

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF HEALTH AND HUMAN
SERVICES
NATIONAL INSTITUTES OF HEALTH
NATIONAL INSTITUTE OF ENVIRONMENTAL
HEALTH SCIENCES
RESEARCH TRIANGLE PARK, NORTH CAROLINA

and

LOCAL 2923, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 08 FSIP 108

DECISION AND ORDER

Local 2923, American Federation of Government Employees (AFGE), AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of Health and Human Services, National Institutes of Health (NIH), National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina (Employer or NIEHS).

After investigating the request for assistance, which involves negotiations over the relocation of approximately 80 bargaining-unit employees to a newly-renovated building,^{1/} the

^{1/} According to information provided by the Employer during the investigation of the Union's request for assistance, employees are moving from Building 4401 and Nottingham Hall to the Keystone Building. The Employer has begun the relocation in accordance with the following timetable: (1) equipment was moved into the Keystone Building on November 3, 2008; (2) occupants began moving into the Keystone Building on November 17, 2008; (3) occupant moves into the

Panel determined that the dispute should be resolved through an informal conference with Panel Member Barbara Bruin.^{2/} The parties were advised that if no settlement were reached during the informal conference, Member Bruin would notify the Panel of the status of the dispute, including the final offers of the parties and her recommendations for resolving the issues. After considering this information, the Panel would take whatever action it deemed appropriate, which could include the issuance of a binding decision.

In accordance with the Panel's procedural determination, Member Bruin met with the parties on November 19 and 20, 2008, at Nottingham Hall. A site inspection of the Keystone Building was conducted with the parties prior to the start of the conference. During the course of the meeting, the parties were able to resolve some of the issues, but a complete settlement was not reached. The parties submitted their final offers on the remaining issues at the conclusion of the informal conference and supporting statements of position shortly thereafter. The Panel has now considered the entire record.

BACKGROUND

The Employer's mission is to conduct, foster, and coordinate research and research training on the biological effects of chemical, physical, and biological substances in the environment to improve human health conditions. The Union represents 157 employees in such jobs as biologist, program analyst, and in support staff positions, GS-4 through -14. The parties' current collective-bargaining agreement (CBA) was unilaterally imposed by the Employer on March 18, 2008.^{3/}

Keystone Building are scheduled to be completed by December 22, 2008; and (4) from December 22, 2008, through January 31, 2009, all other steps necessary to vacate Building 4401 and Nottingham Hall will be undertaken.

2/ The Union also requested "when the Panel assumes jurisdiction of the impasse . . . that the Panel order a stay on any changes until all FSIP proceedings are complete." On November 6, 2008, the Panel fully considered the Union's request for a stay. The request for a stay was denied.

3/ The Union has filed an unfair labor practice (ULP) charge against the Employer concerning the unilateral

ISSUES AT IMPASSE

The parties disagree, among other things, over: (1) prefatory wording in the parties' Memorandum of Agreement (MOA) regarding the relocation; (2) the size of bargaining-unit employees' offices and whether they should be enclosed by hard walls; (3) office selection criteria and process; (4) whether the MOA should establish procedures for the selection of offices by new employees, multiple person moves (in case of reorganizations and restructuring), and the retention of offices; (5) the seating capacity of the break rooms and whether the Employer should provide eating utensils and clean the refrigerators; (6) whether unit employees should be entitled to the replacement of up to two lost or stolen fitness center access cards at no cost; (7) whether unit employees who want to occupy offices of less than 100 square feet despite any telework status should be required to sign a waiver to that effect; (8) whether the Union's proposed telework policy should be implemented for unit employees who cannot be granted offices of at least 100 square feet; (9) whether the Union should be permitted to use the interoffice mail system for regular representation communications; (10) whether the Employer should provide the Union with an explicit reason for not implementing recommendations by qualified professionals with respect to handicap accessibility; (11) whether there should be a Facilities Improvement Committee; (12) after-hours access to the building by unit employees and the Union; and (13) Union site visits.

POSITIONS OF THE PARTIES

1. The Union's Position

On the key issues separating the parties, the Union proposes that: (1) the MOA include prefatory wording recognizing "the importance of office space and office environment as related to work performance, work productivity, and morale," and requiring the Employer not to implement the relocation during bargaining, impasse proceedings, or "pending the decision of a negotiability appeal unless a compelling need exists"; (2) all bargaining-unit employees be placed in offices of 100 square feet or more unless the employee agrees to a waiver or is

implementation of the successor CBA which is currently pending before the FLRA's San Francisco Regional Office.

granted "telework status," and that their offices be enclosed by hard walls; (3) the Employer be permitted to group employees on the basis of functionality if "it is persuasively shown that the employee must be in close proximity of others"; (4) other vacant office space "throughout the NIEHS space or leased space will be considered and used as appropriate"; (5) unit employees be given priority in the allocation of work space adjacent to windows; (6) office selections within organizational groupings be based on grade and Federal service computation date, and that unit employees be given an opportunity to select offices first; (7) multiple moves resulting from an office cascade be negotiated by the parties on a case-by-case basis; (8) the MOA establish specific procedures for the selection of offices by new employees, multiple person moves (in case of reorganizations and restructuring), and the retention of offices; (9) the seating capacity of the break rooms not be less than 25 percent of the employees on that floor; (10) the Employer provide eating utensils and clean the refrigerators; (11) unit employees be entitled to the replacement of up to two lost or stolen fitness center access cards at no cost; (12) unit employees who want to occupy offices of less than 100 square feet despite any telework status be required to sign a waiver to that effect; (13) the Union's proposed telework policy be implemented for unit employees who cannot be granted offices of at least 100 square feet; (14) the Union be permitted to use the interoffice mail system for regular representation communications; (15) the Employer provide the Union with an explicit reason for not implementing any recommendation by a qualified professional with respect to handicap accessibility; (16) a Facilities Improvement Committee be created, "including members in equivalent percentage to the number of unit employees in the Keystone Building, one of whom is a Union representative, to recommend improvements to the physical environment"; (17) unit employees/Union representatives be granted 24/7 access to the Keystone Building and their workstations/the Union office, except in emergency situations; (18) the Employer provide the Union with each work product or report resulting from the use of information collected regarding access to the Keystone Building card-key system and to provide notice of any changes in the type of information collected; and (19) the Union be given a site visit prior to the construction of the new office environment and at least 14 calendar days prior to move-in, and that any

issues of concern be addressed as soon as possible by the parties.^{4/}

Its proposed prefatory wording merely confirms statements made by the Employer during bargaining that office environment and space is important for productivity, morale, and work performance. The proposal also preserves the Union's statutory rights and is negotiable. A minimum office size of 100 square feet per unit employee is still 30 square feet or less (on average) than what they had prior to the relocation. Offices larger than the 80 square feet proposed by the Employer for administrative and technical staff could prevent "tripping hazards" from files and other work-related items that might gather on the floor for lack of space. Requiring that all unit employees have enclosed offices with walls simply continues the practice that existed prior to the relocation, and many of these employees need privacy because of the kind of work they perform. While the Union's final offer permits the Employer to cluster employees in the same office or group in fairly close proximity, functional grouping should not be the dispositive factor when it comes to where individual employees are located. In this regard, employees performing the same function have been operating effectively in separate buildings for years, and during bargaining management never claimed that functionality was an issue. The use of other vacant office space throughout NIEHS would relieve employees from the "space constraints" of the Keystone Building. Morale would be enhanced by giving employees a say in office configurations that already have been approved by management. Moreover, requiring supervisors to provide reasons for denials in writing avoids the conflict that can arise when employees must request such reasons, as well as subsequent reprisal and discrimination. Optimizing unit employees' exposure to natural sunlight would increase morale, productivity and efficiency.

The Union's final offer would establish a fair, seniority-based office selection procedure that has been used throughout the Federal government in similar circumstances. In addition, granting employees a measure of control over the offices they will occupy would enhance productivity and morale. Its proposals governing a variety of other office-selection scenarios, e.g., employees in the process of coming on board,

^{4/} The complete text of the Union's proposed MOA is attached to this Decision and Order.

multiple moves resulting from an office "cascade," future employees, and multiple-person moves during reorganizations and restructuring, would establish clear written procedures for the parties to follow in dealing with such situations, replacing the "disjointed and piecemeal fashion" in which the parties now operate. The same is true regarding its office retention proposal, which would allow employees to keep their offices except under certain specified circumstances, and establish procedures permitting and/or requiring the Employer to negotiate with the Union. Ensuring that seating capacity of break rooms will not be less than 25 percent of the employees on their floor "seems reasonable" given that there is no cafeteria or restaurant within walking distance of the new building. It also would prevent employees from being forced to eat their lunch in their offices. Unit employees would benefit from having eating utensils provided by the Employer and having management ensure that refrigerators are cleaned on a routine basis. With respect to onsite fitness space and amenities, the Union's proposals would provide "some security" that, if slots are limited, 25 percent will go to unit employees, and ensure that they are not charged \$10 to replace lost or stolen fitness access cards.

Unit employees should be permitted voluntarily to waive their right to offices of at least 100 square feet, even if they do not avail themselves of the Union's proposed telework option, as this "would provide the employee with some control over these issues and at the same time protects both the Agency and the Union from future litigation issues." The adoption of its telework proposal would ameliorate the adverse affect on employees of the Employer's decision to place them in small, cramped offices and cubicles by permitting them to perform their duties at an alternative work site. This would increase morale and productivity, reduce pollution, and improve health, retention, and recruitment. Contrary to the Employer's contention, the parties have never negotiated a telework arrangement, and management improperly implemented its current telework policy.

The Union's proposal that it be permitted to use the Agency's interoffice mail system should be adopted because it would reduce the burden on the Union of having to drive to the main campus to deliver hard copies of representational communications to management and unit employees. It also would relieve "both parties of the official time issues entailed in such delivery." The Employer already permits all other NIEHS employees to use the interoffice mail system on a regular basis.

On the issue of handicap accessibility, its proposal is consistent with the Employer's statement during bargaining that the only reasons it would not implement a recommendation from a qualified professional regarding accessibility issues would be for budgetary or other overriding reasons. A Facilities Improvement Committee would allow employees a voice in problems or issues that need to be addressed and provide a mechanism for improving the Keystone Building. Moreover, the Employer would not be required to act on any of the recommendations of the committee. The Union's proposals regarding after-hours access to the Keystone Building would continue the *status quo*. Union access to copies of work products, reports, or other documents resulting from the use of information collected regarding access to the Keystone Building card-key system would permit the Union to defend employees against adverse actions for failure to comply with work rules. Contrary to the Employer's contention that its proposals on after-hours access and access to reports violate management's right to determine internal security practices, substantively identical proposals have previously been found negotiable by the FLRA.^{5/} Finally, its proposal on site visits addresses the Employer's failure to provide the Union a walkthrough of the Keystone Building throughout negotiations.

2. The Employer's Position

In essence, the Employer proposes that: (1) the MOA contain the following prefatory wording: "The parties agree to engage in I&I bargaining as required by law for bargaining-unit employees moving to the Keystone Building"; (2) senior staff (GS-13 through -15) be provided 135 square foot enclosed offices, and administrative and technical staff (GS-1 through -12) be provided 80 square foot workstations; (3) bargaining-unit employee work areas be assigned based on the criteria provided above; (4) employees be grouped together by function and that management select offices for employees within their official organizational units based on function; (5) sufficient lighting be available in workstations and offices, and that lighting be

^{5/} In support of its position, the Union cites the FLRA's decisions in AFGE, Local 2782 and U.S. Department of Commerce, Bureau of the Census, Washington, D.C., 49 FLRA 470 (1994) and Patent and Trademark Association and U.S. Department of Commerce, Patent and Trademark Office, 41 FLRA 795 (1991).

adjusted to the extent possible upon request; (6) all offices be assigned at the same time on the basis of function and grade levels; (7) regarding all future office vacancies and/or office moves, the Employer notify the Union and satisfy any bargaining obligation required by law; (8) employees be permitted to keep offices allocated to them unless there is a reorganization of their organizational unit that necessitates relocation or the Employer determines there is a need based on health, security, or mission of the Agency; (9) the seating capacity of the break rooms not be less than 25 percent of the bargaining-unit employees located in the Keystone Building; (10) employees bring their own eating utensils and clean the refrigerators themselves if they use them; (11) bargaining-unit employees be charged in the same manner as other Keystone occupants for lost or stolen fitness center access cards; (12) employees not be required to sign waivers regarding office assignments; (13) any suggestions or proposals not implemented by management concerning handicap accessibility be considered once budget or overriding reason permits; (14) a Facilities Improvement Committee not be established; and (15) the Union be given a site visit 7 calendar days prior to the relocation of unit employees and any issues of concern be evaluated for resolution by the Agency as soon as possible thereafter.

In addition, the Employer has no counter offers on a number of issues addressed in the Union's final offer, including the use of other vacant office space throughout NIEHS, the Union's use of the interoffice mail system, its proposal that unit employees be permitted voluntarily to waive any right to offices of at least 100 square feet, even if they do not avail themselves of the Union's proposed telework option, and telework. In this regard, management only has an obligation to bargain over the impact and implementation of its decision to relocate affected bargaining-unit employees to the Keystone Building, and these matters do not fall within the scope of that obligation. It also has no counter offer to the Union's building access proposal because it interferes with management's right to determine its internal security practices under section 7106(a)(1) of the Statute.

The Employer's proposed prefatory wording should be adopted because it accurately describes the bargaining in which the parties have been engaged. On the issue of office space, while it is true that a number of employees will have less space as a result of relocating to the Keystone Building, the amounts are greater than those currently authorized by NIH. Moreover, the

Union's allegation that the building is too small to accommodate all employees "is without merit and is purely speculative." To address the Union's privacy concerns, management "has made concessions" for bargaining-unit employees who have been identified by their supervisors as needing offices to maintain confidentiality. In addition, employees in cubicles performing like functions will be located in suites together, further ensuring confidentiality. The Employer's proposal also addresses the Union's interest in ensuring that sufficient amounts of natural lighting are available to unit employees.

Under its approach, "management will provide layout options and [unit employees] will be able to choose from those options." More importantly, management will select offices for employees on the basis of function, "which is also the existing *status quo*." Adoption of the Union's approach, on the other hand, would undermine one of the chief reasons for the relocation to the Keystone Building, *i.e.*, the consolidation of offices and co-location of employees in the same office group to maximize the efficiency of work flow and supervision. With respect to the Union's proposals concerning office selection for new employees, and for future office vacancies and/or office moves, the Employer prefers that such matters be addressed through negotiations with the Union when such scenarios arise, to the extent required by law. The Employer's proposal regarding the circumstances under which employees should be permitted to retain their offices provides management with greater flexibility than under the Union's proposal. As in the case of future office vacancies and office moves, if the Employer determines to reassign work spaces, it will notify the Union when necessary to fulfill any bargaining obligations.

The Employer's proposal to ensure that the seating capacity of break rooms will not be less than 25 percent of bargaining-unit employees located in the Keystone Building would provide adequate space for them to eat during the lunch period. Management informed the Union during the informal conference that it "cannot supply eating utensils due to budgetary constraints." Its proposal on the cleaning of refrigerators merely maintains the *status quo* whereby "employees currently take it upon themselves to clean the refrigerators located in the break rooms," and is consistent with practices at other Federal agencies. As to the section dealing with onsite fitness space and amenities, the parties' proposals are similar except for the Union's insistence that unit employees be entitled to the replacement of up to two lost or stolen fitness center

access cards at no cost. The Employer proposes that unit employees be treated in the same manner as other Keystone Building employees because the Union's proposal is unfair to non-unit employees.

The Employer opposes having to provide the Union with explicit reasons for not implementing recommendations from a qualified professional regarding accessibility issues. Instead, it proposes to evaluate suggestions and satisfy any bargaining obligations required under law. Management also opposes the formation of a Facilities Improvement Committee, but would "notify the Union as required by law if such a committee is formed." In addition to its argument that the Union's proposals on after-hours access to the Keystone Building interfere with its right to determine internal security, the Employer "has made no changes in any policies nor generated any work rules governing employee access to Keystone or any other NIEHS building." Nor will there be any "work products, reports, or other documents generated from card key systems at the Keystone Building." In any event, the Union already has a statutory right to request information related to the access system if it can "articulate a specific particularized need," and "it may not force the Agency to bargain over an entitlement to data to circumvent the statutory provisions governing information requests." Finally, the Union already has been given two site visits. The Employer has evaluated the concerns raised by the Union, in accordance with its counterproposal, and implemented one of the suggestions regarding signage for carpool parking.

CONCLUSIONS

Having carefully considered the arguments and evidence presented by the parties, we shall order the adoption of the Employer's final offer on most of the issues in dispute concerning the relocation of unit employees to the Keystone Building. The exceptions involve: (1) the parties' proposals for (a) the Preface, which are unnecessary, and (b) Union site visits, which are moot; and (2) the remaining issue in the section on handicap accessibility, where we shall order the adoption of the Union's proposal. On the most significant issues, *i.e.*, the size and structure of unit employees offices, and office selection criteria and procedures, the Union has not demonstrated that the adverse affect of the relocation on unit employees outweighs the Employer's interest in grouping employees functionally in office areas that are sufficient in size to accomplish its mission. Nor are we persuaded that the

adverse affect justifies the creation of a second NIEHS telework program that would apply only to unit employees at the Keystone Building. Among the other issues in dispute, we note that the adoption of the Union's proposed procedures concerning office selection for new employees, and for future office vacancies and/or office moves, would not provide finality for either side when such circumstances occur. Therefore, the Employer's approach of negotiating with the Union only when the need arises is preferable. Finally, as both parties acknowledge and the Employer's "NIEHS Keystone Occupant Guide" of November 2008 confirms, management's practices concerning after-hours access to the Keystone Building are not changing. Accordingly, the Union proposals on the matter appear to be unnecessary.

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 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

1. Preface

The parties shall withdraw their proposals.

2. Article I. Office and Other Space

Section 1. Office Determination; Section 2. Selection Criteria and Process; Section 3. Procedures for Multiple Person Moves (Reorganizations and Restructuring); Section 4. Retention; Section 6. Break Rooms; and Section 7. Onsite Fitness Space and Amenities

The parties shall adopt the Employer's proposals.

Section 9. Waivers

The Union shall withdraw its proposal.

3. Article II. Telework

The Union shall withdraw its proposals.

4. **Article III. Union Office**

Section 2. Interoffice Mail System

The Union shall withdraw its proposal.

5. **Article IV. Other Issues of Importance**

Section 1. Handicap Accessibility - C.

The parties shall adopt the Union's proposal.

Section 5. Facilities Improvement Committee

The Union shall withdraw its proposal.

Section 8. Building Access - A., B., and C.

The Union shall withdraw its proposals.

Section 9. Site Visits - A., B., and C.

The parties shall withdraw their proposals.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

December 22, 2008
Washington, D.C.

AFGE Local 2923

Memorandum of Agreement
Between
NIEHS
And
AFGE Local 2923
Regarding Relocation of Bargaining Unit Employees

Preface: The parties recognize the importance of office space and office environment as related to work performance, work productivity, and morale. Consequently, the proposed change(s) shall not be implemented during bargaining, during impasse if a party has invoked impasse resolution procedures, or pending the decision of a negotiability appeal unless a compelling need exists.

Article I. Office and Other Space

Section 1

Office Determination

A. All bargaining unit employees will be placed in offices of 100 square feet or more unless the employee agrees to a waiver or the employee is granted telework status. See Article II: Telework.

B. To the maximum extent possible, whenever bargaining unit employees are moved from one office to another they will be given the same or better in terms of space, furniture, number of walls, desk space, and windows. [agreed]

C. Offices for bargaining unit employees will be enclosed by hard walls (not cubicles).

D. Employees in the same office or group may be clustered in fairly close proximity. This will not be a determining factor for where the employee relocation or moves unless it is persuasively shown that the employee must be in close proximity of others in the same group due to functionality issues. Any determinations of this nature will be provided in writing in specific detail to the Union.

E. Other vacant office space throughout the NIEHS space or leased space will be considered and used as appropriate.

G. Employees will be permitted to choose office layout whenever there is a choice per management approval. Any denials or refusals by management will be provided with specificity in writing to the employee.

H. To further the goal "to assure a quality working environment," the following measures will be followed:

1. To the extent possible, windows will not be blocked by private offices. [agreed]
2. Conference rooms, copy rooms, file rooms, and other similar space will be located on the inner core of the building to the extent possible. [agreed]
3. Bargaining unit employees will be given priority in allocating work space adjacent to windows.
4. All meeting spaces or conference rooms will be equally accessible to all employees. [agreed]
5. Lighting, indoor air, and/or ventilation surveys or assessments in Keystone offices will be conducted upon request, and the appropriate remedies will be implemented based in concurrence by the Health & Safety Branch. Upon request, the Union will be given a written rationale specifically stating why any remedy could not be or was not implemented. [agreed]
6. Natural sunlight from windows into the interior of each floor will be maximized such as the use of glass walls that would face the interior of the building on enclosed offices.

Section 2 Selection Criteria and Process

A. Employees will select offices within their official organizational unit based on the following criteria:

1. Current grade of qualified employee.
2. Federal service computation date
3. NIEHS service computation date (tie breaker)

B. Employees will select offices in rank order:

1. Bargaining unit employees will first be ranked from the highest grade to the lowest grade. Within each grade, they will be ranked by Federal computation date. The NIEHS service computation date will be used in case of ties.
2. Management will provide the Union with an accurate rank order of employees in the affected unit within 5 days whenever space or an office has been designated as a bargaining unit office or that a bargaining unit employee will be located in that office/space.

3. The recruited vacancies for which there FTE funding, an FTE, and official approval will be ranked after all federal employees having the same grade as the lowest grade of the vacancy. For example, if a GS 12/13 position is being recruited, the office for the position would be selected after all the current GS-12's in that particular organizational unit have had an opportunity to select offices.
4. Bargaining unit employees will be given an opportunity to select offices first.
5. Multiple moves (3 or more) resulting from an office cascade (e.g. one person leaves and multiple people want to shift offices) will be negotiated between the Union and Management on a case by case basis.

C. Office selection for new employees:

1. When an office is vacated and designated as bargaining unit, current bargaining unit employees in that organizational unit will immediately have an opportunity to select the office in the rank order determined by the selection criteria (see Section 2A).
2. Once that process is completed (C1 above), the Employer and the Union will determine the location of new bargaining unit employee's office, but if more than one bargaining unit office is available within the organizational unit, the new employee will have an opportunity to select among the offices.
3. The same procedures will be followed for bargaining unit employees being reassigned into a new unit. Existing employees will have an opportunity to select among vacant offices using the selection process, and the reassigned employee will be placed in the office that is vacant after the selection process is completed. The reassigned employee will have the opportunity to select among offices if more than one remains vacant.
4. Physical moves within units of existing, newly hired, or reassigned employees will not occur until the Union and Management have agreed on their placement, unless an operational exigency exists which management will submit to the Union in writing. In such exigency cases the Union and management will bargain post implementation.

Section 3 Procedures for multiple person moves (reorganizations and restructuring)
The following procedures shall be used when more than one employee or organizational unit(s) are involved in a physical move.

A. When a move is proposed, affecting one or more bargaining unit employees, the Union will be notified in writing at least 15 business days before the expected date of the move.

B. Such notification will identify the employees to be moved and the estimated date of the move. The Union may call for further information to be provided, clarified, or specified. Until the information is provided the move may be delayed. The notification will also include a proposed floor plan, or layout indicating bargaining unit and non-unit offices.

C. The Employer and the Union will jointly determine the location of bargaining unit employees with special office needs due to medical reasons.

D. The Employer and the Union will jointly determine the location of bargaining unit employees that are in any jobs or positions whereby placement in proximity to their supervisor or staff they support is paramount.

E. All other bargaining unit employees in the organizational units will select among the bargaining unit offices using the selection process specified in Section 2.

F. Physical moves and allocation of office space will not occur until the Union and Management have reached agreement on the placement plan.

Section 4 Retention

A. Once an office is allocated to an employee they will be permitted to keep that office unless:

1. There is a realignment or reorganization of their organizational unit (reorganization/realignment defined as: the imposition or creation of a new organization; extensive alteration of the structure, often involving drastic changes).
2. The Agency determines that there is a substantial or emergency issue that would adversely impact health, security, or the mission of the Agency. The Agency would provide in writing the specific reason(s) to the Union of any such determination. The Union would be given the option of negotiating any implementation or post-implementation issues as appropriate.

B. If there is a major restructuring of functions within an existing organizational unit, such as those resulting from A-76, business consolidation, etc, the Employer and the Union will negotiate any moves of bargaining unit employees from offices they have been occupying.

C. No employee will be displaced to accommodate newly hired employees, or employees who are promoted, reassigned, detailed, or affected by any personnel action that may have a bearing on this matter.

D. Retention rights do not apply to employees who sign waivers (see Section 6, Waivers).

Section 5 Furniture and Equipment

A. All types of office furniture (e.g. bookcases, filing cabinets, computer tables, chairs, etc) will be moved by a contractor. If an Employee wishes to move their own personal belongings they may or the contractor will move those belongings. [agreed]

B. The movement of non-portable items may be allowed in special circumstances, such as for ergonomic or health reasons. If management feels that a request is unreasonable, the employee may be asked to provide medical documentation, which would entail a signed statement from a licensed physician, in order for their request to move forward. Management will provide any refusals, with specificity, in writing to the employee. [agreed]

C. The Agency will permit, to the extent possible, the use of current furniture or equipment by use of Employees in the new location. Exceptions to this are when furniture or equipment are in poor condition and need replacement. In such situations better equipment or furniture will be provided. [agreed]

D. Employees will be given adequate time during their regular work hours to pack their belongings that will be moved to the new location by a moving vendor. [agreed]

Section 6 Break Rooms

A. The employer agrees to provide to each floor in the Keystone Building:

1. Adequate space for all employees during lunch period to store their lunches, prepare them, eat them and clean up afterwards. This includes space for the items listed in #2 below. The seating capacity of break rooms will be not less than 25% of the employees on that floor.

2. Items:

a. Two refrigerators large enough to hold lunch and other spoilable items for staff. [agreed]

b. Two microwave ovens of sufficient size and sufficient space to provide cooking capability for all those assigned to the same lunch. [agreed]

c. Utensils so that all assigned to the same lunch can eat in the break room (plates, cups, glasses, bowls, knives, forks, spoons) and similar items.

e. Coffeemaker or dispensing machine. [agreed]

f. Sink with hot/cold running water and/or dishwasher large enough to clean up after lunches in the break room. Dish soap will be provided free of charge through the self-service store which is the current practice. [agreed]

g. Filtered drinking water will be available to employees without purchase. [agreed]

i. The Agency will provide a vending machine or freezer that will have a selection of packaged healthy items such as yogurt and juices. Fresh fruit will also be available. [agreed]

j. Electric drip coffee maker. [agreed]

k. Tables and chairs for at least 25% of people on that floor.

l. The agency will provide one ice machine per break room. The ice will be produced from filtered water. [agreed]

m. A toaster oven. [agreed]

n. The refrigerators will be cleaned on a routine basis. Unless considered a qualified volunteer, bargaining unit employees will be considered last for this duty.

Section 7. Onsite Fitness Space and Amenities

A. The agency will provide fitness space or access to the fitness center at the 630 Davis Road Building.

B. A shower facility and lockers will be provided.

C. BUE's will be given at least 25% of any slots available (if slots are limited) for this exercise center at 630 Davis Drive.

D. BUE's will not be charged for lost or stolen access cards (up to 2 cards) to the exercise center at 630 Davis Drive. After two cards BUE's will be charged as other employees for lost or stolen access cards to the exercise center.

E. As per past practice, employees may use available space and/or equipment at the 530 "Keystone" building for fitness activities.

- F. Each floor will have at least one restroom for each sex that is fully handicap accessible. [agreed]
- G. At least one bicycle rack will be provided to accommodate 8 bicycles. The rack will be either secured or heavy enough that it cannot be removed. The rack will be placed appropriately for ease of use and accessibility. [agreed]

Section 8. Office Equipment and Environment

- A Existing ergonomic equipment, such as desk chairs, computer keyboards trays, telephone/accessories, will be relocated upon request by the employee. [agreed]
- B. The indoor temperature in the office shall not fall below 65 degrees and in hot weather, adequate ventilation and air conditioning will be provided. [agreed]
- C. Terminals shall not be arranged so as to direct the primary heat exhausts, without intervening ducts walls or insulation, within four (4) feet of the place where any person is stationed for periods of time. [agreed]

Section 9 Waivers

- A. Closed Window Offices of Less Than 100 Square Feet Waiver
Anytime there are offices within NIEHS that are desirable, despite the fact that they are less than 100 square feet, no bargaining unit employee shall be required to move into an office that is less than 100 square feet unless given telework status designated in Article II. Notwithstanding, some bargaining unit employees may want to occupy an office of less than 100 sq ft despite any telework status.

Upon consulting with a union representative, who will seek to establish that this selection is voluntary on the part of the employee, he or she will be required to sign a waiver to that effect. The waiver is for the mutual benefit of the Employee, the Union, and Management. It is applicable only in the case of this particular employee and office, and will not establish any precedent that may be used to seek or justify other office selection processes within NIEHS. See Attachment 1

Article II. Telework

Whenever it is determined that there is an overriding mission-related reason that a BUE cannot be granted an office of 100 square feet or more (which will be provided in writing to the Union) the following article will apply. Telework is simply a way of getting work done from a different location. It can serve multiple purposes – and have multiple benefits – when it is implemented effectively in an organization. Telework gives

employees more flexibility in meeting personal and professional responsibilities; it can offer freedom from office distractions, reduced work/life stress, and an alternative worksite setup that reduces pollution and environmental impact.

For purposes of this Agreement, telework refers to an employee's performing assigned duties at a location other than the official duty station. Such an alternative duty station (ADS) can include a government or private telework center, or the employee's home, to name a few.

Employees of the Agency may participate in telework to the maximum extent possible without diminished employee performance. All positions will be considered eligible to participate in telework unless the Agency can demonstrate that circumstances directly related to the accomplishment of that work unit's mission prohibit the performance of that position anywhere but the Agency's workplace

Section 1 Requests

A. For those employees where it is determined that no other alternative exists that they must reside in an office under 100 sq ft, if they meet eligibility requirements, they will be given the option of a full-time or nearly full-time (3 or more days per week) telework schedule.

B. Employees will have the option to request to perform work from home or an Alternate Duty Station (ADS) on a regularly scheduled basis. Employees may also request at anytime to work at an ADS on an irregular basis (episodic) to work on a specific assignment(s).

C. The nature of the work to be performed must be suitable for a work-at-home or alternative work site setting. The work must be portable or can be accessed through various electronic means such as VPN, any necessary security requirements must be maintained, and the necessary equipment and resources to accomplish the work must be available. Normal workflow requirements are not to be disrupted.

Section 2 Eligibility

Employees who meet all the following criteria are eligible to participate in Telework.

A. The employee volunteered (or concurred with the supervisor's recommendation) to perform work at the ADS.

B. The employee is not on a performance improvement plan (PIP).

C. The employee has acknowledged that they have the work space and utilities at home suitable for performing work.

D. The employee is willing to sign and abide by the Telework Program Agreement (see Section 4 of this Article for details).

E. The employee is not on leave restriction.

F. The employee's official duties can be performed, either in whole or in part, at the ADS without impairment to the mission of the agency.

Section 3 Evaluation of Work

A. Any employee who is teleworking will have their work evaluated in the same fashion as an onsite employee.

B. Employees will communicate and complete work in a telework status as they would in their onsite duty location. Such work and communication should function in a near seamless fashion.

C. Employees will not be normally or regularly requested to provide summaries of their work, deliverables, and/or work products to their supervisor or to their supervisory chain of command that would differ from the typical requests of this nature if the employee was working onsite. Mandating that employees who telework must submit frequent, specific, and time-consuming work reports or updates is considered burdensome and has a debilitating effect upon the telework program and also interferes with the spirit of telework laws and regulations.

Section 4 Approval

Employee requests that meet the requirements of the section regarding "Eligibility" above will be approved. Requests should normally be submitted to the employee's immediate supervisor. The supervisor will respond to the request within five (5) workdays. If a request is not approved, the Employee will receive a specific written explanation of the reasons for the disapproval and reference one of the above eligibility requirements that the employee has not met.

Section 5 Employee Rights

Employees participating in the telework program continue to enjoy all of the rights of a Federal employee and any rights afforded to employees in the CBA or supplemental agreements between the parties.

Section 6 Call Backs

Employees may be required to report to their official duty station for previously scheduled training, conferences, other meetings, or to perform work on a short term basis that cannot otherwise be performed at the ADS or accomplished via telephone or other reasonable alternative methods. A manager/supervisor has the right to direct teleworking employees to report to the official duty station when necessary to meet mission, staffing and workload requirements (e.g., meetings in the office). The employee will be provided as much advance notice as possible, normally not less than twenty-four (24) hours. In consideration of necessary time to report various factors will be considered such as

traffic, commute time, and the work or training to be performed. Employees should specify a reasonable call back time to their supervisors.

Section 7 Employees may also be required to report to their official duty station for emergency operational exigencies to perform agency work which cannot otherwise be performed on another workday, at the ADS, via telephone or other reasonable alternative methods. In such cases, employees will be provided reasonable advance notice and be provided a reasonable time to report. Employees should make every effort to report as soon as possible. With good and sufficient reason, the employee will be permitted up to two (2) hours to report.

Section 8 Removal

The Agency may remove an employee from the Telework Program due to one or more of the following:

- A. The employee is placed on a leave restriction. The employee is eligible to re-request participation upon lifting of the leave restriction.
- B. The employee is placed on a PIP. The employee is eligible to re-request participation 60 days after expiration of the PIP.
- C. The employee's failure to adhere to the requirements specified in the Telework Program Agreement.
- D. The employee has proven to be non-accessible for coverage requirements while working at the ADS and/or working at the ADS has proven to place an undue burden on other office staff.
- E. Normally, employees will not be removed from participation for single or minor infractions of Telework Program requirements. Employees will be given the opportunity to be counseled about specific problems before being removed from the Telework Program. There will be a bona fide effort to counsel employees and work to resolve any problems prior to removal from the Telework Program.
- F. When a decision is made to remove an employee from the Telework Program, the employee must be given written notice indicating the reason(s) for removal, using the format in Attachment 4. Unless otherwise specified, the employee may reapply for Telework Program participation 30 calendar days after removal from the Program.
- G. **Problems Affecting Work Performance**
Employees will promptly inform managers whenever any problems arise which adversely affect their ability to perform work at the ADS. Examples could include situations such as equipment failure, power outages, telecommunications difficulties, etc.

Section 9 Pay, Hours of Work and Leave

A. Participation in the Telework program has no effect on Employees' rate of pay, differentials or allowances.

B. Employees performing work at the ADS are subject to the same workday requirements as they would be if they were performing work at the official duty station. Employees performing work at the ADS continue to be covered by the provisions regarding overtime in the parties' CBA and applicable regulations.

C. Employees performing work at the ADS will follow established procedures for requesting and obtaining approval of leave, consistent with provisions regarding leave in the parties' CBA and applicable regulations.

D. Travel Reimbursement

Employees will be reimbursed for official travel as if working at their official duty station.

Section 10 Emergency Closing/Late Openings/Early Dismissals

On a day when an employee is scheduled to work at the ADS and her/his official duty station building is closed for all or part of a day, the following rules apply:

A. Full Day Closing. The employee is not required to perform work at the ADS. However, if the employee voluntarily chooses to perform any work at the ADS, she or he is not entitled to additional compensation, such as overtime or compensatory time, credit hours, etc.;

B. Late Openings . On a day when an employee is scheduled to work at the ADS and his or her official duty station building opens late, the employee is entitled to the exact amount of excused absence that he or she would have received if scheduled to work at the official duty station. In this situation, the voluntary work provisions in A. above apply;

Section 11 Emergency Situations

In the event of a local emergency situation which adversely affects employees' ability to commute to the workplace (e.g., transit strike, natural disaster), the parties agree to meet as soon as possible to discuss possible temporary Telework arrangements for affected employees.

Section 12 Additional Requirements

Employees participating in the Telework Program will be required to:

A. utilize any government owned/leased equipment for official purposes only and will safeguard government owned/leased equipment documents as currently required at their official duty station; and

B. adhere to applicable government regulations governing information management and electronic security procedures for safeguarding data and data bases.

Section 13 Equipment and Support

A. At a minimum, the Agency will provide the following as available and appropriate for each teleworker:

1. call forwarding with remote access capability;
2. government issued telephone credit cards;
3. access to 1-800 lines;
4. a computer and monitor (or laptop);
5. necessary software;
6. necessary ergonomic hardware such as keyboard and mouse;
7. a printer;
8. a fax machine.

Section 14

In accordance with applicable policies and within demonstrable budgetary constraints, the Agency will make a good faith effort to assist employees in obtaining all necessary equipment, supplies, and services required to participate in the Telework Program. The parties will meet to discuss whether replaced equipment can be properly used to support the teleworkers or the telework program. Any refusals or denials by the Employer to provide equipment will be specified as to the reasons why in writing to the employee.

Section 15

The employee will be responsible for operating costs, home maintenance, or any other incidental costs (e.g., utilities) associated with the use of the ADS. The Agency will be responsible for the maintenance and repair of government owned equipment (e.g., a government owned computer). The Agency will be responsible for the cost (installation and maintenance) of a dedicated phone line if required by the Agency to enhance accessibility and/or for the employee to contribute to coverage. The employee does not relinquish any entitlement to reimbursement for appropriately authorized (in advance if appropriate) expenses incurred while conducting business for the Agency as provided for by law and implementing regulations.

Section 16

In accordance with demonstrable budgetary constraints, the Agency will reimburse telecommuters 100% of installation cost for new broadband accounts only. The Agency will also reimburse telecommuters 80% of the monthly service fee for their broadband accounts. To receive reimbursement telecommuters will complete and sign Form 1034 (Public Voucher for Purchases and Services Other than Personal) or other appropriate form.

Section 17

Any denial of telecommuting costs will be provided in detail and in writing to the telecommuter and to the Union.

Section 18 Satellite Offices

The parties agree to meet one (1) year after implementation of this Agreement to discuss the feasibility of establishing satellite office locations. Discussions will focus on accessibility of GSA sites, employee interest, and availability of Agency funding. Prior to establishing satellite office locations, the parties agree to negotiate consistent with Statutory Mid-Term Bargaining.

Section 19. Union Access to Employees

A. Within two weeks of the effective date of this Agreement, the Agency will provide the Union and a list of all bargaining unit employees who are enrolled in the Telework Telework Agreements), and whose requests to participate in the Telework program were denied, on a monthly basis.

B. The Union will have full access to employees, who are participating in the Telework program during those employees' scheduled work hours.

C. Union Representatives may use official time during telework.

D. The Union will be permitted to send all-hands emails to employees that notify them of events or activities that are open to all NIEHS employees. Also, the Union will be permitted to respond to any all-hands message(s) regarding the Union.

Section 20 Staff Coverage

The parties will determine coverage requirements locally. When it is determined that coverage is an issue, priority consideration will be given to eligible bargaining unit employees for participation in Telework when both bargaining unit and non-bargaining unit employees provide the coverage in question. The parties agree that employees working at an ADS do not necessarily detract from coverage requirements. The parties also agree that employees working at an ADS with E-mail capability contribute to coverage requirements.

Section 21 Suspension of Telework/Adverse Impact

A. The Agency reserves the right to temporarily suspend the Telework Program for individual employees where operational exigencies require all employees to report to the regular workplace. If this occurs, the Union will be notified immediately for any bargaining obligations. A specific statement in writing will explain the operational exigency and the need to have employees onsite. The Union and employees will be notified of the expected date for resumption of the Telework Program. Prior to extension of the suspension beyond one pay period, the Union will be notified and the Agency agrees to fulfill its obligation in accordance with 5 U.S.C. 71 and this Agreement.

B. Occasionally, an employee may also be required to report to the workplace on a particular day for special activities (e.g., to attend a class, to attend a meeting where personal appearance is necessary, etc.). If the circumstances requiring such a change permit, the Employer will, to the maximum extent possible, provide the employee with at least twenty-four hours written notice explaining the reason(s) for the change.

C. Should adverse impact result from the implementation of telework (e.g. computer server capacity, etc.), the parties will meet at the level of exclusive recognition immediately to attempt to resolve the matter. The provisions within this Article may be adjusted to resolve the adverse impact.

Section 22 Hotelling

Sharing of an office space by employees who work intermittent telework schedules is called "hotelling."

- A. In those cases where it is absolutely unavoidable that an employee must work in an office space less than 100 square feet and/or in a cubicle space the employee will be given the option of "hotelling" with another employee in a 120 sq ft or greater office.
- B. Employees will first be given the option of volunteering for hotelling and appropriate or eligible employees [above section] will be given this opportunity first.
- C. Employees will also be given their option of who they wish to hotel with.
- D. A schedule will be created to avoid as much as possible overlap of 2 employees sharing the same office at the same time. While one person teleworks the other may be teleworking or may be in the onsite office and visa versa.
- E. Appropriate employees with appropriate work will need to be identified for the hotelling option. Management will provide the Union with a listing on a quarterly basis of the employees who are considered appropriate for hotelling. Any disagreement with the listing or personnel contained therein (or not listed) will be brought to management's attention by the Union. Management will provide a specific written explanation to the Union for any person listed or not listed on the hotel option upon request by the Union. Management will fully consider to list or remove any person as suggested by the Union. If management disagrees with the Union then management will provide a reason to the Union for their disagreement.

Article III—Union Office

Section 1 - Local Union Office Space

A. Management recognizes the importance and value of the Union's mission and purpose. Accordingly, Management agrees to furnish office space to the Union appropriate for carrying out its representational and partnership duties in a location easily accessible to employees and private citizens. The Agency will provide space for files, storage and meetings. The Union President can continue to conduct Union business at your work site as long as an appropriate request for official time receives approval to do so.

B. Specifically, the Union will be provided with office space, equipment, file cabinets, desk space, telephone, table, chairs, computer, email, and all other current office furnishings and equipment comparable with what that the Union currently has at Nottingham Hall, RTP, NC. [AGREED]

C. The Union office will have a lockable door with a key (or keys) given only to Union representatives or other emergency employees. The agency will provide a list to the Union President or designee of any/all employees or contractors who have a key to the Union's office space. [AGREED]

D. As per the current practice, the agency agrees to provide the Union, where available, access to photocopiers, computer/phone or other such support personnel, scanners, shuttle service, and other customary and routine services and equipment. The Union will not be charged for such services or use of equipment. [AGREED]

E. The agency will provide a computer to the Union, which will be located in the Union office that is equal to or better than the computer currently used by the Union President in his duty office for use by the Union in its official representational capacity. This upgrade is agreed to as a component of the Keystone move and does not bind the Agency to future upgrades. [AGREED]

F. The agency will provide the union with a lockable four-drawer file cabinet to be located in the immediate vicinity or directly outside of the Union office. Only the Union will have a key or keys and access to this file cabinet. The agency will not open, move, or remove the file cabinet without the express written consent of the Union unless exigencies exist or security dictates. The Union will be notified in writing of the occurrence. [AGREED]

Section 2 - Interoffice Mail System

The local and its representatives may use the interoffice mail system for regular representation communications (e.g., grievances correspondence or memos to Management).

Section 3 – Move [agreed]

A. The Union will be given a minimum of 16 hours of official time to move and/or rearrange Union supplies, equipment, files, etc to the new location as well as unpack at the new location. This time will include but not be limited to any preparation of moving such items. The Union will be given this time irrespective of any other official time and it will not count against any bank or block of official time for representational purposes.

B. The deadline for the moving date will be 8 working days after delivery of the moving crates.

C. Moving crates will be provided by the agency.

- D. Contractors will move the Union's crates, boxes, equipment, computer, phone, etc and reconnect necessary equipment to the new office location.
- E. Any other issues not covered by this MOU are covered in the "Keystone Occupant Guide."
- F. The agency will use contractors to pack Bill Jirles' duty office at NH-279.

Article IV Other Issues of Importance

Section 1. Handicap Accessibility

A. There will be at least one evaluation or assessment by a qualified professional regarding accessibility prior to the move-in date. This will be done as early as practical. Management will make every effort to incorporate reasonable recommendations from the evaluation for accessibility. Recommendations and/or reports from such assessments will be given to the Union. [agreed]

B. Such assessments will be conducted as appropriate with input from the NIEHS DAC and Union. [agreed]

C. Any suggestions or proposals not implemented by management will be considered once budget or overriding reason permits. Management will provide the Union with an explicit reason for not implementing any recommendation.

D. The Keystone building will conform to all required codes. [agreed]

E. Evacuation procedures will be negotiated with the Union as appropriate. [agreed]

Section 2 (previously section 3). Tolls

A. Currently the Triangle Parkway does not exist. When construction is complete, employees will not have to pay tolls from the Keystone campus to the main campus and vice versa. [agreed]

Section 4. First Aid [agreed]

Prior to the beginning of the move of any employees, the first aid facilities in the Keystone Building will be fully equipped.

Sufficient, operational, and ample First aid supplies and/or equipment will be provided and the locations of these supplies will be clearly marked and easily accessible.

"Operational" means functional: fit or ready for use or service.

An Automated External Defibrillator (AED) will be located on each floor, mounted in or near the elevator lobbies.

The Agency will ensure qualified government employees will be located at the Keystone building are participants on the NIEHS First Responder Team and have received advanced first aid and CPR training. There will be a fully equipped "trauma kit" with supplemental oxygen at Keystone available for their use. The agency will provide notice to employees of those qualified employees mentioned above. If such employees are bargaining unit employees appropriate training will be provided. The Agency will also provide notice to employees of emergency phone numbers. [agreed]

Section 5. Facilities Improvement Committee

There will be a facilities improvement committee including unit members in equivalent percentage to the number of unit employees in the Keystone Building, one of whom will be a union representative, to recommend improvements to the physical environment.

Section 6. Lactation Room

A. At a minimum the lactation room will meet the following basic requirements.

- Private, locked office, conference room, or other space (not restroom)
- A minimum of 6'X6' or 36 square feet of space
- Sink
- Electrical outlet
- Clean, safe environment
- Chair and shelf or table for breast pump
- Breast pump (durable pump that more than one mother can use)
- Small refrigerator
- Phone to contact NIH Lactation Consultants or other Lactation Consultants

B. The Union and the Employer recognize the importance of breastfeeding and of support from managers, supervisors, and co-workers [agreed]

C. The Employee will have equivalent services and/or have full use and access to the NIH Lactation Program which includes:

- a. prenatal breastfeeding education classes taught at various locations on campus
- b. telephone support while on maternity leave, providing advice and problem-solving during the first critical weeks
- c. return-to-work consultation
- d. onsite lactation rooms in various buildings, all equipped with breast pumps.

["C" - agreed]

D. Agency will provide information in the lactation room that includes at a minimum:

- Prenatal information on breastfeeding
- Information regarding postpartum assistance in the hospital, at home, and back at work
- Phone number of NIH lactation consultants
- Information regarding mother-to-mother support groups ["D" agreed]

Section 7. Parking [agreed]

1. Free parking spaces will be provided.
2. Parking lots will be sufficiently lit.
3. Sufficient or ample parking spaces will be provided for employees, handicap spaces, government service vehicles, and carpool spaces with appropriate signage.

Section 8. Building Access

- A. Barring exigency events, bargaining unit employees with necessary security pass or ID will be granted 24/7 access to the Keystone Building and their workstations.
- B. Union representatives with necessary security pass or ID will have access to the Union office at any/all times barring emergency situations to carry out their labor relations responsibilities.
- C. To the extent not prohibited by law, rule, or regulation the Agency agrees to provide the Union with a copy of each work product, report, or other document(s), including any on computers, resulting from the use of the information collected (that are neither part of a security system investigation that could lead to disciplinary action nor any internal audit of the security system) regarding access to the Keystone Building card-key system, and to provide notice of any changes in the type of information collected.

Section 9. Site Visits

- A. The Union will be given a site visit to the Keystone Building prior to construction of the new office environment.
- B. After construction of the new office environment but at least 14 calendar days prior to move-in the Union will be given another site visit and access to all parts of the Building. The Union will be permitted a minimum of 4 representatives for this site visit and sufficient official time to survey the areas and make any evaluations/inspections. Such official time will not be counted against any official time "bank" hours.
- C. After the second site visit by the Union any issues that are of concern will be addressed as soon as possible by the Parties. Any necessary final negotiations will take place prior to move-in. If such final negotiations are impractical prior to move-in, then the Parties will meet as soon as possible to remedy any issues and complete any negotiations.

Attachment 1

CLOSED WINDOW OFFICES OF LESS THAN 100 SQUARE FEET

Anytime there are offices within NIEHS that are desirable, despite the fact that they are less than 100 square feet, no bargaining unit employee shall be required to move into an office that is less than 100 square feet. However, some bargaining unit employees may want to occupy these offices.

Upon consulting with a union representative, who will seek to establish that this selection is voluntary on the part of the employee, he or she will be required to sign a waiver to that effect. The waiver is for the mutual benefit of the Employee, the Union, and Management. It is applicable only in the case of this particular employee and office, and will not establish any precedent that may be used to seek or justify other office selection processes within NIEHS.

Waiver for Offices of Less Than 100 Square Feet

I, _____ understand that room ____ is less than 100 square feet. However, I am willing to occupy this space, and do so voluntarily.

Employee

Union Representative

Date

Supervisor

Attachment 2

TELEWORK AGREEMENT

The following constitutes an agreement between the NIEHS, and _____
(Name of Employee)
on the terms and conditions of the NIEHS Telework Program, consistent with this
Agreement between the NIEHS and AFGE Local 2923:

1. The address of the employee's residence within which the alternate duty station (ADS) is located is:

Telephone # _____

2. The ADS meets the following criteria which are required by the government for its convenience and to ensure a safe workplace and the security of records and files.

a. telephone line(s) and instrument(s) are present and working to ensure that the employee is accessible for coverage requirements during the agreed upon hours at the ADS;

b. records and files must be secure in order to minimize the opportunity for unauthorized access; and

c. a smoke detector and readily accessible fire extinguisher are in the residence where the ADS is located; and

3. The employee's participation in this program is voluntary. Both parties agree to adhere to the applicable Telework Program policies outlined in the Agreement regarding the Keystone Building. The agreement is in effect until canceled by either the employee or the appropriate supervisor/manager. The employee may withdraw from the program at any time.

4. The employee's official daily tour at the ADS will be selected from one of the work schedules or alternative work schedules available to employees at the official duty station as listed below [need to include]. The employee will designate a normal start and ending time at the ADS and will notify the immediate supervisor of any changes.

5. Employees performing work at the ADS are subject to the same maximum workday limits and starting and ending times as they would be if they were performing work at the official duty station. Participating employees are not authorized to work overtime hours at the ADS unless approved by management consistent with the parties' Agreement and applicable regulations. Employees are not entitled to work credit hours at the ADS unless authorized under the parties' Collective Bargaining Agreement. If the

employee works overtime or credit hours which meet these criteria, s/he will be compensated in accordance with applicable law, regulation, and policies.

6. An employee's time and attendance for work performed at the ADS will be recorded in the same manner as is used to record the performance of work at the official duty station.

7. Consistent with the Parties' CBA and law, the employee will follow established procedures for requesting and obtaining approval for leave at the ADS.

8. Employees performing work at the ADS on a regular basis and their immediate manager will jointly develop a Work plan (See Attachment 4) and may be required to submit a work summary after his/her work at ADS day(s) but before the end of the pay period. If required, such work summary will normally be informal in nature. It should include the employee's name, date(s), and generally show the activities/accomplishments on his/her work at the ADS or during telework status.

9. The employee will be responsible for operating costs, maintenance, and any other incidental costs (e.g., utilities) associated with the use of the employee's ADS unless the costs are the result of maintenance of government-owned equipment (e.g., a government-owned computer). The employee does not relinquish any entitlement to reimbursement for appropriately authorized expenses incurred while conducting business for the Agency as provided for by law and implementing regulations.

10. When there is reasonable suspicion that the employee is not complying with Section 2 above, and provided the employee is given at least 24 hours advance notice, the Agency may conduct periodic inspections of the ADS during the employee's normal working hours to ensure work site conformance with safety standards and other specifications in these guidelines. Such inspections will occur only on days when the employee is working at the ADS.

11. The Government will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while using Government equipment at the employee's ADS, except to the extent that the Government is otherwise liable under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act.

12. The employee is covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties at the ADS (designated work station). Any accident or injury occurring at the ADS must be brought to the immediate attention of the supervisor as soon as practicable. Because employment-related accidents sustained by an employee during a Telework Program assignment occur outside the premises of the official duty station, the Agency must investigate all reports immediately following notification.

13. The ADS is the location enumerated in Section 1 of the Telework Program Agreement and may not be changed without prior approval of the immediate supervisor.

14. All Government-borrowed equipment is for official business only.

EMPLOYEE: _____
(Signature of Employee)

DATE: _____

APPROVED: _____
(Signature Immediate Manager)

DATE: _____

Attachment 5

EPISODIC TELEWORK WORK ASSIGNMENT REQUEST
(A separate request must be completed for each assignment)

TO: _____
(Name of First-Line Supervisor)

FROM: _____
(Name of Employee)

SUBJECT: Request to Perform Episodic Work at My Alternative Duty Station (ADS)
as Part of the Telework Program

I am requesting to work at my ADS as indicated below:

Date(s) Starting Time Ending Time

Description of Assignment:

Signature of Employee Date

Approved Disapproved (for the following reasons:

Signature of Supervisor Date

NOTE: A copy of this request should be maintained by both the employee and the supervisor.

EXHIBIT 4

NOTICE OF REMOVAL FROM TELEWORK PROGRAM

TO: _____
(Name of Employee)

FROM: _____
(Name of Immediate Supervisor)

SUBJECT: Removal of Employee Participation in the [Agency] Telework Program

I am rescinding your participation in [Agency's] Telework Program effective
/ / . The reason(s) for my decision are as follows:

You may reapply for participation in the Telework Program as specified in Article ___ of the Collective Bargaining Agreement.

Signature of Immediate Manager

Date

I acknowledge receipt of this Notice
(Signature of Employee does not imply agreement)

Date