

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

NATIONAL LABOR RELATIONS BOARD
REGION 3
BUFFALO, NEW YORK

and

LOCAL 3, NATIONAL LABOR RELATIONS
BOARD UNION

Case No. 05 FSIP 119

DECISION AND ORDER

Local 3, National Labor Relations Board Union (Union) filed a request for assistance with the Federal Service Impasses Panel (the Panel) to consider a negotiation impasse under the Federal Labor-Management Relations Statute (the Statute), between it and the National Labor Relations Board (NLRB), Region 3, Buffalo, New York (Employer).

Following an investigation of the request for assistance, concerning the installation of privacy locks on professional employees' office doors, the Panel determined that the matter should be resolved through single written submissions. The parties were informed that after considering the entire record, the Panel would take whatever action it deems appropriate to settle the matter, which may include the issuance of a *Decision and Order*. Written submissions were received from the parties in accordance with the Panel's determination, and it has now considered the entire record.

BACKGROUND

The Employer's mission is to administer the National Labor Relations Act, under which it is vested with the power to prevent and remedy unfair labor practices (ULPs) committed by private sector employers and unions, and to safeguard employees' right to organize and determine, through secret ballot elections, whether to have unions as their bargaining representatives. The Union, part of a nationwide consolidated bargaining unit of 950

professional employees, represents approximately 28 employees in Region 3, who work as compliance officers, attorneys, and examiners, at grades GS-7 through -15. The collective bargaining agreement (CBA) covering these parties is due to expire on September 27, 2006.

ISSUE AT IMPASSE

The parties disagree over whether to install privacy locks on professional employees' office doors at the Regional Office's new location.^{1/}

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that the Employer maintain the *status quo* as it existed at the previous location, *i.e.*, install privacy buttons or locks on professional employees' office doors in the new Regional Office. In this regard, the Employer has "fail[ed] to demonstrate the need to deviate from the *status quo*." Employees have become accustomed to "significant benefit[s]" from having lockable doors, which include, among other things, "protection from hostile intrusion." In the previous office, professional employees "lock[ed] their doors to stop abrupt interruptions from other employees, maintenance staff, and while writing decisions, briefs, and final investigations." In addition, employees used their offices to change clothes when arriving and leaving work for recreation or to cope with the sometimes extreme elements of a Buffalo winter; to prevent interruptions during breaks and approved private telephone calls; and for medically related activities, such as self-administering injections and infant nursing. Moreover, Union officials could confer with each other about working conditions and contract issues without fear that supervisory personnel will enter the office without permission.

Privacy locks should continue to be provided because "professional employees are better able to perform their jobs if they are not subject to the sudden interruption of their work by the door opening." This would not prevent supervisors from speaking with professional employees, even if it interrupts their

^{1/} When the Employer moved to the new location over the weekend of September 17-18, 2005, privacy locks were not installed on professional employees' office doors.

work, or impede the Employer's mission. As the character of the surrounding neighborhood has not changed since the Regional Office relocated, neither has the safety-related need for privacy locks. There were numerous incidents of assault and theft in the immediate vicinity of the former office, which is diagonally across the parking lot from the new office. Such incidents include a disgruntled veteran causing a security guard to discharge his firearm and shatter the glass panel in the front door to the building; thefts of employee vehicles and other property; vandalism in the parking lot "just yards" from the new building; and shootings in the apartment complex within one block of the new building.

The Employer's option of posting a sign on the door when the employee is with a witness, on the telephone, or in conference, is ineffective, and could "detract[] from the professional nature of the employee's position." Finally, turning to the issue of the cost of installing the locks, the General Services Administration (GSA) promised the Employer that it would provide similar working conditions as in the previous location. Therefore, GSA should be required to absorb the expense. If the Employer wishes to reduce costs, it can remove the locks it purchased for five other rooms in the Regional Office, none of which are being used, and reinstall them on professional employees' office doors. The fact that these locks were installed in the first place "demonstrates that the Employer's plan "was neither well considered nor cognizant of costs."

2. The Employer's Position

The Employer essentially proposes that locks not be installed on the office doors of bargaining unit professional employees. Security in Federally occupied buildings is much tighter than it was years ago when the parties moved into the previous Regional Office, so locks on the office doors of professional employees "are neither necessary or desirable." In this regard, because the new office building houses mostly Federal agencies, there are several levels of security. There are "at least four guards" who are employees of the Federal Protective Service stationed in the building, and "two guards posted at the lobby entrance." All visitors to the building "must pass by the guards and through a magnetometer" before they are permitted access to the building, and all visitor packages, briefcases, purses, and other "belongings must pass through an x-ray machine." Further, all "incoming mail is x-rayed" at the loading dock before it is delivered to the building tenants. In the Regional Office itself, "there is a secured waiting area upon

entry into the space." Visitors are required to remain in the "waiting area" until they receive approval from the Receptionist to enter the office. The Receptionist sits behind "a 3-foot by 5-foot Plexiglas security window," and she has an "electric strike release mechanism" to control the door leading to interior office areas. In addition, "duress alarm buttons" are located in the Information Office, the Reception Area, and at the Judges desk in the Hearing Room, and all exterior doors in the occupied space contain "a push button cipher combination lock" to prevent members of the public from gaining unauthorized access.

The Union's proposal also should not be adopted for a number of other reasons. First, "employees do not have an inherent right to privacy in their offices."^{2/} Installing door locks on professional offices "would impede [its] operations" by preventing management from gaining entrance into a professional employee's office in his or her absence, thus "disrupting the [Employer's] ability to serve the public in an efficient and orderly manner." Second, it would be a serious obstacle in the event of a medical emergency. Besides, employees should not be behind locked doors while working in the office since doing so "would impede interaction between the employee and his or her colleagues." Finally, installing individual door locks also would be cost prohibitive, involving the expenditure of approximately \$4,395 to equip 15 professional offices, according to GSA. If the Union's proposal is adopted for the Region 3 office, the requirement to install individual door locks could expand nationwide to all of the NLRB's Regional Offices at a "conservative" estimate of \$300,000, which would not be cost effective "in this era of shrinking appropriations."

CONCLUSION

Having carefully considered the record presented by the parties in this case, we are persuaded that the Employer has demonstrated the need to change the practice that existed at the Regional Office's previous location. In our view, the Employer's proposal properly balances the need to provide a safe and secure workplace in today's environment with employees' security and privacy needs. The Union's arguments and evidence, on the other hand, are insufficient to justify installing privacy locks, especially when there are other viable options available to afford employees a measure of protection from unwanted

^{2/} The Employer cites the Supreme Court's decision in *O'Connor v. Ortega*, 480 U.S. 709 (1987) to support this contention.

interruptions. Accordingly, we shall order the parties to adopt the Employer's proposal to resolve their impasse.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the Employer's proposal.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

December 29, 2005
Washington, D.C.