violates past practice and the national agreement regarding Union access to its office. It is a "necessary protection" against the Employer's proven past "lawlessness" on this issue. Finally, its sixth proposal concerning access to the District Office for Union meetings on nonduty time merely maintains the practice of the parties prior to the relocation, and "should be absolutely no burden on management at all."

b. The Employer's Position

The Employer's proposals under this subject heading are as follows:

> Management agrees to continue to provide space for the use of the Union as required by the National Agreement, Article 11. This space will measure at least 150 [square] feet. The Union space will be separated from the remainder of the office by a floor-to-ceiling partition with a door that locks. Management will retain a key to the space for security purposes.
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> Management will continue to provide furnishings, equipment, and supplies previously used in the Union space for the Union's appropriate use. Management will continue to provide maintenance for those items furnished to the Union.
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> Janitorial services will be provided at the same level as they are provided for the rest of the facility.
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> The Union will have access to the Union office at all times. When working in the Union office the Union will have benefit of the HVAC system. Because the HVAC is set to run at lower (winter) and higher (summer) temperatures on the weekend and evenings in order to conserve funds, the Union will need to notify management when it anticipates being in Union space during nonduty times so the timer may be reset.
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> The Union will be provided a portable photocopier, which may be kept in the Union space. Manuals that are not maintained by the Union may be moved to the Union space for use during nonduty hours. The Union's representative will be given a key to the restrooms that are in the hallway outside the D[istrict] O[ffice].
>
> The Union will have access to the D[istrict] O[ffice] during nonduty hours when it is otherwise open for official purposes when bargaining-unit employees are present. Such access would not constitute a breach of security.

Furthermore, it believes that Union Proposal 3 should be withdrawn, and its counterproposal to Union Proposal 6 is that "the Agency will comply with Article 11, Section 3, and any other issues in this proposal in the process of being addressed in a separate forum."

The Employer's counteroffer provides "at least" a 50-square-foot increase in Union space from what it had at the previous District Office location, even though GSA reduced the overall square footage at the new facility from approximately 13,000 to 10,000 square feet. Moreover, its counteroffer would not limit or restrict the Union's access to its own space. The Agency has determined, however, "that only designated management officials

will have unlimited access to its offices." This policy was implemented after Regional-level negotiations over an agency-wide regulation. Since the Union already has exercised its opportunity to bargain over the policy at the Regional level, "there is no subsequent duty to bargain on this issue at the local level."

The Employer admits that it "incorrectly allowed employees to retain keys to the office before the relocation to the new facility . . . one of whom also happened to be a Union representative," but ended the practice of issuing keys to nonmanagement employees when the move occurred. This simply corrected "its unauthorized variance from binding higher level procedures." In any event, through the special arrangements contained in its offer, the Union would be provided with items normally maintained within the District Office for its use during nonduty hours.

The Union's third proposal concerning the acquisition of additional space should be withdrawn primarily because "GSA sets space limits based on staffing" and Governmentwide regulations, so the matter is outside the Employer's control. Finally, its proposal on the issue of access to the District Office for Union meetings on nonduty time should be adopted because "the Agency is attempting to negotiate a settlement of a grievance by the local Union on this issue which is at the arbitration stage."

CONCLUSIONS

After examining the evidence and arguments submitted by the parties in connection with this subject area, we are presented with the following dilemma. In our view, overall the Employer's final offer clearly is more reasonable than the Union's. In this regard, it appropriately balances the Union's institutional and representational requirements for a private, equipped, and accessible office, with management's legitimate interests in ensuring that: (1) employees are afforded enough space to perform the agency's mission, and (2) the District Office is secure. The adoption of its entire position, however, as required by the final-offer selection procedure being used in this case, would appear to be inconsistent with a provision in the parties' national agreement, which requires the Agency to provide the Union with the use of facilities to the extent and under the circumstances in effect on March 12, 1988. Having fully considered the equities involved, we nevertheless shall order the adoption of the Employer's final offer to resolve the parties' impasse.

While the record establishes that the Union had unlimited access to its own office, as well as to other District Office facilities, prior to the date in question, we obviously disagree with its view that any change to this past practice can occur only through a reopening of the national agreement. Moreover, yielding to the Union's position on this point would result in an unwarranted doubling of the size of its office at a time when the

rest of the District Office has been reduced by approximately 23-percent. The Employer's proposal, on the other hand, provides for a generous 50-percent increase in the size of the Union office, despite the overall reduction in floorspace. Further, the Employer's final offer guarantees the Union access to its own office at all times, and provides special accommodations which should compensate for the loss of the Union's access to the entire facility. Finally, though less significant to our decision than the reasons identified above, adoption of the Union's final offer on the issue of access to the District Office for Union meetings on nonduty time would undercut the ongoing efforts of the parties to resolve the matter through other means, and provides additional grounds for imposing the Employer's position.

5. Floorplan

a. The Union's Position

The Union's floorplan divides the District Office into four quadrants. It essentially proposes that: (1) in Quadrant 1, the waiting room in the reception and front-end interviewing areas be expanded by bringing in the barrier wall at the reception window, the size of interviewing stations also be expanded and reduced in number from 3 to 2, and the number of reception windows be reduced from 3 to 1; (2) in Quadrant 2, the barrier wall at the last three workstations be placed 4 feet to the west, and a wall and a new door be built in the northwest corner of the office; (3) in Quadrant 3, the PIR be sectioned off into a computer-equipment side and an employee-use side; and (4) in Quadrant 4, in the alternative, (a) the current Union office at the north end of the stockroom be expanded to 200 square feet, and walled-off to ensure privacy, or (b) walls be constructed to provide for 200 square feet of Union office space at the south end of the stockroom.

The changes proposed in Quadrant 1 would provide the visiting public with more room to be seated in the waiting area, and is consistent with its proposals under the Interview Area/Procedure subject area. The waiting public also "would be easier to locate, direct, etc., since they would all be in one location." The changes also would enhance the accomplishment of the Employer's mission by providing a better interviewing environment, and expedite emergency evacuations of the public. The alterations required under Quadrant 2 of its floorplan would open up more space for filing cabinets, and free up the training room for the purpose for which it was intended. Construction of a barrier wall and emergency door would prevent cold and hot air from entering the office, and preserve convenient exiting for employees. They also are consistent with the Union's final offer in the Health, Safety, and Environment subject area.

The changes involved in Quadrant 3 are related to its first proposal in the Work and Breakroom subject area, and would ensure

that employees and the Union have access to a private area for personal meetings. They also would involve no construction costs. Finally, the modifications to the District Office outlined in Quadrant 4 of its floorplan provide alternative ways of implementing its proposals on Union office space and access. It prefers the first alternative, which is where its temporary office now is located. The Union's second alternative location, however, has the "possible advantage" of allowing "the stockroom to keep both doors, and possibly a little additional usable space."

b. The Employer's Position

The Employer basically would alter the District Office's existing floorplan by: (1) remodeling the inside reception counter; (2) reducing the number of interviewing windows on the south barrier wall from 3 to 2, as requested by the Union; and (3) installing a floor-to-ceiling wall and a new door lock to provide the Union with a private facility which prevents it from accessing the rest of the District Office during nonduty hours. In general, it is attempting "to respond with a limited budget to the most pressing concerns as expressed by the Union."

Turning to the Union's floorplan, the changes it proposes in Quadrant 1 would require the relocation and complete remodeling of the reception window barrier wall inward "into an already crowded office," at a "prohibitively expensive" estimated cost of $4,350. In addition, management has taken steps to minimize the number of visitors who overflow to chairs opposite the interviewing windows, rendering the proposed changes unnecessary. The walls that would be constructed under the Union's floorplan for Quadrant 1 "would create a safety hazard" and "undoubtedly interfere with the circulation of filtered, heated, and cooled air." Further, the estimated cost of custom building the furniture proposed by the Union in remodeling the interview windows south of the reception counter is $700, while the Employer's proposal uses the existing interview counter.

The Union's floorplan for Quadrant 2, among other things, would require the construction of a vestibule and an additional emergency door (estimated cost: $1,460) for which "it has not demonstrated a practical need." Its floorplan for Quadrant 3 "seeks to remove management's control" of the PIR, even though the room is required in all SSA field offices for interviewing members of the public "which would be most appropriately conducted in a private setting." Finally, the Union's Quadrant 4 proposals would double its facility space "for occupancy by **one** Union officer" (emphasis in original). The Employer's offer of a 50-percent increase in Union space was made "in an effort to bring these protracted negotiations to conclusion," and is generous "considering the downsizing experienced by the rest of the office."

CONCLUSIONS

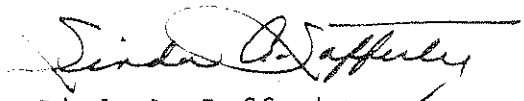
An examination of the parties' final offers concerning the floorplan of the District Office reveals that each corresponds with the positions that were taken in the previous subject areas. Accordingly, consistent with our decisions therein, we shall order the adoption of the Employer's final offer. In addition to the specific reasons provided in the previous conclusion sections, in general we are persuaded that its floorplan is superior to the Union's because it would better address the practical needs of the workplace while holding costs to a minimum. The Union's floorplan, on the other hand, would require a significant expenditure of scarce resources unjustified by the record.

ORDER

Pursuant to the authority vested in it by section 7119 of the Federal Service Labor-Management Relations Statute and because of the failure of the parties to resolve their dispute during the course of the proceedings instituted under section 2471.6(a)(2) of the Panel's regulations, the Federal Service Impasses Panel under section 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the Employer's final offers on all of the subject areas in dispute.

By direction of the Panel.



Linda A. Lafferty
Executive Director

October 11, 1991
Washington, D.C.