

In the Matter of

DEPARTMENT OF THE NAVY
PORTSMOUTH NAVAL SHIPYARD
PORTSMOUTH, NEW HAMPSHIRE

and

LOCAL 4, INTERNATIONAL
FEDERATION OF PROFESSIONAL
AND TECHNICAL ENGINEERS,
AFL-CIO

Case Nos. 15 FSIP 114,
16 FSIP 5, and
16 FSIP 17

ARBITRATOR'S OPINION AND DECISION

Local 4, International Federation of Professional and Technical Engineers, AFL-CIO (IFPTE or Union) filed three requests for assistance with the Federal Service Impasses Panel (Panel) to consider negotiation impasses arising under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire (Employer).

Following investigation of these consolidated requests for assistance, arising from negotiations over the relocation of approximately 100 bargaining-unit employees in three different divisions (or "Codes") to the Building 174 Annex (the Annex) at the Portsmouth Naval Shipyard (Shipyard), the Panel determined that the dispute should be resolved through mediation-arbitration with the undersigned, Panel Chairman Mary E. Jacksteit.^{1/} The parties were informed that if a complete settlement of the issues at impasse was not reached during mediation, a binding decision would be issued to resolve them.

1/ On January 20, 2016, after the Panel had already asserted jurisdiction over the Union's requests for assistance, the Employer for the first time raised numerous jurisdictional issues concerning many of the Union's proposals. At mediation-arbitration, however, the Employer elected to negotiate over all of the Union's proposals and did not raise any jurisdictional concerns as part of its last-best offer which dealt solely with the merits of the issues before me.

Consistent with the Panel's procedural determination, on February 18 and 19, 2016, I conducted a mediation-arbitration proceeding with representatives of the parties at the Employer's facilities. During the proceedings, the parties were able to reach agreement over three proposals at impasse and the Union agreed to withdraw three other proposals. However, they were unable to reach agreement on all or parts of seven remaining issues though the parties worked to narrow their disagreements and revised their proposals in the process. I am now required to issue a final decision imposing terms for the disputed proposals in accordance with the Statute and 5 C.F.R. § 2471.11 of the Panel's regulations. In reaching this decision, I have considered the entire record, including the parties' pre-hearing submissions, and observations made during a tour of employee seating areas. The record was closed at the end of the hearing on February 19 after the parties submitted their last-best offers. Neither party requested an opportunity to submit additional information or arguments.^{2/}

BACKGROUND

The Employer is a component of the Department of the Navy. Its mission is to overhaul, repair, and modernize various naval submarines in a safe, timely, and affordable manner. The Union represents approximately 1,500 employees in the bargaining unit, including GS-5 through GS-12 engineers, engineer technicians, safety specialists, technical writers, and quality-assurance specialists. The parties are governed by a master collective bargaining agreement (MCBA) that expired in 2014 but continues in effect until agreement is reached on a successor MCBA. The

^{2/} On February 23, 2016, the Union submitted an unsolicited revised floor plan and an engineering diagram for its proposed Union satellite office (discussed in greater detail below) to the Panel representative initially assigned to investigate its requests for assistance. At the representative's request, the Union submitted them to the Employer on the same day. On February 24, 2016, the Employer objected to the submission of the documents. It also requested an opportunity to submit a response because the Panel representative had already "seen" the Union's submissions. Because the record was closed on February 19, the Union's unsolicited documents have not been reviewed or considered by the undersigned in rendering this decision. Accordingly, the Employer's request to submit a "response" to the Union's submissions is hereby denied.

parties are currently bargaining over ground rules to govern negotiations for a new MCBA.

Between Spring and Summer 2015, the parties entered into negotiations over the relocation of all or parts of three Codes - Code 220.3, Code 230, and Code 246 - to the Annex. The parties participated in numerous bilateral negotiation sessions for each group of employees and also received mediation assistance from the Federal Mediation and Conciliation Service (FMCS) but could not reach agreement. While bargaining was ongoing, the Employer relocated the three Codes to the Annex.^{3/} The relocated bargaining-unit employees were moved into existing workstations that are 6' x 3' with a single work surface. This is a temporary arrangement pending renovation of the workstations into cubicles. Twelve branch managers and two division heads were also moved into the area into cubicles and offices that range between 95 to 230 sq. ft.

ISSUES AT IMPASSE

The parties disagree over: (1) the floorplan (cubicle size) for the three Codes; (2) the use of certain vinyl material to cover portions of the Annex's flooring; (3) the Employer's obligation to provide the Union with an explanation and an opportunity to bargain when it denies an employee's request for "minor office equipment"; (4) employee requests for ergonomic chairs and "standing desks;" (5) seating of employees in the Annex; (6) provisions for window access, lighting and heating and air conditioning; and (7) the construction of a "satellite" Union office within the Annex.

^{3/} The Union has filed three pending unfair labor practice charges (one related to each Code's relocation) with the FLRA's Boston Regional Office alleging that the Employer engaged in bad faith bargaining by unilaterality relocating the Codes prior to the completion of negotiations.

POSITIONS OF THE PARTIES AND CONCLUSIONS

1. Floorplan ^{4/}

a. The Union's Position

The Union proposes a floor plan that replaces the current work stations with primarily 6' x 10' cubicles with 6' high partitions. By design this will create fewer work stations than currently exist in the Annex. The plan also features reduced workspaces for Code 230 and 246 Branch Managers. To achieve this, the Union proposes that one of the Codes currently in the Annex be relocated. The Union's final proposal therefore includes not only the floor plan provided on February 19 but also the following provisions:

1. Management shall move Code 220.3 from the 2nd floor of Building 174 Annex second floor to their previous location in Building 92 second floor. Each IFPTE bargaining-unit member of Code 220.3 shall have the same or better office cubicle size and furnishings in Building 92 as they had previously before they were temporarily relocated due to mold issues. This move shall be completed within 60 days from when the existing Nuclear Training employees, who were

4/ Although they disagree over their respective floorplans, the parties have agreed to the following introductory language:

The parties agree all cubicles will be constructed, laid out and procured per [the] Union floorplan or [the Employer] floorplan. Where there are differences between the floorplans and [a 2003 Memorandum of Understanding concerning cubicle designs] floorplans shall take precedence.

The MOU referenced above was agreed to on September 22, 2003. Among other things, it states that "future office cubicle construction [should] be engineered and designed with open office concept." It also provides that wall partitions will "normally be solid to a height of [4] feet" but that any part of the partition that exceeds [4] feet must be constructed of "glass or see through material." But in any event, a partition will "normally not exceed [5] feet."

temporarily moved into this location from the 3rd floor above are returned to their previous location. The Nuclear Training employees are to return to their previous location on the 3rd floor above by October 1, 2016.

2. The office work cubicles/stations on the second floor of Building 174 [Annex] shall be per the attached Union proposed plan with the exception of the single secretarial area which is covered by AFGE.

3. Code 230 and Code 246 Managers shall have first choice as to their work cubicle/station reside [sic] in accordance with the attached Union proposed plan.

The Union believes that the Employer's proposed plan for 6' x 6' cubicles does not provide sufficient privacy or relief from noise and distraction, and creates workspaces for the engineers that are not functional or efficient for the work they perform. Larger space is needed to provide employees with work surfaces for reviewing large charts and documents and for accommodating books. Witnesses testified to the need for visual privacy and noise control, and for space for work and reference materials. Constructing all new cubicles is feasible as management officials stated that money is not a "major" issue.

As demonstrated in the tour provided to the Arbitrator, a large number of the employees in the Annex moved from cubicles in other buildings where engineers still work that are much larger than the Employer's proposed design for the Annex (often 90 square feet of usable space).^{5/} This size is consistent with the Department of Defense Unified Facilities Criteria (UCF) which provides that employees in administrative facilities - such as the engineers in the Annex - can be assigned space up to a maximum of 90 to 100 net sq. ft. The Union has reduced its proposal to 60 square feet to accommodate the Employer's interests. The Employer's insistence on a much more drastic reduction in workspace size flies in the face of what has been understood as needed for engineering work, and denigrates the contribution that employees make to the Shipyard mission.^{6/} The

5/ Some cubicles in these areas are arranged as single occupancy; others are arranged in quads or doubles within a single set of partitions.

6/ The Employer has prejudiced employees by using a "gross square feet" space per employee calculation that ignores

Employer's plea to reduce space rings especially hollow given that it did not spread the pain or the space and reduce the size of cubicles and offices for managers and supervisors who relocated to the Annex. To the contrary, division heads actually received office space that is larger than both their prior offices and the maximum space allotted to them under the UCF.^{7/} The UCF guidelines state that GS-14/15 division head offices will not exceed 200 net sq. ft., but their current offices are around 230 to 250 sq. ft. Sacrifice should not be a one-way street that is paved exclusively with bargaining-unit employees.

There are currently numerous empty cubicles in the Annex, undercutting the Employer's insistence that it needs 124 work stations. The Employer's claim that it needs to reserve space for additional employees should not be credited because the Union's experience is that Shipyard hiring goals routinely fall short. A recent Agency document shows that so far, hiring goals for FY 2016 have fallen well short of intended targets.

It is true, as the Employer points out, that the Union previously agreed to a 6' x 6' cubicle configuration for another group of bargaining-unit employees in Building 174 - the "Trouble Desk" group. That situation strongly differs from this one because employees assigned to that unit typically stay for only 1 to 2 years and are in a less crowded space than the Annex. For this reason, those employees are not a suitable comparator.

Moving the Code 220.3 employees to Building 92 will serve multiple interests. The Employer will have sufficient room to construct the Union's proposed cubicles and with density reduced, there will be less noise in the Annex. The Code 220.3 employees will return to their former home. The Union has already heard that, while this has not been made public, the Employer is already considering implementing this move.

the fact that several secured rooms within the Annex reduce available space well beyond the usual stairwells, aisles, etc. considered in such calculations. Fairness requires that the gsf allowance be increased in this situation.

7/ Calling the space occupied by table and chairs within managers' offices as "common" as a way to get around the UCF guideline, as the Employer did during the tour, is patently absurd.

In summary, the Union's proposal is intended to provide bargaining-unit employees in the Annex a more hospitable work environment, closer to what they have heretofore enjoyed, that will accommodate the demands of their jobs and enable them to work effectively.

b. The Employer's Position

The Employer requests adoption of its final designed plan in which bargaining-unit employees work in 6' x 6' cubicles with 5' walls generally, but 6' panels along heavily used aisles. The entrance to each cubicle would be reduced by extending partitions to create a 3' entryway, providing more privacy. Each cubicle has two (perpendicular) desk surfaces with shelves above. The final plan reduces the number of cubicle work stations by 7, creating an additional aisle to provide more open space in the Annex and bringing the number of workspaces to approximately 124.

The 6' x 6' cubicles will be built using components of the existing 6' x 3' workstations. These workstations are only 3 years old and this reuse represents responsible stewardship of taxpayer money. According to the manufacturer the partition heights cannot be built higher than 6', and the cubicles that fit the existing equipment are 6' x 6'. Entirely new cubicles would have to be purchased to satisfy the Union's proposal, at significant cost.

As with most federal agencies, the Employer is under significant pressure to reduce its "footprint" and maximize the efficiency of its space.^{8/} The Department of Defense has been cited for a high level of waste in its space utilization by the Government Accounting Office. A senior-level space utilization committee at the Shipyard has made a decision that administrative offices, including those used by engineers, will transition to 6'x 6' cubicles as a new norm, as relocations and renovations take place over time. There are currently two other

^{8/} Among other sources, the Employer points to Presidential Memorandum "Disposing of Unneeded Federal Real Estate - Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency," dated June 10, 2010, and Office of Management and Budget (OMB) Memorandum M-12-12 "Promoting Efficient Spending to Support Agency Operations," dated May 11, 2012, requiring Executive agencies to ensure that total square footage remains at FY 2012 baseline levels and to dispose of excess properties.

groups of engineers already working in new 6' x 6' cubicles, including the Trouble Desk area where agreement on the office configuration was reached with the Union. The 6' x 6' cubicle configuration for the Annex provides an optimal per employee space utilization rate (expressed as gross square feet) that reflects the need for reduction.

As to the existence of empty cubicles, there are far fewer than the Union contends. These spaces must be retained for growth. Codes 230 and 246 intend to hire between 10 to 20 employees by the end of FY 2016, and several of them will be seated within the Annex. These hires have been approved. The Union's reliance on recent Shipyard hiring statistics fails to account for hiring patterns within the entire Engineering Department (of which the Codes are a part) and covers only a four month period through February 2016. It is definite that hiring will take place later in this fiscal year. Thus, the Employer must operate under the assumption that it will need to retain space within the Annex for future hires. At the same time, in response to Union concerns, the Employer reexamined projected needs and determined it could eliminate one row of seven cubicles to provide more open space.

The Employer calculated the results of other possible layouts, such as a design based on 6' x 8' cubicles, and the Union's original proposed size, 6' x 12'. Any cubicle larger than 6' x 6' would not allow for enough work stations to accommodate the needs of all three codes assigned to the Annex, and would produce an excessive per-employee space utilization rate (gsf.) Moreover, because Codes 230 and 246 will see additional growth before the end of FY 2016, the Employer cannot construct larger cubicles that would prevent their being accommodated in the Annex. Additionally, while money is not a "major" factor for the Employer, it is also something that cannot be ignored. In this regard, reconstructing existing furniture within the Annex would be significantly more cost-effective than constructing a new layout.

Although the Employer understands the Union's frustration over the size of cubicles and offices for branch heads and division chiefs, the existing space utilization within the Annex at the time of the moves did not provide the Employer with many options. Smaller cubicle sizes for branch heads would only have resulted in leftover space that would not have been usable for any purpose, including changing the space allocation for employees. The same applies to reducing the size of the division head offices. For one of the division head offices it

would have required removing existing walls. It is true that some of these offices exceed the UCF maximum but the meeting areas of these offices (table with chairs) should be excluded from the calculation since this is really multi-purpose space.

The management decision to co-locate three Codes in the Annex rests on the fact that the functions of the three Codes - particularly Code 230 and Code 246 - have a great deal of synergy that requires frequent collaboration. Further, the Annex is close to project teams in nearby buildings that also collaborate with the Codes (especially in the new project area in building 174.) Consequently, it was appropriate to relocate the three Codes at the Annex. The Employer cannot agree to relocate Code 220.3 to the second floor of Building 92. Contrary to the Union's assertions, it is not clear that, even once the renovations are complete, the Code would be able to relocate to that building because other Shipyard tenants are also seeking to move there. Furthermore, from the Employer standpoint, the space utilization density reflected in its floor plan must be sustained no matter whether it is Code 220 employees in the Annex or some other group of employees.

In conclusion, the Employer does not have the luxury of ignoring the limitations within which it must operate. The era of 90 sq ft cubicles - now 30 years old - is past. The Employer's final proposal alters the cubicle design to provide greater privacy and decreases density, addressing Union's concerns while also insuring that management interests are met. As such, the proposal should be adopted.

CONCLUSION

The Arbitrator will adopt the Employer's final proposed floor plan described above, for the following reasons.

The Union's proposal for 6' x 10' cubicles, on the face of it, is a fully justified proposal given the enormous reduction in employee work space represented by the Employer's alternative and the understandable dismay of the Union at the difference in treatment between bargaining unit employees and supervisors and managers. It represents a scaling back from its original position. The proposal fails, however, because this larger cubicle size cannot be "de-linked" from the Union proposal that the Arbitrator order the Employer to reduce the number of employees assigned to the Annex by, specifically, moving Code 220 employees and their branch chief out of that location and into building 92 where this Code was once located, in order to

create the space necessary to install larger cubicles. Code 220 was moved out of building 92 in July 2013, almost three years ago, and other employees were moved in. Currently Building 92 is under renovation. The Union's proposal therefore rests on a number of contingencies: renovations being completed later this year and the other tenant group being relocated. It also presumes that no decision has been made to place another work unit in that space. And it imposes a standard for work stations in that building (what employees had before) that has had no analysis whatsoever. In its effect, the Union proposal is to hold matters in abeyance, keeping BUEs in the current unsatisfactory work space in the Annex with no change until such time as Code 220 can be moved to Building 92 under conditions set by the proposal. But these preconditions leave the Arbitrator contemplating issuance of an order that would delay resolution of this impasse until a future condition comes about that cannot be known, or timed, with certainty. Building 92 might not become available. It might not be built out as the Union requires. Certainty could be achieved by ordering the immediate removal of 220 employees regardless of where they relocate but that is not the Union's intention - it is aiming to improve the working conditions of Code 220 employees, not worsen them (dislodged employees not infrequently end up in trailers.) The mission of the FSIP is to resolve bargaining impasses and bring negotiations to an end. The Union's proposal does not provide a viable means for doing that, especially since the parties' relationship and bargaining history offer no reason to believe that constructive, collaborative problem-solving could serve as an alternative to certainty. The Employer proposal insures that at the earliest possible time the highly unsatisfactory status quo will end. It makes concessions to the issues of noise and density. At this juncture it is the only viable alternative among those offered.

It is also relevant that with all the information shared, the one glaring gap in the Union's case is any description of what it is actually like to work in a 6' x 6' cubicle. The Union's case treats the space reduction in and of itself as establishing inadequacy but it does not. It only shows that the reduction is substantially outside of what has been customary and accepted - until now. There is current and actual experience with the "new reality" within the Engineering Division, but we did not hear about it or have the inferiority of the cubicles demonstrated. The Union witnesses spoke only to their *current* working conditions in the Annex - conditions that will not exist once renovations are completed, and not the conditions that are actually the subject of this impasse. Thus

an actual prejudicial impact of the smaller cubicles on work performance was not established.

2. Flooring Material

a. The Union's Position

The Union's final proposal language on this subject is:

All flooring shall be commercial office grade carpeting in the individual cubicles and immediately outside the cubicles. High traffic hallways shall have high quality vinyl flooring similar in quality to that which is installed for the main thoroughfare in Bldg 174, 2nd Floor. The carpeting and the vinyl flooring shall be installed at the same time that the office layout is reconfigured.

The parties reached agreement on carpeting areas inside and just outside cubicles, as a way to reduce noise. While the parties agree to leave high-traffic hallways uncarpeted, they cannot agree over the type of material to be used for such flooring in such areas. The Union is seeking "high quality vinyl" that is used in another portion of Building 174. This vinyl is aesthetically pleasing and also requires less cleaning/maintenance because the existing flooring is dust-producing. Although the Union has no doubt that acquiring such flooring would be expensive, the cost would not financially cripple the Employer. The Union also proposes that all carpeting and flooring be installed at the same time as the office is reconfigured in order to minimize potential employee disruptions.

b. The Employer's Position

The following wording is proposed by the Employer:

All flooring shall be commercial office grade carpeting in the individual cubicles and immediately outside the cubicles. High traffic hallways shall be uncarpeted flooring.

The Employer is also interested in using the type of high-quality vinyl requested by the Union. Because of pricing issues (thousands of dollars per sq. ft.), however, it cannot guarantee that it will be able to obtain the requested flooring. In addition, the Employer is reluctant to tie cubicle

reconstruction, carpeting, and vinyl installation within the same time frame. Installing the vinyl could take many months since the Employer first would have to secure funding for the project. The refurbishment of the cubicles and installation of carpeting should not have to be postponed while the vinyl is acquired. It wants to give employees in the Annex something sooner rather than later.

CONCLUSION

The Arbitrator will adopt the Union's proposal with one addition. There is no disagreement here on the merits. While completely agreeing that flooring issues should not delay installation of the cubicles the Arbitrator assumes that reducing disruption will be as important to the Employer as to employees and this will propel quick action concerning the flooring. The added language requires that the Union be informed if waiting for the tile will delay the rest of the renovation.

3. Minor Office Equipment

a. The Union's Position

The Union proposes the following:
Requests for minor office equipment such as additional task lights and shelving shall be made as needed by Bargaining Unit Members to their Immediate Supervisor in the Agency. The Agency shall grant reasonable requests for equipment and obtain such within budgetary constraints. If any requests are denied the IFPTE shall be informed by the agency as to the reason for the denial and if necessary the IFPTE reserves the right to bargain any requested office equipment that the agency denies.

The Union wants to ensure that employees receive minor office equipment, but it also wants to learn supervisors' rationale if they deny a request for equipment. The Union believes such information could help it to resolve disagreements and identify any problematic global issues or patterns. Additionally, the Union wants to preserve its ability to bargain over denials of minor office equipment to facilitate the resolution of workplace disputes.

b. The Employer's Position

The Employer proposes the following:

Requests for minor office equipment such as additional task lights and shelving shall be made as needed by Bargaining Unit Members to their Immediate Supervisor in the Agency. The Agency may grant reasonable requests for equipment and obtain such within budgetary constraints.

The Employer rejects the Union's approach to requests for minor office equipment. Providing the Union with information about the rationale for the denial of every piece of minor equipment would be cumbersome. Moreover, the Union's envisioned scenario would lead to endless bargaining over workplace minutiae.

CONCLUSION

The Arbitrator adopts a modified version of the Union proposal, substituting recourse to the grievance procedure for bargaining. Given the difficulty these parties have in completing bargaining successfully it would be foolhardy to invite that process into individual disputes. The Union's language and arguments for using the grievance procedure for disputes over ergonomic furniture apply fully here.

4. Ergonomic Chairs and Standing Desks

a. The Union's Position

The Union has one proposal with two sub-parts on the issue of ergonomic chairs, and one proposal that addresses standing desks:

Ergonomic/orthopedic office chairs.

- If requested by any individual bargaining unit member, the [Employer] shall consider procuring other ergonomic/orthopedic office chairs (aside from what is initially provided) that meets the individual's needs. Employees who request special ergonomic/orthopedic office chairs shall not have to provide medical documentation unless the projected cost of the chair would exceed \$800. Any such requests granted shall be fulfilled by the [Employer] within 30 days. If the Agency

denies any such request from a individual bargaining unit member, the [Employer] shall provide a detailed rationale for the denial in a letter to the individual and the [Employer] shall provide a copy of such letter to the IFPTE. If the BU wishes to contest the denial, this will be adjudicated via the [Employer] and IFPTE Local 4 Agreement grievance procedures.

- Should any BU Member require an ergonomic/orthopedic office chair due to a medical condition, and has medical documentation stating such, then the [Employer] will procure a chair that meets the medical needs of the BU member. The BU member shall liaison with the [Shipyard] clinic that will provide the necessary documentation to the BU member supervisor in accordance with HIPPA privacy laws. The [Employer] shall procure the ergonomic/orthopedic office chair within 15 days after the immediate supervisor receives the medical documentation from the [Shipyard] clinic.

Standing Desks:

Sit/stand desks will be made available for those employees who need them to address ergonomic issues. The sit/stand desks shall be raised or lowered hydraulically. Employees who request sit/stand desks shall not have to provide medical documentation. All such request shall be approved and furnished by the [Employer] within 30 days.

The Union's proposals aim to proactively address health issues by granting bargaining-unit employees the option of requesting items that could alleviate those issues before first seeking out medical treatment. In this regard, employees could request ergonomic chairs that are under \$800 and obtain standing desks without having to first obtain medical documents from their healthcare providers. This approach would allow employees to quickly address health issues in the workplace. The Union does not want to see employees wait for months - or even years - to receive a beneficial piece of office equipment.

The Union notes that its proposal on ergonomic chairs is divided into two sub-parts. The first sub-part concerns chairs under \$800 and does not require an employee to provide medical

documentation in support of a request for such a chair. But, as a tradeoff, the Employer is merely required to "consider" an employee's request for an ergonomic chair. If a request is denied, however, the Employer must provide the Union and the affected employee with a detailed explanation for the denial. The Union would then be permitted to file a grievance in accordance with the parties' MCBA. The Union proposes this approach because it wants to ensure that denials are not being made on an "arbitrary" basis and that the Union has a venue to challenge "arbitrary" denials. The second sub-part of the Union's ergonomic chair proposal concerns requests for chairs that are over \$800. Although this proposal does require an employee to obtain and provide medical documentation to the Employer, it mandates that the Employer will provide a chair once it receives such documentation. Again, the Union wants to ensure that employees receive the equipment they need when they actually need it.

With regard to standing desks, the Union believes that these should be made available to any employees requesting them.

b. The Employer's Position

The following is the Employer's final offer for both issues:

- All parties shall proactively approach ergonomic improvements as they are identified. Upon request, in accordance with NAVSHIPYD PTSMHINST 5100.82, Chapter 360, ergonomic assessments will be performed in order to identify any risks or individual needs. The agency will grant reasonable requests for ergonomic items within budgetary constraints.
- Should any BU member require ergonomic/orthopedic office equipment, due to a medical condition, the [Employer] will initiate the reasonable accommodation process to determine the needs of the employee.

The Employer is not opposed to the idea of providing employees with ergonomic chairs or standing desks. But it disagrees with the Union's approach because it is overly broad. The Union's proposals ignore the fact that the Employer, through various workplace policies, has a system in place to address employees' health/ergonomic concerns in the workplace. Under

these policies, an employee who is experiencing health-related issues that he or she believes are being caused and/or exacerbated by workplace conditions may request an "ergonomic assessment" from the Employer's safety division. Once an employee makes such a request, a representative from the division would assess the employee's equipment/workspace to determine whether adjustments would alleviate the employee's concern. The Employer believes that the utilization of this process could eliminate the need for an ergonomic chair or standing desk altogether because it could uncover a simple solution to an employee's problems, such as adjusting a chair or doing stretching exercises. The foregoing process could still leave the door open for the Union's requested items, if necessary.

The Employer also believes that the second sub-part on the Union's proposal for ergonomic chairs - which mandates chairs upon the receipt of medical documentation - would unduly interfere with the Employer's reasonable accommodation policy. In this regard, the Union's proposal requires grants of requests for chairs while depriving the Employer of the discretion to determine whether such requests were necessary or unduly burdensome. The Employer once again stresses that its safety policy could provide an employee with solutions he or she had not previously considered. Moreover, the Employer is uncomfortable with the idea of foreclosing management feedback in the process of obtaining potentially costly ergonomic furniture.

CONCLUSION

The Arbitrator's resolution draws from both proposals taking the approach that the Employer is required to consider requests for ergonomic chairs and standing desks and denials of requests must be documented and are grievable. Where an employee relies on a documented medical condition the employee may go through this same process with the supervisor (where the Employer agrees to consider but is not required to grant a request), or choose to pursue a reasonable accommodation claim. The Employer cannot insist that the latter procedure be used. There could be situations where an existing or potential medical condition is determined by a supervisor to justify ergonomic equipment as, for instance, a preventive measure or in recognition of the demands of a particular work assignment, even if the requirements of establishing a disability are not met. Therefore in considering requests involving medical issues the Employer cannot insist on the employee meeting reasonable

accommodations standards unless that specific process is opted for by the employee.

The Arbitrator believes that an *entitlement* to ergonomic equipment - either chairs or standing desks - is best addressed in the parties' negotiations over a master agreement, where the parties can establish a consistent approach for all groups of employees represented by the Union. Nothing indicates atypical needs among the employees affected by this impasse.

5. Seating Issues ^{9/}

a. The Union's Position

The Union offers two proposals:

- The intent of the subject negotiated 2nd floor of the bldg. 174 Annex plan is as a designated area that is primarily occupied by IFPTE Bargaining Unit Members. The designation for additional cubicles within the Annex for non-IFPTE bargaining unit members shall be negotiated with IFPTE prior to occupancy. Seating/cubicle arrangements of others (non IFPTE BU members), that would be performing Codes 230, or C246 functions will be negotiated (between IFPTE and the Agency) before they are assigned an empty BU member seat/cubicle. These arrangements will be made in a reasonable timeframe to optimize personnel assignments.
- In consideration of the fact that IFPTE did not have an adequate opportunity to address the current effectuation of the IFPTE bargaining unit (BU) seats, the IFPTE shall have the opportunity to make adjustments to the current seating of BU employees. At least four weeks prior to IFPTE BU

9/ During mediation, the parties reached agreement on the following wording:

Within each branch, IFPTE BU members may change/swap cubicles by engaging with IFPTE, who will coordinate timing with Management. No IFPTE BU member will be displaced from their existing cubicle/seat without IFPTE approval and management involvement.

occupancy, the [Employer] will provide an accurate list of IFPTE BU members currently assigned (or to be assigned) to Codes 246 & 230 who would be moving into the Annex area. The list will state the service computation date (SCD), time in Codes 246 & 230, badge # and phone number. After the initial move future seating/cubicle selections will be made by the IFPTE BU member with the assistance of the IFPTE if requested. All cubicle assignments will be made by the IFPTE in consultation with the IFPTE BU members. The IFPTE will determine & designate seating/cubicle assignments on the 2nd floor of the bldg. 174 Annex. Cubicle selection will be made from all available cubicles, normally by Branch unless there is more than one supervisor in a branch, in which case, it will be by supervisor.

According to the Union, its first proposal concerns those situations where a non-bargaining unit employee might be placed in a seat that has been vacated by a Code 230 or 246 bargaining-unit employee (Code 220.3 is not factored in because of the Union's proposed relocation). The Union wants to reserve the right to bargain over such situations because the seating of those individuals could affect seating choices for bargaining-unit employees. For example, a bargaining-unit employee may want to relocate to a vacated seat if it is near a window or otherwise desirable. The adoption of its proposed wording would give the Union greater latitude.

The Union's second proposal addresses the Annex's current seating situation and post-reconstruction of the Annex. In this regard, employees were rushed into the Annex by the Employer and did not really get a chance to consider possible seating options. Its proposal gives employees an opportunity to reassess their seating choices. Additionally, 4 weeks prior to reconstruction of the workstations the Employer would be required to provide the Union with a list of bargaining-unit members who are seated, or will be seated, in the Annex that includes SCD, time in Codes 246 & 230, badge numbers, and phone numbers. The Union would use the foregoing information to work with employees to determine their seating arrangements post-construction, but employees would normally be required to sit within their respective division branches. This approach is similar to the Employer's proposal but differs concerning the type of information that is required in the list of employees

provided to the Union. The Union feels that the information the Employer proposes to provide would be inaccurate and lead to confusion.

b. The Employer's Position

The Employer offers the following two counter proposals:

- The intent of the subject negotiated 2nd floor of the bldg. 174 Annex plan is as a designated area that is primarily occupied by IFPTE Bargaining Unit Members. The designation for additional cubicles within the Annex for non-IFPTE bargaining unit members that affected the working conditions of current bargaining unit employees in the building shall be negotiated with IFPTE prior to occupancy. Seating/cubicle arrangements of others (non IFPTE BU members), that would be performing Codes 230, 220 or C246 functions will be negotiated (between IFPTE and the Agency) before they are assigned an empty BU member seat/cubicle. These arrangements will be made in a reasonable timeframe to optimize personnel assignments.
- At least four weeks prior to completion of reconfiguration, the Agency will provide an accurate list of IFPTE BU members currently assigned (or to be assigned) to Codes 220, 246 & 230 based on their supervisory assignment in the performance appraisal tracking system. The list will state the service computation date (SCD), time in Codes 220, 246 & 230, badge # and phone number. After the initial move future seating/cubicle selections will be made by the IFPTE BU member with the assistance of the IFPTE if requested. All cubicle assignments will be made by the IFPTE in consultation with the IFPTE BU members. The IFPTE will determine and designate seating/cubicle assignments on the 2nd floor of the bldg. 174 Annex. Cubicle selection will be made from all available cubicles, normally by Branch unless there is more than one supervisor.

On the issue of non-bargaining unit employee seating, the Employer is willing to bargain. It wants to make clear, however, that such bargaining would be done in accordance with existing law. In this regard, the Employer can only bargain over proposals concerning non-bargaining unit employees if such proposals vitally affect bargaining-unit employees' conditions of employment.^{10/}

As to the Union's second proposal, the Employer did not offer any wording concerning reconfigurations of the employees' current seating in the Annex. With respect to future seating reconfigurations, the Employer is agreeable to allowing them to take place. But, as part of the list of employees it would provide, the Employer wants to include different information than requested by the Union. The information is similar but will be based on supervisory assignment in the Employer's performance appraisal tracking system by Code. The Employer feels the foregoing qualification provides a more accurate picture of employee breakdowns by Code. The Union's preferred approach is too open-ended and would create too many disputes.

CONCLUSION

There is actually little of substance that separates the Union and Employer proposals. One difference is in the first paragraph where the Employer inserts language to modify its agreement to bargain the seating of non IFPTE BUEs to where that seating "affected the working conditions of current bargaining unit employees in the building." This language simply states what is required under the Statute. In some instances that might render the language unnecessary but the better choice for these parties is to make things clear since the Union's language is broad and there are good reasons to cut off future disputes about the meaning of the language.

In the second paragraph the Union has an additional first sentence. The Arbitrator will adopt that sentence - which allows adjustments in the current seating assignments - but with the addition of the language relating to functional grouping that the Union has agreed to insert at the end of the final sentence of this paragraph. This change is to create consistency by making it clear that immediate adjustments, like other seating decisions covered in this paragraph, are covered by the same caveat.

^{10/} See, e.g., NTEU, Ch. 83 and U.S. Dep't of the Treasury, IRS, Wash., D.C., 64 FLRA 723 (2010).

Also in the second paragraph the Union and Employer wording differs in describing the "accurate list" of employees with accompanying relevant information that the Employer is to provide to enable the Union to carry out its process for seating choices. This is a dispute requiring an immediate, practical solution. The Arbitrator adopts the Employer's language for that reason -it appears the most "doable". The Union's broader complaint about accuracy of information can be pursued by other means. For the finite group of employees involved here, the parties should work together to get a satisfactory list.

6. Window Access, Lighting, Heating and Air Conditioning

a. The Union's Position

The Union proposes the following wording:

Windows will not be blocked by private offices except as documented in union floorplan. Bargaining unit employees will be given priority in allocating work space adjacent to windows. All meeting areas will be equally accessible to all employees. Lighting and ventilation surveys in relocated offices will be conducted upon request, and the appropriate remedies will be implemented. Suitable air conditioning and/or heat will be provided in all working areas.

The Union did not offer much discussion on this proposal but generally expressed an interest in giving priority to bargaining-unit employees for window seating. Moreover, it would like to ensure that these employees receive appropriate lighting, ventilation, air conditioning and heat.

b. The Employer's Position

The Employer does not have a counterproposal on this issue and offered little discussion regarding the Union's proposal except for noting that skylights give employees access to natural lighting throughout the Annex. Any issues concerning air quality should be addressed through various safety procedures within the Employer's control that are accessible to employees.

CONCLUSIONS

The Union's proposal will not be adopted. There was no presentation of any actual problems and nothing was obvious

given that the Annex space is new, high-ceilinged with skylights and light colored walls. The first sentence about window seating also presupposes a seating selection process that would happen only if the Union's floor plan proposal were being adopted. As to all the items covered, BUEs are currently protected by existing terms of the collective bargaining agreement and government and Employer regulations about occupational health and safety.

7. Union Satellite Office

a. The Union's Position

The Union proposes that the Employer construct a Union "satellite office" within the Annex, as follows:

- Wall heights for the IFPTE Satellite Office would be the same as what is agreed to for the Managers. The IFPTE Satellite Office shall occupy two standard cubicles as located in the plan. The IFPTE Satellite Office shall be occupied by one of the Stewards. It is agreed that after all other vacant cubicles are occupied and another vacant cubicle is required, IFPTE will no longer occupy the double cubicle and the individual assigned to the area will only occupy the cubicle nearest the window. Height of partitions for Bargaining Unit members shall be at least six feet.
- Beside the normal office equipment for a work cubicle, the [Employer] shall provide office equipment inside [the Union Satellite] office as below:
 1. One multiple line telephone with caller ID and Speaker system to have conference telephone meetings.
 2. The door shall be partially constructed of glass and shall be lockable by the IFPTE with keys provided for entry.
 3. Table and 4 chairs.

- Nothing in this MOU shall change, modify or open negotiations pertaining to the current IFPTE office [in the Shipyard].

The Union currently has one office that is located approximately 5 minutes from Building 86a where Code 230 was originally located. Code 230 has three Union stewards. Because of the Code's relocation to the Annex, the Union office is now about 15 minutes away for these stewards. Additionally, the stewards had more privacy in Building 86a because employee cubicles were much larger. The Employer's proposed floorplan would do little to alleviate that situation. Based on the foregoing, the Union believes that the construction of a satellite office within the Annex is the easiest way to resolve the Union's privacy concerns and also grant it easier access to a Union facility.

The satellite office proposal is incorporated within the Union's proposed floorplan. Two of the 6' x 10' cubicles near the conference rooms would be reconfigured to make one work station/ "office." A partition could be later erected to separate the office into two cubicles if the Employer needs seating space for an additional employee. A Union steward, however, would remain in the other cubicle as that would be his ordinary workstation.

b. The Employer's Position

The Employer did not offer a counter proposal but instead points out that the parties' MCBA states that the Union will meet with employees at their duty stations.^{11/} It also notes that the Annex has two conference rooms that are available to all employees and that Building 174 has seven other conference rooms also available to employees. When Code 230 was in Building 86a, the Union had 1 hour per week reserved in one of the conference rooms and never expressed a need for a satellite office. Moreover, bargaining-unit employees are scattered throughout the Shipyard. Building a satellite office in the Annex would not alleviate all of the Union's distance-based concerns. Finally, the issue of Union office space is not appropriate for

^{11/} Although the Employer did not identify any particular section of the MCBA, the Union did not dispute the Employer's interpretation. Moreover, during the mediation-arbitration proceeding, the Employer clarified that it is not alleging that the Union's proposal is covered by the MCBA.

negotiations over the relocation of some employees to the Annex. Rather, such discussions are more appropriately suited for the parties' ongoing negotiations over a successor MCBA.

CONCLUSIONS

The Union proposal is workable only if the Union floor plan is adopted. Since that is not the case and given the concerns expressed about the lack of privacy, the Arbitrator does not anticipate that the 6' x 6' cubicles are viable as confidential meeting space. The need for confidential meeting space is satisfied by the two conference rooms located in the Annex. There are also, in Building 74, additional conference rooms and spaces for use by stewards to speak to employees. Therefore, the Union's proposal will not be adopted; however, the Order will assure that the Union has access to the conference rooms.

It is duly noted that the issue of Union space will be part of the negotiations for a new master agreement. Nothing said here is intended to suggest what might be determined as warranted in that context.

ORDER

The following wording is ordered to be incorporated into the MOU the parties' jointly created on February 19, 2016.

1. Floorplan

Section 1.a: The Employer's final floor plan (submitted at the end of the mediation-arbitration) is adopted. And the accompanying language for this section shall read:

The parties agree all cubicles will be constructed, laid out, and procured per the Employer's floorplan. Where there are differences between the floorplan and MOU Office Cubicle Design dated September 22-25, 2013, the floorplan shall take precedence.

Section 1.b:^{12/} The parties shall adopt the following modified version of the Union's final proposal:

^{12/} In preparing the joint last-best offer MOU, the Union withdrew what was initially identified as Section 1.b. The parties, however, did not renumber the subsequent sections. Thus, they have been renumbered accordingly, e.g., the original Section 1.c is now Section 1.b, etc.

All flooring shall be commercial office grade carpeting in the individual cubicles and immediately outside the cubicles. High traffic hallways shall have high quality vinyl flooring similar in quality to that which is installed for the main thoroughfare in Bldg. 174, 2nd Floor. The carpeting and the vinyl flooring shall be installed at the same time that the office layout is reconfigured. The Union will be informed if the tile installation will delay the other renovations.

Section 1.c: The parties shall adopt the following modified version of the Union's final proposal:

Requests for minor office equipment such as additional task lights and shelving shall be made as needed by Bargaining Unit Members to their Immediate Supervisor in the Agency. The Agency shall grant reasonable requests for equipment and obtain such within budgetary constraints. If any requests are denied the employee and IFPTE shall be informed by the agency as to the reason for the denial. If the BUE wishes to contest the denial, this will be adjudicated via the Employer and IFPTE Local 4 Agreement grievance procedures.

Section 1.d: The parties shall adopt the following modified version of the parties' final offers on the issues of ergonomic seating and standing desks:

- The Employer shall consider requests from individual bargaining unit members for ergonomic/orthopedic office chairs (other than what is initially provided) and/or other ergonomic equipment including standing desks. The Employer shall consider the employee's individual needs in considering such requests. A decision will be made within 14 days from the individual's request and where equipment is approved, it will be provided within 30 days of approval. The Union will be informed of delays the Employer believes are unavoidable. If the Agency denies any such request the Employer will provide a written explanation for the denial to the employee, with a copy to the IFPTE. If the BUE wishes to contest the denial, this will be

adjudicated via the Employer and IFPTE Local 4 Agreement grievance procedures.

- Where the employee relies on a medical reason, and documents that reason, the supervisor will handle such information in conformity with HIPPA privacy laws. The employee may utilize the on-Shipyard clinic for the purpose of obtaining documentation. At the employee's election, a medically-based request may be processed through the reasonable accommodation process. Otherwise, the supervisor will make a decision without being bound by the standards and processes required by that process.
- Upon request from a employee an ergonomic assessment will be conducted in accordance with NAVSHIPYD PTSMHINST 5100.82, Chapter 360.

Sections 1.e and 1.f: The parties shall adopt the Employer's final offer for Section 1.e. as set forth in the first bullet point below. With respect to Section 1.f, the parties shall adopt the modified version of the parties' last best offers as set forth in the second bullet point below:

- The intent of the subject negotiated 2nd floor of the bldg. 174 Annex plan is as a designated area that is primarily occupied by IFPTE Bargaining Unit Members. The designation for additional cubicles within the Annex for non-IFPTE bargaining unit members that affect the working conditions of current bargaining unit employees in the building shall be negotiated with IFPTE prior to occupancy. Seating/cubicle arrangements of others (non IFPTE BU members), that would be performing Codes 230, or C246 functions will be negotiated (between IFPTE and the Agency) before they are assigned an empty BU member seat/cubicle. These arrangements will be made in a reasonable timeframe to optimize personnel assignments.
- In consideration of the fact that IFPTE did not have an adequate opportunity to address the current effectuation of the IFPTE bargaining unit (BU) seats, the IFPTE shall have the opportunity

to make adjustments to the current seating of BU employees consistent with the requirement that normally seating will be by Branch unless there is more than one supervisor in a branch, in which case, it will be by supervisor. At least four weeks prior to IFPTE BU occupancy, the [Employer] will provide an accurate list of IFPTE BU members currently assigned (or to be assigned) to Codes 246 & 230 based on their supervisory assignment in the performance appraisal tracking system. The list will state the service computation date (SCD), time in Codes 220, 246 & 230, badge # and phone number. After the initial move future seating/cubicle selections will be made by the IFPTE BU member with the assistance of the IFPTE if requested. All cubicle assignments will be made by the IFPTE in consultation with the IFPTE BU members. The IFPTE will determine & designate seating/cubicle assignments on the 2nd floor of the bldg. 174 Annex. Cubicle selection will be made from all available cubicles, normally by Branch unless there is more than one supervisor in a branch, in which case, it will be by supervisor.

Section 1.k: The Union shall withdraw its final offer from the MOU.^{13/}

Section 2: The parties are ordered to adopt the following to resolve the issue of the Union satellite office:

The Employer will insure that the Union has reserved time in the Annex conference rooms, or if/when those rooms are not available, in other suitable space for the purpose of meeting with bargaining unit employees.



Mary E. Jacksteit
Arbitrator

March 4, 2016
Takoma Park, Maryland

^{13/} This is identified as Section 1.m in the parties' joint last-best offer MOU.