

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF HEALTH AND HUMAN
SERVICES
FOOD AND DRUG ADMINISTRATION
SEATTLE DISTRICT
SEATTLE, WASHINGTON

and

CHAPTER 215, NATIONAL TREASURY
EMPLOYEES UNION

Case No. 11 FSIP 137

DECISION AND ORDER

Chapter 215, National Treasury Employees Union (Union or Chapter) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse, under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and the Department of Health and Human Services, Food and Drug Administration, Seattle District, Seattle, Washington (Employer or FDA).

Following an investigation of the request for assistance, which concerns bargaining over an office relocation, the Panel determined that the matter should be resolved through mediation-arbitration by telephone with Panel Member Thomas E. Angelo.^{1/} In

1/ Negotiations over the office relocation began in early 2011, and the parties reached a verbal agreement on floor plan issues on or about February 10, 2011. The Employer proceeded to implement the floor plan thereafter. The parties then continued their negotiations over a Memorandum of Understanding (MOU) which they anticipated would address other issues related to the move. According to the Union, however, it learned that the office design had not been implemented according to what the Union believed was the agreement, particularly, the size of the cubicle workstations was smaller than what the Union had

accordance with this procedure, Member Angelo convened teleconferences with the parties' representatives on December 15 and December 22, 2011. While the parties were unable to resolve any issues, they made numerous modifications to their proposals. At the close of the second teleconference, the parties were directed to submit to the arbitrator and each other their final offers and supporting statements of position. In the interim, Member Angelo's appointment to the Panel expired before a decision was issued. Subsequently, the Panel determined to resolve the parties' impasse in this case on the basis of the record. The Panel has now considered the entire record, including the parties' final offers and post-hearing supporting statements of position.

BACKGROUND

The Employer's mission is to protect consumers and enhance public health by maximizing compliance with FDA regulated products and minimizing risk associated with those products. The Union represents approximately 150 professional and non-professional employees in the Seattle District who are part of a nationwide bargaining unit. Employees work primarily in compliance, investigations, enforcement and administration. The parties are covered by a master collective-bargaining agreement that went into effect on October 10, 2010.

ISSUES AT IMPASSE

The parties disagree over: (1) whether there should be a Union office in the new building; and (2) the procedures for the assignment of private offices and cubicle workstations, conversion of the Personal Identity Verification (PIV) processing office to a private office, and the duration and agency head review of the MOU.

POSITIONS OF THE PARTIES

1. Union Office Space

a. The Union's Position

The Union proposes that it be provided with a private office at the new location in the general vicinity of the highest concentration of employees. It contends that an office

anticipated. The Panel has not asserted jurisdiction over any issues that involve the floor plan.

designated for the Union would ensure privacy during meetings with employees and eliminate the need to request conference room space for such meetings which affords less privacy. Although there will be a Union office in the laboratory building, which some bargaining-unit employees will soon vacate, employees who are to be relocated would not have a Union office readily accessible in their own space. Management officials disagree over whether the relocated employees still would be able to use their "swipe cards" to access the laboratory building and its Union office. The Union should have a presence at the new building because of the high concentration of bargaining-unit employees being relocated there and to provide employees with convenient access to their Union representatives. Furthermore, if the Union has a more conspicuous presence at the new location it would help to ensure the smooth operation of the Chapter's business and maintain a collaborative relationship with District management.

b. The Employer's Position

The Employer maintains that there is insufficient space at the new location to designate a private office exclusively for the Union's use. In lieu of a designated Union office, the Employer would give the Union priority in reserving, for representational activities, one of three private offices in the Investigations Branch. The amount of representational activity (seven grievances and two unfair labor practice charges in 2011) does not warrant a designated Union office. Allowing the Union to have priority in reserving one of three private offices would ensure that the Union has access to space when it is needed. Bargaining-unit employees in the new building would continue to have access to the Union office in the laboratory building by using their "swipe cards" so they would not have to sign in to enter, thereby giving employees greater assurance of privacy. A second Union office in the new building is unnecessary, however, given the proximity of another Union office.

CONCLUSIONS

After carefully considering the record created by the parties on this issue, we shall resolve the dispute on the basis of the Employer's final offer. In our view, a union's ability to secure office space is not automatic. Among the factors to be considered are: Is there sufficient space to accommodate a union office? Is there a present need for the union's requested space? Would the effectiveness and efficiency of the agency be adversely impacted by allowing the space? Are there reasonable

alternatives available to the union? Here, the Union's efforts are severely hindered by the lack of space to accommodate an office. As was made clear from the record, there are more employees that should have private offices than are available to them, and attempting to shoe horn a Union office into the mix would deprive a unit employee of a private work area necessary to carry out sensitive and important Agency work.

Furthermore, the Union will have office space in the building that houses the laboratory, an adjacent office building some 300 yards away from the District Office. The record supports the conclusion that the Union office in the laboratory building would be adequate to handle the Union's needs. In this regard, the Union filed seven grievances and two ULPs during calendar year 2011. In addition, it engaged in bargaining with the Employer from time to time. Even including the normal (but unidentified) administrative activities demanded of the Chapter, there is no reason to suspect its office facility in the laboratory building would be inadequate either in terms of location or size to handle the Chapter's workload. Finally, on balance the benefits realized by the establishment of a Union office do not outweigh the adverse impact on the Employer's operations and personnel, as there are a myriad of ways the Chapter can establish a presence apart from merely maintaining an office.

2. Allocation of Private Offices and Cubicle Workstations; Procedures for Assigning Office Space; and Duration and Agency Head Review of the MOU

a. The Union's Position

Essentially, the Union proposes that private offices be granted to compliance officers based on their FDA seniority; a private office would be allocated for PIV duties and the secure storage of equipment, with an employee who operates the PIV equipment also to occupy the office; remaining private offices would be divided between management and the Union for assignment, with the Union to make its assignments based upon FDA seniority; ties would be broken based upon Federal service computation date and, if employees have no prior Federal service, by the flip of a coin. No private offices would be left vacant. As private offices become vacant, the Union and management would alternately assume responsibility for assigning offices. When private offices must be relinquished so that they may be filled by new managers, supervisors and compliance officers, the parties alternately would relinquish occupancy in

reverse order. When all private offices have been assigned, but there is a need to provide a private office to a position, the parties would bargain without reopening the entire MOU. With respect to cubicle workstations, six workstations in the Investigations Branch would be combined to create three larger workstations; the modifications would be completed prior to the initial occupancy of the building. Workstations would be made available first to employees who are assigned to the same duty station or who have been assigned to transfer to that duty station. Employee requests for the same workstation would be determined based upon FDA seniority. Employees would select workstations within their functional grouping; those functional groupings would include, but are not limited to, IT/Computer Center, Administrative, Compliance and Investigations. Any vacant workstations within functional groupings could be bid on by employees who elect to be seated in a functional area outside their own but they would have to relinquish the workstation in favor of a new employee who is hired after initial occupancy and is assigned to the functional area which the seated employee was occupying. The employee removed would have the first-right-of-refusal for the next comparable workstation. No other employees would be required to relinquish their workstation outside of the functional area. As to the assignment of private offices and workstations when they become vacant, the Union would be notified within 3 days of an office becoming vacant; employees would be notified of vacant offices within 2 weeks of a vacancy; employees would be permitted to bid for vacant workstations with priority given to employees working in the functional area where the office is located; the most senior employee, based on FDA service, would be awarded the workstation. Disputes over office and workstation assignments, based on allegations of unfair treatment, could be grieved; disputes over the "negotiation, application or renegotiation" of the MOU would be resolved through the grievance procedure or by the Federal Labor Relations Authority, including the Panel, as either party deems necessary. The MOU would remain in effect for 1 year unless "specifically superseded" by a national agreement; either party could reopen the MOU within 30 days after its anniversary date; if it is not reopened, the MOU would roll over for subsequent periods of 1 year.

The Union asserts that the level of detail in its proposed MOU would minimize the need for future bargaining and reduce the likelihood of disputes. Each party would have the opportunity to "control" the assignment of private offices that are not filled initially by managers, supervisors or compliance officers (who are bargaining unit members). The proposal adheres to

management's desire that employees select their offices within the functional area designated for their position; however, under certain situations, it would allow employees to select offices outside of their functional area because the use of telephone and computer communication among staff make it unnecessary for them to sit in clustered groupings. It provides a fair and equitable procedure for situations that would require a manager, supervisor or bargaining-unit employee to relinquish a private office or workstation. Allowing an employee who uses PIV equipment to be assigned to the private office where the equipment is housed would ensure that one more employee has the benefit of private office space. Furthermore, the proposal would give employees in the Investigations Branch the opportunity to move into an excess private office or one that becomes vacant after the initial move into the new building. Providing notice to the Union and employees of vacant office space should ensure that the space is quickly filled, particularly if it is desirable office space; this would remedy past situations where offices were left vacant for significant periods of time. Finally, the enlargement of some cubicles in the Investigations Branch would provide employees with the expanded area they need to perform their duties.

b. The Employer's Position

The Employer basically proposes that employees who work in the same functional areas select their office space within the parameters designated by the Employer. Accordingly, employees who work in IT, Administrative Area/District Director, Compliance and Investigations, would select their offices and workstations within the space designated for their functional area. Seniority, based upon the employee's most recent appointment to FDA, would determine the order of selection. The past practice of providing private offices to the consumer complaint coordinator, Federal-state liaison, public affairs specialist, senior FOI technician, and training officer, would continue. Private offices also would be provided to the emergency response coordinator, OEI coordinator, program support specialist, QMS manager, and senior recall coordinator, with the incumbents of these positions to select their private offices within their functional areas. Management would retain discretion to determine whether an employee is assigned to occupy the private office where the PIV equipment will be located. In the event that more such positions are added, reverse seniority would determine who may have to relinquish a private office. Three private offices in the Investigations Branch would be made available for investigators to write

complex inspection reports or perform tasks that require a larger work space, with employees to reserve the office by using the same reservation process for conference rooms. The balance of private offices and workstations would be made available to employees at the GS-9 grade level and higher, in the employee's functional area, based on seniority. Should more supervisors be assigned to the office after the move, private offices may have to be vacated by seated unit employees; reverse seniority would determine who must relinquish a private office. Any employee involuntarily relocated to a vacant workstation in the employee's functional area would have a one-time first choice of a comparable vacant workstation in the employee's functional area. Matters not covered by the MOU are appropriate subjects for bargaining. The MOU would remain in effect for 1 year; thereafter, either party could reopen the agreement within 30 days of its anniversary date or, if it is not reopened, the agreement would roll over for subsequent periods of 1 year. Finally, the MOU would be subject to agency head review.

The Employer maintains that its proposal addresses its functional needs while preserving past practices with respect to private offices. Designating functional areas would enhance office efficiency and communication among employees because, among other things, it would require support staff to select their workspace in the nearby area where the managers and employees they support also work. The proposal also would accommodate the occasional need investigators may have for expanded office space by permitting them to use three private offices to write complex inspection reports or perform other tasks that require a larger work area. In addition, it would give management the flexibility to reclaim an office that may be needed for a newly-hired or transferred manager or supervisor; an employee involuntarily relocated would have first choice of any vacant workstation in the employees' functional area. Placing limitations on further negotiations involving the office move would help avoid an endless bargaining process. Finally, its proposal recognizes the Employer's statutory right to conduct agency head review of an MOU imposed by a third party.

CONCLUSIONS

After carefully considering the parties' proposals and positions on the remaining issues, we are persuaded that the impasse should be resolved on the basis of a modified version of the Employer's proposal. While both parties have attempted to craft an MOU that covers immediate and foreseeable issues that relate to the office relocation, on balance the Employer's final

offer should be adopted because it would require employees to consistently work in their cohesive functional units with minimal disruption in the office environment when private offices and workstations become vacant following the initial move. In our view, those aspects of the Union's proposal that would allow employees to select office space outside of their functional areas may undermine the ability of staff to work together and provide mutual support. Furthermore, the provision in the Union's proposal that would require employees, under certain circumstances, to relinquish occupancy of a private office "in reverse order," is unclear and, therefore, may lead to grievances. Moreover, the Union's proposal to expand the size of some workstations raises an issue that is related to the floor plan, a matter which is not before the Panel. Also, a requirement in the Union's proposal that, under certain conditions, a private office occupied by a manager or supervisor would have to be vacated may be outside the scope of bargaining because the proposal addresses working conditions of nonbargaining-unit employees. While it is unnecessary to state in the MOU that it shall be subject to agency head review, we shall retain the provision proposed by the Employer to alleviate disputes over whether agency head review is appropriate under 5 U.S.C. § 7114(c) of the Statute.

Finally, we shall modify the Employer's proposal to include the Union's definition of seniority to ensure that the MOU applies solely to bargaining-unit employees. In this regard, although not specifically stated in the Employer's proposal, its post-hearing supporting statement of position reveals that management intends the MOU to cover nonbargaining-unit investigators who work for the Public Health Service (PHS) and are stationed in the FDA's Seattle District Offices. Under the Employer's definition of seniority, which is based on "most recent appointment to FDA," PHS investigators may have greater priority in the selection of office space over some FDA employees. In our view, if PHS employees are "appointed to FDA," it is possible that they would be competing with bargaining-unit employees in the office selection process. Adopting the Union's definition of seniority should eliminate the possibility of nonbargaining-unit employees receiving preferential treatment in the selection of office space.

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 pursuant to 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:

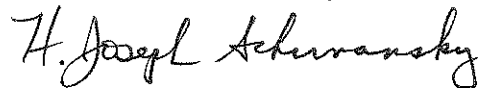
1. Union Office Space

The parties shall adopt the Employer's final offer.

2. Allocation of Private Offices and Cubicle Workstations; Procedures for Assigning Office Space; and Duration and Agency Head Review of the MOU

The parties shall adopt the Employer's final offer, modified to include the Union's definition of seniority.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

March 9, 2012
Washington, D.C.