

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

ENVIRONMENTAL PROTECTION AGENCY
REGION 7
KANSAS CITY, KANSAS

and

CHAPTER 294, NATIONAL TREASURY
EMPLOYEES UNION

Case Nos. 12 FSIP 129
and 12 FSIP 133

DECISION AND ORDER

The Environmental Protection Agency, Region 7, Kansas City, Kansas (EPA or Employer) and Chapter 294, National Treasury Employees Union (NTEU or Union) filed separate requests 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.^{1/}

After an investigation of the requests for assistance, which arose during bargaining over the relocation of EPA's Region 7 Regional Office to a site approximately 20 miles from its current location, the Panel determined that the dispute should be resolved by directing the parties to submit written statements of position (SOP), with evidence and arguments supporting their final offers, on the issues at impasse. The parties were informed that, after considering the entire record, the Panel would take whatever action it deems appropriate to resolve the dispute, which may include the issuance of a *Decision and Order*. In accordance with the Panel's instructions,

^{1/} The Panel also received separate requests for assistance from the EPA and the union that represents its non-professional employees and attorneys concerning an impasse over the same issues. See the Panel's *Decision and Order in Environmental Protection Agency, Region 7, Kansas City, Kansas and Local 907, American Federation of Government Employees, AFL-CIO*, Case Nos. 12 FSIP 130 and 134, issued this same date.

the parties timely submitted their responses. The Panel has now considered the entire record.

BACKGROUND

The Employer's mission is to promote and protect the environment. Employees work closely with state counterparts on a variety of programs that include clean water activities and hazardous waste clean-up. The Union represents approximately 260 professional employees (mainly engineers, scientists and accountants, GS-9 through -14).^{2/} The parties are covered by a collective-bargaining agreement (CBA) which was to have expired but whose terms and conditions continue in effect until negotiations over its successor are completed.

ISSUES AT IMPASSE

The parties disagree over: (1) the height of the "stackers" that will be placed on top of the 46" "Canvas" partitions that make up employee workstations at the new location^{3/}; and (2) whether the glass in the stackers should be clear, opaque or "frit."

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes:

That all EPA Region 7, non-attorney and non-management employees represented by NTEU Chapter 294, about to be moved to the new EPA Region 7 building in Lenexa, KS,

2/ Approximately 650 EPA employees, grantees, and contractors are housed in the current building, which has five floors. The new building has two floors. The lease for the current building recently was extended until November 1, 2012, to permit completion of construction at the new location. The Employer is scheduled to begin lease payments at the new location on that same date but if occupancy occurs prior to November 1, 2012, lease payments will commence with occupancy.

3/ Stackers contain glass and are placed on top of the 46" Herman Miller partitions that the Employer has inherited from the previous tenant. According to the Employer, the stackers only come in 11" and 22" heights.

be provided cubicle wall heights of approximately 68", using a base that is 46" in height and [] 22" opaque glass stackers added above the 46" base.^{4/}

The Union's final offer should be adopted because it is comparable to the *status quo*, while the Employer's is not. Unlike the Employer's final offer of 57", a 68" cubicle height is closer to the 64" high cubicles employees have at their current location. In fact, given that the stackers only come in 11" and 22" sizes, "the only comparable height would be to add a 22" stacker to the 46" base left behind by the previous tenant that the Agency intends to re-use." The 68" wall height also is "justified by the needs of the bargaining unit employees." In this regard, they perform work that routinely involves personally identifiable and confidential business information. The Union already has agreed to a cubicle floor space reduction of 20 percent which will result in more crowded space and the loss of "a measure of privacy," and the two floors employees will be moved into at the new location contain many cubicle openings that will face each other. The Union's proposal, therefore, "serves the express purpose of increasing the privacy employees need to perform their work."^{5/} As the Employer's proposal will result in loss of privacy compared to current standards "beyond that which the parties have agreed to in the form of smaller cubicles with a more open design, while NTEU's proposal will more closely approximate the privacy employees

4/ In its supporting SOP, NTEU refers to a final offer it submitted on June 9, prior to the Panel's receipt of its request for assistance, instead of the final offer solicited by the Panel's Staff on July 9 that was included in the procedural determination letter that was sent to the parties on July 16, 2012. The only substantive difference between the proposals is that the June 9 wording includes the phrase "using sound absorbent materials." Although it is unclear why NTEU cites its earlier proposal, neither party discusses this matter in its supporting SOP, suggesting that the issue of whether the 46" base should be made of sound absorbent materials is not in dispute.

5/ In support of its position, the Union cites a previous decision in *Department of Housing and Urban Development, San Francisco Regional Office and Local 1450, National Federation of Federal Employees*, 91 FSIP 95 (May 27, 1992), where the Panel ordered an increase in partition heights from 4' to 5', on the basis of privacy needs, for employees who occupy positions similar to those at EPA.

enjoy, within the agreed changes," the Union's proposal should be adopted.

Turning to the issue of the color/tint of the glass in the stackers, "ordering opaque glass outweighs the cost of the proposal."^{6/} The Union would not oppose clear glass if the parties had agreed to larger cubicles and a more spacious floor plan. However, "these two aspects of privacy have been lost in the relocation plan, making clear glass less workable." Moreover, there are additional changes taking place that will affect employees' privacy, such as the vacuuming of offices during the day as a cost saving measure, and visitors having to pass through employee workstations to reach meeting rooms as a result of the new floor plan design. For these reasons, "it is important that employees maintain as much privacy as possible, rather than lose further privacy." Nor has the Employer argued that the 22" opaque stackers would not arrive in time for the relocation. Finally, the Union has not opposed EPA's plan to re-use cubicles that were left behind, which has already resulted in significant cost savings. Adding 22" stackers to the re-used 46" base "will not require major renovations," 22" stackers are readily available in the commercial market place, and EPA has not established that the move would be disrupted if they were installed. Because "there is no practical reason the Employer could not implement [the 22" stackers] in a timely and cost-effective manner," the Union's final offer should be imposed by the Panel.

2. The Employer's Position

The Employer proposes that:

Employees [represented] by [] NTEU Chapter 294 who currently sit in cubicles will be provided a cubicle with a 46["] high panel with an additional 11["] high glass stacker.

^{6/} To support its position on this issue, the Union cites the Panel's decision in *Department of Veterans Affairs, Health Eligibility Center, Atlanta, Georgia and Local 518, American Federation of Government Employees, AFL-CIO, 06 FSIP 10* (February 15, 2006), where it ordered that existing glass panels be replaced by frosted glass, finding that "the measure of privacy that will be afforded to employees by replacing the existing side glass panels . . . outweighs the cost of the proposal."

- All stackers will be 11["] high, for a total workspace partition height of 57["](46["] panels with 11["] stacker);
- All 11["] stackers in its inventory that fit Region 7 partitions be used first^{7/};
- Any additional stackers purchased will be opaque.

Those employees [represented] by [] NTEU Chapter 294 who occupy an office in the current regional office building based on operational needs will be provided with a DIRTT workstation.

EPA's "primary goal" in relocating to the new building is "to ensure that Region 7 employees are appropriately equipped to perform their part in carrying out the mission of the Agency - protecting human health and the environment." In achieving its goal, the considerations management has taken into account include the following: (1) President Obama's 2010 directive to federal agencies to reduce expenditures on real estate and associated operating expenses; (2) EPA's Agency-wide 20-percent space reduction goal in response to the President's directive; (3) a recent charge to Agency management by the EPA Administrator "to redesign EPA work space at leased offices across the country using an approach that is more efficient, collaborative, and technologically sophisticated so as to reduce the Agency's physical and environmental footprint"; (4) the size and design of the building leased by the General Services Administration for EPA Region 7; and (5) budget constraints. With respect to the latter, if the Employer is permitted to use its existing inventory of 11" clear and frit glass stackers "considerable cost savings" would result "while also meeting the goal of employee productivity." Conversely, the use of 22" stackers, as the Union proposes, would add "considerable cost" to the move. In this regard, use of the existing inventory would require EPA to spend \$165,755 for additional stackers. Forcing it to install 22" opaque stackers for all bargaining unit workstations would cost \$278,631, "plus a premium of \$63,100 for design and installation changes," for a total added expense of nearly \$176,000.^{8/} Significantly, the adoption of the Employer's final offer is also more consistent with the

^{7/} According to the Employer, there are 580 11" clear glass and 243 11" frit stackers, for a total of 823 usable 11" stackers, in its inventory.

^{8/} The Employer supports its cost estimates by providing an affidavit from EPA's Region 7 Move Project Manager.

principal of "reduce, reuse, recycle and being good stewards of public funding" embraced by the parties at their first negotiating session.

Providing non-attorney bargaining unit employees with different workspace than attorneys "is the *status quo* in Region 7." The Union's proposal to require 68" high partitions "represents an increase in partition height from the current building and is a departure from the *status quo* of decreased panel heights for those moving to the new building." In contrast, the 57" panel height proposed by the Employer for the Union's bargaining unit is less than half the reduction in panel height that awaits managers, attorneys, and LER/EEO employees at the new location. With respect to the Union's argument that 22" opaque stackers are necessary "based on considerations such as confidentiality of work and the need for privacy," there is no evidence that the adoption of its final offer would have a demonstrable effect on the ability of employees to perform their duties "such that this offsets the considerable costs." Management recently revisited the determinations it made as a result of its 2009 study concerning which employees require private offices because their work "regularly involves substantial face-to-face discussions which are confidential or sensitive in nature." As a result, "all employees that have a business need for a private office in order to effectively perform their duties have such space." In the current Regional Office, unit employees are able to effectively and efficiently perform their work in cubicles "without full visual or acoustical privacy," and "there is no business need for these employees to have increased visual or acoustical privacy at the new facility." In addition, the new facility has more than 40 enclaves and 35 conference rooms for such discussions. Finally, management also has taken numerous steps to enhance audio and visual privacy at the new location, including the use of a "pink" noise-masking system, doubling the number of noise-attenuating acoustical tile "clouds," and enclosing an open atrium, ensuring that employees will continue to perform EPA's mission without loss of productivity and effectiveness.

CONCLUSIONS

After carefully considering the arguments and evidence presented by the parties, we shall order the adoption of a modified version of the Union's final offer to resolve the impasse. Preliminarily, we note the significant impact on conditions of employment that will occur because of the relocation. In meeting EPA's stated goal of a 20-percent

reduction in space, employee cubicle sizes will decrease across the board, and there will be a corresponding increase in population and cubicle density, especially in the non-attorney wings of the new building. In meeting the challenges created by these changes, the parties already have achieved commendable savings to taxpayers by, among other things, agreeing to re-use the 46" partitions left behind by the previous tenant. In our view, they have substantially complied with the principal of "reduce, reuse, recycle and being good stewards of public funding" that they adopted at the start of their negotiations. The pertinent question at this point is whether, on balance, the additional cost of 22" opaque stackers estimated by the Employer^{9/} is outweighed by the increase in employee privacy and confidentiality that would result if they are installed. We conclude that the additional privacy they afford is likely to increase employee productivity in the denser work environment and, therefore, the use of 22" opaque stackers is warranted under the circumstances presented.

It is clear from the affidavit of the Region 7 Move Project Manager that the Employer also has some 22" frit stackers in its existing inventory. Unlike the precise accounting it provided for the 11" stackers, however, we are unable to determine the exact number on the basis of the record. In any event, to reduce the number of 22" opaque stackers it will need to purchase, we shall modify the Union's final offer to allow the Employer also to use the 22" frit stackers in its inventory.

ORDER

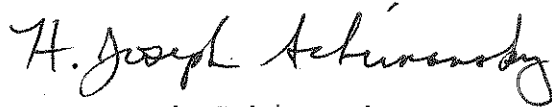
Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their impasse

^{9/} The Employer's cost estimate of the Union's final offer assumes the re-use of all of its 11" stackers. Point 8.b. of the Region 7 Move Project Manager's affidavit, however, states that "the design and orders for furniture components were prepared . . . to accommodate our understanding of union preferences so as to limit re-use of clear stackers to the ends of rows and near windows, but not where two employees face each other . . . Under that plan there would still be 105 11["] stackers left in existing inventory after installation." If the Employer still intended to accommodate the Union's preferences, it appears that its estimate of savings would have to be reduced by the cost of 105 11" stackers.

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:

The parties shall adopt the Union's final offer, modified to permit the Employer also to use the 22" frit stackers in its inventory.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

August 3, 2012
Washington, D.C.