

In the Matter of

ENVIRONMENTAL PROTECTION AGENCY
REGION 10
OREGON OPERATIONS OFFICE
PORTLAND, OREGON

and

LOCAL 1110, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 08 FSIP 9

ARBITRATOR'S OPINION AND DECISION

Local 1110, 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 Environmental Protection Agency (EPA), Region 10, Oregon Operations Office, Portland, Oregon (Employer or OOO).

After an investigation of the request for assistance, which arises from bargaining over an office relocation, the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on January 25, 2008, a mediation-arbitration proceeding was held in the Employer's office in Portland, Oregon, with representatives of the parties that was preceded by a tour of the new office with representatives of the parties. Prior to the mediation/arbitration proceeding, the parties were able to settle an issue concerning "slab-to-slab" concrete walls in the office; however, all other issues remained unresolved. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and oral statements of position.

BACKGROUND

The mission of the OOO is to implement EPA regulations that 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 20 professional and non-professional employees in the OOO who are part of a nationwide consolidated bargaining unit consisting of 550 employees. Typical bargaining-unit positions in the Portland, Oregon, office are environmental engineer, attorney, environmental scientist, environmental biologist, environmental protection specialist and a variety of administrative positions. The parties are covered by a master collective-bargaining agreement (MCBA) between EPA and AFGE that is in effect until December 19, 2009; the MCBA does not address office relocations. At the local level, the parties do not have a supplemental collective-bargaining agreement.

In Fall 2006, EPA, Region 10, was notified by the General Services Administration (GSA) that the lease for the building where the OOO was located would not be extended by the landlord and the office would have to relocate. The parties engaged in bargaining over the move to a new facility, which included mediation assistance with the Federal Mediation and Conciliation Service, but were unable to resolve their dispute. The office relocation to the Fox Tower Building took place on or about October 22, 2007.

ISSUES AT IMPASSE

The parties disagree over: (1) whether employees should have private offices or cubicles; (2) the size of office areas; (3) whether natural light has been maximized in the new office; (4) the effect of pillars in employee work space; and (5) modifying existing employee work areas.

POSITIONS OF THE PARTIES

1. The Employer's Position

In essence, the Employer proposes to consider, on a case-by-case basis, making adjustments requested by employees to their cubicle work areas (other than alterations to the size or location of cubicles); such adjustments would include systems furniture configurations, additional task lighting and additional in-cubicle storage options.^{1/} It states that the

^{1/} The Employer's final offer, dated January 25, 2008, also sets forth three items which it describes as "considerations": (1) using seniority to select seating assignments and incorporating an "Oregon Operations Office Policy" into an agreement with the Union; (2) prohibiting

proposal demonstrates management's desire to accommodate the legitimate needs of employees that would help them adjust to their new office space. As to all other working conditions in the new office, the Employer argues that the *status quo* should be maintained and the Union's proposals rejected. In this regard, although employees had private offices in the building where the OOO previously was located, the decision to allow private office space in that facility was dictated by the economics of the situation. When the Employer moved to the facility, private offices already were in place and management determined not to go to the expense of eliminating them. The current EPA policy concerning office space, however, mandates cubicles for employees rather than private offices. Other EPA offices in Region 10 currently provide private offices for some bargaining-unit employees, but that will change when they relocate. Employee cubicles at the new Fox Tower location are, for the most part, large enough to accommodate furnishings from the prior office. If employees believe they need more privacy for work-related conversations, they can use the conference rooms or the team room for that purpose. The new office is significantly larger than the prior office and much of the additional space has been used to provide for these private meeting areas.

With respect to the Union's desire for more natural lighting, the Director's office was designed with a glass panel that allows natural light to flow into employees' interior office space. Furthermore, many of the cubicles have windows that allow employees to enjoy the benefit of natural lighting. As to the interior cubicles, admittedly, there is a lack of natural lighting; however, employees chose them because they were larger in area than cubicles with windows and, therefore, willingly made the tradeoff. Finally, contrary to the Union's position, no adjustment should be made to cubicles with pillars within their confines. These cubicles were designed to minimize the impact of pillars on cubicle space. Moreover, expanding the size of cubicles that contain pillars would only infringe on

vacant cubicles from being used as storage space; and (3) allowing management to have unfettered ability to make reasonable accommodations for qualified disabled employees. These items were not identified as proposals, nor were they the subject of mediation or discussed during the arbitration phase of the proceeding. Therefore, for the purposes of this decision, they shall not be not regarded as part of the Employer's final offer or addressed further herein.

other cubicle space and may result in cubicles having to be moved away from window areas.

2. The Union's Position

The Union's final offer consists of six provisions. Essentially, it proposes that: (1) the Director's office be designed to maximize the flow of natural light into interior office space; (2) seven private offices and one semi-private office be established and the remaining employee work areas consist of cubicles; (3) private offices and cubicles generally be 135 sq. ft. in size; (4) private offices and cubicles to be designed and placed so as to maximize natural lighting in the office; (5) the five cubicles with pillars be expanded and redesigned to compensate for the loss of approximately 6 sq. ft. of space; and (6) vacant cubicle number 5 be abandoned and its space allocated between employees Vallette and Nadeau, with access to the latter's cubicle moved to the inside rather than on the main hallway.

The Union contends that there is a past practice in the 000 for certain employees to have private offices. It should be continued because of the confidential nature of employees' work, and employees' need to have meetings in their offices and to conduct investigations over the telephone. The new office location is considerably larger than the previous one so there is sufficient room to accommodate employees with 135 sq. ft. private offices and cubicles. Furthermore, the office should be designed to eliminate the impact of large pillars in employee work space. It is difficult to place furniture in such cubicles and the overall effect of the pillar is to further shrink the work area. Moreover, the furniture employees brought with them to the Fox Tower Building requires space that is larger than the small and cramped cubicles the Employer has provided. The office also can be designed to better utilize natural lighting; in this regard, cutting "relights" on the outside walls of private offices would allow as much natural light as possible into interior cubicles. Finally, there is no reason why one of the vacant cubicles cannot be eliminated and the space divided between two employees to expand their work areas. Allowing one of these employees interior access to her cubicle would enhance her working conditions by reducing noise from the hallway.

CONCLUSION

Having carefully considered the arguments and evidence presented in this case, including an assessment of the working

conditions in the OOO's new office building, I conclude that the dispute should be resolved on the basis of the Employer's final offer. Although employees had private offices in their previous location, this was due mainly to the economics of the situation when the OOO originally moved there. Currently, it appears that EPA is implementing floor plans that favor cubicles rather than private offices. For example, employees stationed in the new EPA building in Denver, and those who perform enforcement work in the Region 10 office in Seattle, do not have private offices. Significantly, under the Union's proposal the office would have to undergo a major renovation to accommodate 135 sq. ft. private offices and cubicles, and to redesign space to minimize the effect of pillars. I am reluctant to order such a costly resolution where employees appear to have sufficient space to perform their jobs, including the ability to conduct meetings in conference rooms and to secure confidential documents in locked file cabinets, as necessary. Moreover, the Employer already has taken steps to enhance natural lighting in interior space by placing a clerestory in the exterior wall of the Director's office, and by ensuring that the majority of cubicles have windows. To the extent employees feel that certain changes would eliminate impediments to performing their work, under the Employer's proposal they would have the opportunity to make requests for such changes and have them fully considered by management. Accordingly, in the circumstances presented, I shall order the adoption of the Employer's final offer.

DECISION

The parties shall adopt the Employer's final offer.

Barbara Bruin
Arbitrator

February 29, 2008
Albuquerque, New Mexico