

In the Matter of

SOCIAL SECURITY ADMINISTRATION  
OFFICE OF DISABILITY ADJUDICATION  
AND REVIEW  
LOUISVILLE, KENTUCKY

and

CHAPTER 224, NATIONAL TREASURY  
EMPLOYEES UNION

Case No. 15 FSIP 96

ARBITRATOR'S OPINION AND DECISION

Chapter 224, National Treasury Employees Union (Union or NTEU) 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 Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Louisville, Kentucky (Employer or Agency).

Following investigation of the request for assistance, arising from negotiations over the opening of a satellite office in Louisville, the Panel determined that the dispute should be resolved through mediation-arbitration with the undersigned. The parties were informed that, if a complete settlement of the issues at impasse were not reached during mediation, a binding decision would be issued to resolve them.

Consistent with the Panel's procedural determination, on October 27, 2015, I conducted a mediation-arbitration proceeding at the Louisville Federal Building. At the outset, I was given a tour of the then still-unoccupied space designated for the satellite office in the basement of the Federal Building. During the mediation phase, the parties were able to resolve a number of issues, but they were unable to reach agreement on the central issue concerning office space for attorneys. Thus, I am required to issue a final decision imposing terms for the disputed issues in accordance with the Statute and 5 C.F.R. § 2471.11 of the Panel's regulations. In reaching this decision, I have considered the entire record, including documentary

evidence, testimony from witnesses, and post-hearing statements of position.

### BACKGROUND

ODAR's mission is to render decisions affecting claimants' rights to, and amounts of, benefits under Social Security laws applicable to those with disabilities. The Union represents a bargaining unit consisting of approximately 1,550 professional (attorneys and paralegals) and non-professional employees who work in 168 Hearings Offices within 10 Regions; 5 National Hearing Centers (NHC); and 2 National Case Assistance Centers (NCAC). Attorneys in the bargaining unit are generally known as "decision writers" and they draft decisions at the direction of Administrative Law Judges who decide benefits eligibility *de novo* based on an evidentiary hearing or written record. There also are a few paralegals in the bargaining unit who are decision writers. The parties' current collective-bargaining agreement (CBA) went into effect on June 2, 2014, for a duration of 4 years.

The dispute arose during bargaining over the impact and implementation of the Employer's decision to expand the National Case Assistance Center in St. Louis by opening a satellite office in Louisville, Kentucky. By the time of the proceeding held in this matter the Employer had completed hiring of 23 new attorneys to staff the new office and they were scheduled to report for training soon thereafter. To house this new unit the Employer signed a 10-year lease for space in the Federal Building in Louisville where the SSA until recently had a field office.<sup>1/</sup> The Employer's plan from the start was to take over the space "as is" from the previous occupiers of the SSA field office and place the attorneys in the existing workstations in the interests of getting new attorneys on board quickly and saving money. The purpose of these new hires is to apply additional resources to reducing ODAR's 1-million case backlog for which there is considerable pressure on the agency.

### ISSUES AT IMPASSE

The central issue is whether the 23 newly hired attorneys should have private offices or cubicle workstations at the new satellite office. The parties also disagree over whether the

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<sup>1/</sup> This was an 18-month holding space during renovations of the ground floor field office, built out with 56 sq. ft. cubicles.

office should have dedicated space for a library. Other issues in the parties' proposed Memoranda of Understanding (MOU) concern: the definition of "office" and whether "office" or "workstation" should be used throughout the MOU to describe employee workspace; equipment/furnishings for employee workspace, including the number of LAN access points in each employee workspace; a first aid kit for the office and the designation of a person to maintain it; incorporating by reference into the MOU the Space Allocation Standards (SAS) for ODAR regarding employee offices; bargaining obligations concerning the design and build-out of the multi-purpose room; and whether the Agency should consider using the satellite office as a pilot to test workplace enhancements such as kitchen/café, Wi-Fi, "casual workspace," and treadmill docking stations.

### PARTIES' PROPOSALS AND POSITIONS

#### I. The Union's Position

The Union proposes the following provisions for inclusion in the MOU:

1. Definitions

F. "Office" means private office.

2. Employee Offices

A. In accordance with the current 1997 OHA/GSA Space Allocation Standard, all employees will select from the twenty-three (23) private offices designated as "NTEU-Attorney" on the agreed upon attached floor plan<sup>2/</sup> based on seniority. Employee seniority for office selection is defined as time in the Louisville NCAC satellite. Any conflict (e.g. employees hired on the same date) will be resolved by earliest date of birth. Prior to office selection, employees will be allowed to examine all attorney offices once the walls are in place and Management deems it safe for inspection. Management will notify the Union in advance of the date scheduled for this visit

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<sup>2/</sup> The Union never provided a proposed floor plan. The Employer submitted one during the investigation of the case.

and Management may reschedule the visit if necessary. Management will arrange a meeting and the opportunity for all NTEU Attorneys to decide among themselves on office selections. All offices annotated as NTEU-Attorney offices on the floor plan will be available for occupancy by NTEU employees. If this selection process cannot be successfully completed, the Employer will timely notify the Union and commence negotiations to resolve any and all outstanding issues related to office selection.

B. In the event that any *office*<sup>3/</sup> designated on the floor plan as "NTEU-Attorney" is vacated, the opportunity to fill that vacant office will be given to all employees based on time as a Senior Attorney and/or Attorney Advisor in the Louisville NCAC satellite. Any conflict (e.g. employees hired on the same date) will be resolved by earliest date of birth. If there remains a conflict or this selection process cannot be successfully completed, the Employer will timely notify the Union and commence negotiations to resolve any and all outstanding issues related to office selection.

C. Offices will have solid core doors which will be maintained in good working order and will be in good repair and operational at all times.

D. No private NTEU Attorney office will have a transom/clerestory or other similar type of window positioned in the door or wall of the office.

E. Pursuant to the OHA/GSA Space Allocation Standard, each employee office will be built to the Sound Transmission Class (STC) of 40.

### 3. Health and Safety

D. The provisions of the GSA lease/occupancy agreement *and the Space Allocation Standard for*

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3/ Only the use of the word "office" in this provision is in dispute.

ODAR regarding employee offices,<sup>4/</sup> building and safety codes, health and safety, fire protection, sound transmission, ambient noise, lighting, stairwells, restrooms, cleaning, heating and cooling, HVAC systems and the relevant provisions of Federal regulations regarding space allocation and utilization are incorporated by reference into this MOU and therefore apply. These provisions will be monitored by the Employer and prompt corrective action will be taken, when appropriate, to ensure compliance.

5. Conference, Multi-Purpose, Video Teleconference and Rest Rooms

D. The Agency agrees to consider using the Louisville NCAC Satellite for a pilot program to test a variety of workplace enhancement tools and amenities, such as, a kitchen/café, Wi-Fi, "casual workspace", treadmill docking station, etc.

7. First Aid

A. The Employer will provide a first aid kit easily accessible in the office.

B. The Employer will designate a responsible person to maintain the first aid kit.

8. Equipment

A. Each Employee office shall include suitable equipment necessary for the performance of the work of the Employee, including a double pedestal desk, tables, bookcases, a computer stand/table/work station, two LAN access outlets in each office and other appropriate equipment. Employees may also keep personal equipment, such as a personal file cabinet, a chair, etc., on a space available basis in their office but Employees should balance the equipment provided and personal equipment so that offices remain professional and safe. If any new furniture is

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<sup>4/</sup> Inclusion of a reference to the Space allocation Standard is the sole wording in dispute.

or will be provided by the Employer in the context of this expansion, the Employee may elect to continue to use any or all of their current furniture and/or personal equipment described above. Fax machines, printers and copiers will be located in areas accessible to employees. The Employer will make every reasonable effort to place printers and copiers away from employee offices upon request by the employee.

## 12. Library Area

A. In accordance with the current 1997 OHA/GSA Space Allocation Standard, the library area will be 200 square feet and will be used for research and to house reference materials for the hearing office. In the event of a proposed change to the library, management will fulfill any bargaining obligations under 5 USC Chapter 71.

The Union argues, essentially, that the Employer's proposal to place attorneys in cubicle space is unprecedented. All other bargaining-unit attorneys in offices where the matter has been negotiated have private offices, generally consisting of 120 sq. ft., including the St Louis NCAC of which the new Louisville location is a satellite. Private offices for attorneys have been the norm because decision writing, the sole focus of their work, requires a high degree of privacy. The Agency's 1997 SAS recognizes that fact. Relegating attorneys to a "cubicle farm environment" in non-conforming space in the basement of an old Federal building will subject them to audio distractions from coworkers talking and from those who dictate their decision writing on voice recognition software. The cubicles which the Employer proposes to use have no soundproofing and the partitions are low, which means that the occupants will face visual distractions as well. The Employer has offered no assurances that it would raise the height of the partitions other than it may do so if the "budget permits."

Numerous studies conclude that a work environment which detracts from privacy will result in poorer production from employees. The visual and auditory distractions that would come with working in the Employer's proposed cubicles likely will impede employee productivity at a time when the Employer has implemented new production quotas for decision writers. It is counter-intuitive to raise performance goals for employees while

placing them in a work environment where they are likely to underperform because of their working conditions.

The Employer puts forth the speculative position that employees would be able to minimize the amount of time they work in cubicles because, after 1 year of their being hired, new attorneys become eligible to telework up to 3-days-a-week. The Union maintains that, even so, employees would have to work for a year in a setting that is disruptive to their ability to concentrate and, therefore, does not foster productivity. Had the Employer been receptive to some of the solutions offered by the Union, such as accelerating telework availability or creating an office sharing environment with enclosed private offices,<sup>5/</sup> the parties could have found a solution.

The Union proposes that the satellite office have a dedicated room to serve as a library. The proposal is consistent with employee need for a quiet area where they can spread out their research materials, and case files which sometimes contain voluminous amounts of medical evidence.

## II. Employer's Position

The Employer proposes the following provisions for inclusion in the MOU:

### 1. Employee Workstations

A. All employees will select from the twenty-three (23) workstations designated for NTEU-Attorneys as depicted on the agreed upon attached floor plan based on seniority. Employee seniority for workstation selection is defined as time in the Louisville NCAC satellite. Any conflict (e.g. employees hired on the same date) will be resolved by earliest date of birth. Prior to selection of workstations, employees with SSA experience will be allowed to examine all attorney workstations once Management deems it safe for inspection. Management will notify the Union in advance of the date scheduled for this visit and Management may reschedule the visit if necessary. All workstations designated

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<sup>5/</sup> The Union's final offer contains no office sharing proposal nor was one offered or discussed during this proceeding.

for NTEU-Attorneys will be available for occupancy by NTEU employees.

B. In the event that any workstation<sup>6/</sup> on the floor plan for NTEU Attorneys is vacated, the opportunity to fill that vacant workstation will be given to all employees based on time as a Senior Attorney and/or Attorney Advisor in the Louisville NCAC satellite. Any conflict (e.g. Employees hired on the same date) will be resolved by earliest date of birth. If there remains a conflict or this selection process cannot be successfully completed, the Employer will timely notify the Union and commence negotiations to resolve any and all outstanding issues related to workstation selection.

5. Conference, Library, Multi-Purpose, Video Teleconference and Rest Rooms

C. The Employer will ensure that the space identified as "Conference Room" on the attached floor plan will also serve as a Library for employees to use for research and to house reference materials for the hearing office.

7. Equipment

A. Employee workstations shall include suitable equipment necessary for the performance of the work of the Employee as set forth in Article 35 of the 2014 NTEU/SSA Agreement. Employees may also keep personal equipment, such as a personal file cabinet, a chair, etc., on a space available basis in their workspace, but Employees should balance the equipment provided and personal equipment so that workstations remain professional and safe. If any new furniture is or will be provided by the Employer in the context of this expansion, the Employee may elect to continue to use any or all of their current Agency-provided equipment and/or personal equipment described above. The Employer will install LAN access point in each workstation.

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6/ Only the use of the word "workstation" in this provision is in dispute.



The Employer contends that it is unnecessary for the 23 attorneys to have private offices because the entire office will be occupied by decision writers and, "given the quiet nature of their work, there is no need for additional privacy." The CBA does not provide any assurances that attorneys would be granted private office space or that any prior guidance in the Agency's SAS would be followed. The Employer's plan to utilize the space, with its existing components of cubicles, satisfies several management objectives intended to fulfill its mission, implement the Administration's mandate that Executive agencies "reduce the footprint" for office space, and contain costs. In this regard, it is well known that the Agency has a backlog of over a million pending cases. The Employer needs to respond to public sentiment that the backlog be reduced as quickly and efficiently as possible which means that more staff is required as soon as possible to meet that goal. The office space selected by the Employer in Louisville would allow it to place newly-hired attorneys in space that needs little renovation prior to occupancy and accommodates the work which decision writers perform. Eliminating the construction of private offices is fiscally responsible particularly because, after 1 year of service, the attorneys are eligible to telework up to 3-days-per-week. An additional day out of the office each week or bi-week would be provided to those who work a compressed schedule. Therefore, to construct private offices for staff that may be using them for only 1 or 2 days per week, within a year's time, is not a wise expenditure of funds. As management witness Frank Biro, Associate Commissioner for Budget, Facilities and Security testified, at this point, renovations that would require the construction of private offices likely would delay occupancy by 18 months, and further add to costs because the Employer would have to provide "swing space" for staff during the construction period. Moreover, the space cannot accommodate 23 private offices measuring 120 sq. ft. Finally, the parties have agreed that, in the event that it is determined by the Arbitrator that attorneys are to occupy cubicle workstations, the parties shall form a joint committee charged with improving the existing work space. This would allow employees to have input on making changes to their working conditions after occupancy.

Management disputes that a dedicated library, as the Union proposes, is necessary. Attorneys have available at their desks the resources they need to conduct research; there is no need for them to go to a library. Furthermore, constructing a library would delay occupancy, increase renovation costs, and ultimately reduce the number of staff occupying the satellite

office because attorney space may have to be utilized for a library. In the alternative, employees may use the conference room to store research material and conduct research there.

#### OPINION

The Arbitrator regards this Louisville satellite office site as presenting a unique situation. The newly-vacant space was an opportunity seized by the Employer to meet a pressing and inherently temporary need for more attorney decision writers to eliminate the Agency's backlog. Nothing in the resolution of this impasse should be read as suggesting what appropriate attorney workstations should be in other situations.

The Arbitrator has concluded that ordering adoption of the Union's proposal for private offices is not feasible given the reality on the ground. The Union did not challenge the assertion made during the proceeding that nowhere near 23 private offices can fit into this space, nor point to any alternative space in Louisville for the 23 new attorneys who by the time of the proceeding had been hired and ordered to report to work at this site.<sup>7/</sup>

At the same time, it is clear that the cubicle arrangement in this space was not designed for attorney decision-writers (the previous users were SSA field office claims employees) and was selected as the NCAC satellite office for reasons of cost and speed of occupancy. In fact, the cubicles differ in significant ways from those located in the one NCAC ODAR office where attorneys in a non-NTEU bargaining unit work in cubicles. A photograph of that Baltimore office provided during the proceeding at the Arbitrator's request shows high and solid cubicle sides. In the Louisville space, the cubicles have low sides and clear panels. The Arbitrator believes that the Baltimore cubicles are in fact indicative of what the Employer believes is appropriate for attorney decision writers.

Asked by the Arbitrator during the mediation-arbitration, the Employer indicated that higher and solid panels could be

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<sup>7/</sup> As indicated, the Union never offered a floor plan showing how 23 offices could fit into this space and, when asked directly about the Employer's assertion that only half that number would likely be feasible, responded that the rest of the new attorneys should be placed in vacant offices in ODAR space in other geographic locations around the country.

installed on these cubicles, with the work being done after move-in at night and on weekends though it would take several months to complete. The Employer qualified this possibility by the availability of funds.

The Order being entered obligates the Employer to alter the cubicles to provide greater privacy and noise control and to create a mechanism for labor and management to address issues as the space is used. Specifically the parties are ordered to adopt language that: (1) mandates alteration of the cubicles to raise the height of the partitions as high as possible (and not less than 66 inches); (2) provides solid panels for the cubicles; and (3) requires completion of these alterations as soon as possible, but no later than May 1, 2016. In the Arbitrator's view, without alteration, the cubicles are not minimally functional for these attorney decision writers.

The parties are also ordered to establish a labor-management committee to develop recommendations for improving the working environment. This group will take up the specific issues set out below and in the Order, and any others raised by employees, the Union, or Employer, including employee or Union proposals for improving the appearance of the office. Optimally, the joint committee will reach agreements on the matters it examines. However, though until now the Union has not sought to pursue contractual arguments about this workspace, if going forward it believes that data from actual experience gives grounds for a grievance and the joint committee cannot find a resolution, the Union is free to pursue that avenue.

These remaining issues are addressed as follows:

- Size of workspace. The existing cubicles are 56 sq. ft. Once the attorneys are working on-site, the joint committee will examine whether all cubicles are in use. If not, the joint committee will examine whether and how it might be possible to use the unused cubicle space to enlarge or supplement work areas.
- Doors. The Arbitrator was informed that doors cannot be placed on these cubicles.<sup>8/</sup> The joint committee should

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<sup>8/</sup> Neither party came to the proceeding prepared with information about potential modifications to the cubicles. Information was hastily gained via a conference call to someone in headquarters but there was no thorough research

revisit that issue and, if doors remain impossible, the committee should look at how the cubicle arrangement (and any extra space from unused cubicles) might maximize privacy. Solid cubicle panels will improve privacy.

- Noise. Higher and solid fabric cubicle side panels may improve soundproofing to some degree. The joint committee should explore any other options for preventing sound disturbance established by experience working in these spaces.
- Health and Safety. The Union proposes the testing of light and air levels, the most significant issues it raises. The Employer indicated that light and air quality levels have already been tested. With regard to lighting there is a Federal government standard for lighting that cannot be exceeded to make the area brighter. The current ceiling lighting provides that level of light. The Arbitrator observed that many cubicles already have desk lamps to direct additional light at work surfaces. The Employer agreed that these are permissible so the Arbitrator will order that lamps will be provided to any employees requesting them. As to air quality, the Employer's facilities expert indicated that the arrangement of the heating and air conditioning should provide good air circulation. All of this being said, the office site is still a basement with limited natural light. Once employees are working in the site, experience will provide more data on the adequacy of light and air circulation and the joint committee can take up any issues raised by employees. The language being adopted does not include the Union's proposal to include the GSA lease terms, nor federal regulations/standards on space allocation and utilization. The parties' CBA governs the applicability of external standards.
- Furnishings/Equipment. The parties' proposals are similar. The Arbitrator believes the Employer language better fits the cubicle configuration. The Union's proposal about the location of copy and fax machines is not adopted since the tour showed a separate room where such equipment will be located.

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conducted. Hence, there is need for a deliberate effort to see what modifications are possible.

- Library. The Union retains its proposal for a 200 sq. ft. dedicated library but without indicating where it could be located. The satellite office space now has a large room containing cubicles, a conference room, and a supervisor's office. The Employer agreed and included language in its final proposal that the conference room can be used as a library. Thus, there will be an alternative workspace for research and other employee uses. The room should be furnished to serve this purpose. Specifics can be taken up by the joint committee. The Arbitrator's impression is that there will be little need for using the room for meetings and thus employee use should be prioritized.
- First Aid. The first aid kit issue was not addressed but the Arbitrator can think of no reason for not adopting the Union's proposal.
- Workplace innovations. The focus of the discussion of this issue before the Arbitrator concerned a new multi-purpose room that the Employer plans for a space next to the ODAR satellite office. The potential exists for using creative design concepts to provide alternative workspace and other enhancements for decision writers (e.g., café, treadmill workstations). Such matters should be the subject of future consultation and/or bargaining (as appropriate) if and when this space becomes a reality. The extent to which the satellite office can accommodate innovations will be a topic for discussion by the joint committee. The record at this point is insufficient to allow for ordering any particular tools or enhancements into that location.

One other issue that arose during the proceeding merits a comment. The Employer has argued that private offices are not necessary here because of teleworking, an opportunity that will be available for these new hires after a year on the job. The Arbitrator wants to stress that the future availability of optional telework does not justify putting employees in workspaces that are not functional for the tasks assigned to them, regardless of whether they use them for 2 or 5 days a week.

#### DECISION

The parties shall include the following wording in their Memorandum of Understanding to resolve the issues at impasse:

MEMORANDUM OF UNDERSTANDINGEmployee Workstations

Employees will occupy the existing cubicle space. Workstation cubicles will be modified to have solid fabric partitions of not less than 66" high. This alteration will be completed as soon as possible, but no later than May 1, 2016.

All employees will select from the twenty-three (23) workstations designated for NTEU-Attorneys based on seniority. Employee seniority for workstation selection is defined as time in the Louisville NCAC satellite office. Any conflict (e.g., employees hired on the same date) will be resolved by earliest date of birth. All workstations designated for NTEU-Attorneys will be available for occupancy by NTEU employees.

In the event that any workstation for NTEU Attorneys is vacated, the opportunity to fill that vacant workstation will be given to all employees based on time as a Senior Attorney and/or Attorney Advisor in the Louisville NCAC satellite office. Any conflict (e.g., employees hired on the same date) will be resolved by earliest date of birth. If there remains a conflict, or this selection process cannot be successfully completed, the Employer will timely notify the Union and commence negotiations to resolve any and all outstanding issues related to workstation selection.

Joint Workplace Committee

The Agency and Union will form a joint workplace improvement committee no later than January 15, 2016. The committee will consist of up to two (2) local Union designees, one (1) official time Union designee, and three (3) Management designees. The committee will be charged with forming and executing ideas, consistent with applicable regulations and policies, for improving the workspace. For example, the committee will consider lighting options, soundproofing, maximizing privacy, décor/decorations, workplace enhancements such as exercise equipment and alternative seat/chair options, social hours, training events, career services, and other workplace

improvement ideas. The committee will make recommendations on mitigating sight and noise distractions and it will take up any issues concerning air quality, heating, cooling and air circulation. In the event that there are any unused cubicles, the committee will consider how they/the space they use may be used to enhance the work environment.

#### Health and Safety

Health and safety conditions and, in particular, light and air circulation, will be topics for the joint committee. Conditions will be monitored by the Employer and prompt action taken, when appropriate, to correct any regulatory deficiencies identified. The CBA governs the Union's recourse to the grievance procedure for any matters it believes are not adequately addressed.

#### Conference Room/Library

The conference room also will be designated as the office library. Decision writers may bring reference materials to the conference room and conduct research there. They will be given priority use of the conference room for research purposes. Reference materials for the hearing office may be kept there.

#### First Aid

The Employer will provide a first aid kit easily accessible in the office.

The Employer will designate a responsible person to maintain the first aid kit.

#### Equipment

Desk lamps will be provided to employees requesting them.

Employee workstations shall include suitable equipment necessary for the performance of the work of the employee as set forth in Article 35 of the 2014 NTEU/SSA Agreement. Employees may also keep personal

equipment, such as a personal file cabinet, a chair, etc., on a space available basis in their workspace, but employees should balance the equipment provided and personal equipment so that workstations remain professional and safe. If any new furniture is or will be provided by the Employer in the context of this expansion, employees may elect to continue to use any or all of their current Agency-provided equipment and/or personal equipment described above. The Employer will install LAN access point in each workstation.

#### Multi-Purpose Room/Workplace Innovations

The Agency will consult and bargain the design and build-out of any future multi-purpose room, including the provision of to the extent required by 5 U.S.C. Chapter 71. The Agency will consider, and discuss with the Union, using the space as a pilot program to test a variety of workplace enhancement tools and amenities. The availability of enhancements in the satellite office will be discussed by the joint committee.



Mary E. Jacksteit  
FSIP Chairman

December 23, 2015  
Takoma Park, Maryland