

In the Matter of

SOCIAL SECURITY ADMINISTRATION  
GLOBE-MIAMI RESIDENCE STATION  
GLOBE, ARIZONA

and

LOCAL 3694, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 47

ARBITRATOR'S OPINION AND DECISION

The Social Security Administration (SSA), Globe-Miami Residence Station, Globe, Arizona (Employer) and Local 3694, American Federation of Government Employees, AFL-CIO (Union) jointly 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.

After an investigation of the request for assistance, which arose during negotiations over the relocation of the facility, the Panel directed the parties to submit their dispute to the undersigned for telephone mediation-arbitration. The parties were informed that if a settlement were not reached during mediation, I would issue a binding decision to resolve the dispute. On March 3, 2011, telephonic mediation-arbitration was conducted with representatives of the parties but the mediation portion of the proceeding failed to result in a voluntary settlement of all of the issues at impasse. Accordingly, I am required to issue a final decision resolving the parties' dispute. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and their pre- and post-hearing statements of position.

## BACKGROUND

The Employer's mission is to administer retirement, Medicare, disability, survivor, and supplemental security income programs. Nationwide, the Employer operates approximately 1,300 field offices that serve members of the public. The Union at the national level represents a bargaining unit consisting of approximately 50,000 employees. Currently, there are four bargaining-unit employees in the Globe-Miami Residence Station: one service representative and three claims representatives. The parties are covered by a National Agreement that was scheduled to expire on August 15, 2009, but has been continued until a successor is negotiated and implemented.

## ISSUES AT IMPASSE

The parties' main dispute concerns the number, types and location of workstations that should be included in the floor plan for the Globe-Miami Residence Station. They also disagree over two provisions in their Memorandum of Understanding (MOU) regarding potential adverse or disciplinary action taken against employees as a result of the relocation and the office design.

## POSITIONS OF THE PARTIES

### 1. The Union's Position

The Union's proposed floor plan for the Globe-Miami Residence Station includes one MA-95 workstation at the barrier wall that would be permanently assigned to the service representative and three K-1 workstations at the barrier wall that claims representatives would use interchangeably when interviewing members of the public. Within the office's interior (away from the barrier wall), there would be three MA-95 workstations permanently assigned to claims representatives where all claims-related duties other than face-to-face interviews would be performed. In addition, its final offers on the two provisions in the MOU are as follows:

8. Management will consider the inaccessibility of claims and/or post-entitlement folders as a result of the relocation in determining whether to impose adverse or disciplinary action.

20. Management will take into consideration the PWBW office design in determining whether to impose adverse or disciplinary action due to an employee's inadvertent disclosure of Personally Identifiable Information (PII).

The Union has modified the floor plan it proposed earlier in the negotiations to address both parties' concerns.<sup>1/</sup> Overall, its compromise floor plan "resolve[s] management's budgetary concern," eliminates the FEI area, and maintains "adequate square footage for the reception area." This "hybrid layout" would permit employees to receive and service the public and to "adjourn to a place to effectively adjudicate" the services and benefits requested "with minimal interruptions, save phone calls." The primary problem with the "permanent-workstation-with-a-barrier wall" (PWBW) design proposed by the Employer is privacy, as employees' "personal belongings and pictures of family are in plain view" of the public. As confirmed by the Union's three witnesses at the mediation-arbitration hearing, all of whom had "actual experience working with the PWBW design" and could provide insight on the problems experienced by employees, the public often bypasses the reception counter and knocks on the closed windows of claims representatives. The design also "encourages public complaints of any unexplained activity, such as taking a personal call, working at your desk with the window closed, and eating/drinking at the desk." The only thing the Employer's witnesses could testify to, on the other hand, "was management's perspective as to how employees performed on the PWBW." It offered no direct testimony from any employee who actually worked in an office with the PWBW design that "related to employees' actual experiences on the barrier wall."

As stated in the Union's pre-hearing position statement and asserted throughout the hearing, another "huge problem" with the PWBW design concerns the "privacy of the public" --

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<sup>1/</sup> The earlier version had a separate front-end-interviewing (FEI) area in the interior of the office where members of the public would be escorted to be interviewed by claims representatives. That floor plan had no interviewing stations at a barrier wall. It contained a total of eight workstations and a smaller reception area than the Union's compromise plan.

specifically, it does not ensure that Personally Identifiable Information (PII) will be kept confidential. Among other things, SSA's PII policy states that employees must "avoid discussing any PII or other sensitive information within earshot of individuals who do not need to know, whether you are speaking to someone in person or over the telephone."<sup>2/</sup> Violations of the policy can result in adverse actions against employees. Thus, in a world where PII is "the highest priority," the PWBW design "is the worst." Files and papers would need to be kept out of the public's sight, "there is a lack of privacy when consulting with other" service and claims representatives, and "the client's own business is heard by other members of the public." For interviews that occur by telephone, "information that could be used for identify theft would be easily overheard, such as the social security number, the date of birth, place of birth, mother's maiden name, etc." The PWBW design exacerbates this problem "because there is no separate adjudication area to hold these personally identifiable discussions."

The Employer cites expense as a major impediment to adopting the Union's proposed floor plan. The cost comparison it presented, however, "was flawed as no costs given for the Union proposal were exact." In the Union's view, "if the exact cost for the Union's plan had been presented," it "would be less than or equal to those connected to the agency's plan for the PWBW design." A final argument concerning the floor plan issue involves employee security. Given the recent violent activities occurring across the country, the need to be proactive "is greater than ever." Incident reports "are soaring in every field office and attest to the need for employees to be protected." SSA has shown its willingness to forego the PWBW configuration in field offices, as evidenced by the relocation in Flagstaff, Arizona, where a waiver was requested and approved by the head of the agency. This demonstrates that the design proposed by the Employer for the Globe-Miami Residence Station "is neither mandated for all offices nor is it always necessary."

As to the remaining two provisions in the MOU, the parties met to discuss these and additional MOU items on February 24, 2011, and "agreed on the language to be used in the MOU." At

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<sup>2/</sup> See page 7 of SSA's "Frequently Asked Questions on Safeguarding Personally Identifiable Information at the Social Security Administration," compiled by the Office of the Chief Information Officer, July 30, 2010.

the conclusion of the mediation-arbitration proceeding, however, the Employer presented an MOU containing different wording than had been agreed to during the earlier meeting. The Employer's actions and "unwillingness to discuss their unilateral changes regarding the language in the MOU is representative of bad faith bargaining at its worst." From the Union's perspective, the Employer's proposals on the two MOU provisions at issue contain unnecessary wording that "places an undue burden on bargaining unit employees." The Union's language should be adopted because it reflects what was agreed to on February 24, 2011, and "in no way presents any added burden on management [ ] or in any way interferes with management's rights to propose adverse or disciplinary action for cause."

## 2. The Employer's Position

The Employer proposes a floor plan that uses the PWBW design. There would be five MA-95 workstations located at the barrier wall between the reception area and the interior of the office permanently assigned to service and claims representatives where interviews would be conducted through openings/windows in the workstations. Employees would continue to perform their duties at these workstations when not interviewing members of the public. Concerning the two provisions in the MOU over which the parties continue to disagree, it proposes the following wording:

8. When an employee raises the concern, management will consider the inaccessibility of claims and/or post-entitlement folders as a result of the relocation in determining whether to impose adverse or disciplinary action.
  
20. When raised as a concern by the employee, management will take into consideration the PWBW office design in determining whether to impose adverse or disciplinary action due to an employee's inadvertent disclosure of Personally Identifiable Information (PII).

There are a number of reasons for adopting its PWBW floor plan in the Globe-Miami Residence Station. First, employees in that office "have never had, nor do they need, two workstations to perform their duties." It is clear from the current floor plan that two workstations are not provided for each employee.

In fact, "employees have interviewed at their permanent workstations for many years." Thus, the PWBW configuration management proposes for the new office "will not present a significant change for the basic approach to how and where the employees perform their interviews and other work." The PWBW design would actually assist employees by allowing them to work in a safer and more comfortable environment. In this regard, when conducting interviews, claims representatives currently escort members of the public into a separate FEI area in the interior of the office. Under its proposal for the new office, employees would be protected by a barrier wall between them and the members of the public they serve.

Second, "there is no evidence that Globe-Miami employees want secondary workstations." As the current Operations Supervisor (OS) of the Globe-Miami Residence Station testified during the mediation-arbitration proceeding, she has not heard "any negative comments or concerns from bargaining unit employees about moving to the new office, or about the PWBW office layout." To the contrary, the OS testified that "employees have stated they are looking forward to the move." In addition, she stated that claims representatives in her office "often use a vacant workstation at the reception window in lieu of interviewing at their workstations." By contrast, the Union "provided no evidence" that directly establishes the opinions of the Globe employees. While management can only "speculate about why no employee from the Globe office testified, despite the fact that the employees were contacted by [the Union]," it believes the reason is that "employees are happy about the impending relocation." Third, consistent with the fact that the extra workstations requested by the Union are unnecessary, they "would represent an inefficient use of public funds." During the hearing, management provided data establishing that the additional cost of implementing the Union's proposed floor plan would be approximately \$20,000. In these times of budget uncertainty, "unnecessary expenditures are unwarranted and unwise."

Fourth, the Employer's proposed PWBW layout "will reduce noise, increase privacy, and decrease the risk of loss of [ ] PII." This was attested to by its two witnesses from a comparable facility, the Phoenix Downtown Social Security Card Center (Card Center), who established that the PWBW workstation and layout "provide a quiet and comfortable environment for employees while protecting against disclosure of PII." The

witnesses also testified that, even though the employees in the Card Center had an opportunity to be reassigned back to their original positions after initial 2-year details, none of them have requested to leave the Card Center, which opened in 2007. Both witnesses also described how the workstations are situated "so as to minimize noise and maximize employee privacy." Each has had extensive opportunity to observe operations in the Card Center, and stated the noise level is low, and that employees have not complained to management about noise. Further, their testimony established that each workstation has areas not visible by the public, "enabling employees to place personal items, such as pictures, in areas that will not be noticed." Management's witnesses from the Card Center also established that there is ample space for employees to place their work in the workstation "where PII will not be legible by members of the public."<sup>3/</sup> Moreover, because MA-95 workstations are equipped with cabinets and drawers, employees have additional means of guarding against disclosure. In this connection, the Card Center "has not reported any loss of PII since it has been in operation."

The Union's concerns regarding noise, privacy, and disclosure of PII, on the other hand, "are over-stated and speculative in nature." Preliminarily, "SSA employees have always worked with PII and have had to be aware of protecting PII when dealing with the public." Although the Union presented three witnesses who testified about noise, privacy, and potential disclosure of PII in their workplaces, "the testimony of two of the three witnesses was not on point." They had worked in the Huntington Beach Field Office, which had an entirely different floor design than what is being proposed for the new Globe-Miami Residence Station. The public service windows "were along a curved line, which created the potential for members of the public to see behind and to the sides of the employees. This affected the privacy of those employees and made SSA documents visible from more angles than will be the case in Globe." In addition, the fact that there was no barrier wall in the field office where they had worked "almost certainly contributed to noise level, as well as the problem of members of the public interrupting employees who were not interviewing."

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<sup>3/</sup> In its post-hearing statement of position, the Employer included a photograph to illustrate this point. As this photo was not presented prior to the close of the hearing, I have not considered it in deciding this matter.

The third Union witness, who testified about noise, lack of privacy, and potential disclosure of PII in the Las Vegas Card Center, acknowledged that she did not know of any complaints filed by employees at that center about noise or lack of privacy. The witness made "contradictory" statements concerning whether there were any areas of the workstation that were not visible to members of the public. Nor is her statement credible that PII placed behind the employee could be visible from the reception window because "the distance from the window to the back of the workstation is too far to enable a member of the public to view details about customers." Moreover, the witness could not state whether the Las Vegas Card Center had been required to report any loss of PII since its establishment. In conclusion on this issue, the Employer's evidence establishes that its proposed PWBW floor plan "provides the best balance of employee/management interests."

With respect to the outstanding issues in the MOU, the parties had reached "tentative agreement" with respect to all of them prior to the mediation-arbitration proceeding. In this regard, the Employer's last best offer on the MOU "reflects substantial compromise by management" as "many of the original proposals made by AFGE were either covered by the AFGE/SSA National Agreement, were non-negotiable under 7106(a), or were permissive subjects of bargaining." At the conclusion of the mediation-arbitration proceeding, however, the parties were not able to come to a final agreement concerning the issues now identified as Items 8 and 20. In the Employer's view, its proposals on these two issues provide "an adequate basis on which to base an agreement." In summary, the Union's concern was that employees should not receive disciplinary or adverse actions because of certain issues related to the relocation. Item 8 would protect employees from punishment who are not able to access packed files. Item 20 would protect employees who inadvertently disclose PII because of the PWBW layout. From management's perspective, its proposals on both items "make it clear that employees who raise inaccessible folders or visible areas of their workstations as defenses will benefit from management's consideration of those factors." The employees need to raise these defenses, however. Otherwise, "management may not be aware of them."



### CONCLUSIONS

After carefully reviewing the arguments and evidence presented, I have concluded that the Employer's proposed floor plan provides the more reasonable resolution of the impasse. As discussed below, however, the Employer's proposal will be modified to include the provision of additional space in the interior of the office where employees can store clients' files and other Personally Identifiable Information. With regard to the MOU, I conclude that the parties should adopt the Union's proposed language for items 8 and 20.

#### Floor Plan

Preliminarily, it should be noted that none of the witnesses who testified at the hearing about their experiences working in MA-95 workstations with a PWBW floor plan had worked in an office comparable to the Globe-Miami Residence Station. Accordingly, for most purposes I did not find their testimony dispositive. Two of the three witnesses for the Employer described the Phoenix Card Center, in which service representatives handle more than 600 clients a day, performing mainly enumeration work. The third Employer witness is the Operations Supervisor for the Globe-Miami Residence Station, which does not now have either MA-95 workstations or a PWBW plan. Two of the witnesses for the Union worked as claims representatives in the Huntington Beach Office, in which MA-95 workstations for 35-40 employees were placed back to back in a horseshoe pattern in an extremely busy office. In contrast, there are only three claims representatives and one service representative currently in the Globe-Miami Residence Station, and the record shows that each of the claims representatives interviews approximately five clients per day. Moreover, it was clear from the description given by one of those witnesses that her workstation provided far less privacy to employees and clients than the model that is currently used. The third Union witness had worked for some months at the Las Vegas Card Center, which had the newer MA-95 workstations and a PWBW floor plan, but which employed 17-19 employees and was far busier than the Globe-Miami Residence Station.

The Union's main concerns with the Employer's proposal centers on the failure of a PWBW plan to provide sufficient privacy for both employees and the public. In particular, the Union is concerned about problems in safeguarding clients' PII

and the inability of employees to display personal items away from public view. A secondary concern is whether the Employer's plan will ensure employee security.

I am sympathetic to the Union's attempt to gain the maximum amount of personal privacy for the employees, but I find it significant that the record does not show that the Employer's proposal will afford the employees less privacy than they have currently. Under the existing floor plan, the service representative works in an MA-95 workstation and interviews through a window that separates the workstation from the reception area. That setup will not change substantially, except that the workstation will be at a 66-inch high barrier wall and the new reception area will be twice as large, providing more space between the service representative and members of the public. Currently, there is another smaller interviewing station with a window separating the work area from the reception area, which, according to the uncontested testimony of the Operations Supervisor, claims representatives "fight" to use. Granted, the claims representatives also have permanent workstations in the interior of the office, to which clients are escorted for interviewing. Those P-95 workstations are somewhat larger than the MA-95 design but their desks appear to be the same size and configuration. In view of the fact that the claims representatives now do some of their interviews at these interior workstations, it appears that they have no more privacy for their personal effects or PII in the current office than in the relocated office under the Employer's plan. Indeed, the Operations Supervisor testified without contradiction that the claims representatives "can hear everything" during those interviews and that they often prefer to interview and do adjudications at the extra desk at the window. In contrast, under the Employer's proposal, three of the workstations are separated from each other and there is a divider that extends approximately three feet between clients at each of the units to provide a privacy and noise buffer. In this regard, I note that the Employer's plan includes five workstations even though there are currently only four employees at Globe-Miami; in the absence of a fifth employee, each of the employees could be situated at a workstation that does not share a divider. Finally, in response to the Union's concern that claims representatives might be overheard when discussing the details of a claim, the Employer asserted that they can use the "office communicator" to text each other. Moreover, there appears to be ample space in the interior of the office to hold such discussions.

With regard to the Union's security concerns, there was no evidence presented that there have ever been any acts of violence at the Globe-Miami Residence Station. Moreover, a guard will be stationed in the reception area in a kiosk from which he or she will be able to see the entire area, including the five workstations. In addition, the workstations will be equipped with electronically-controlled pull-down shutters for periods when the employees are not engaged in interviewing and with Plexiglas strips that will separate employees and clients during interviews. Although there was testimony that the Plexiglas can be easily cracked or marred, it will clearly provide some additional security for the employees. Finally, insofar as witnesses testified that, in the larger offices or centers where they had worked, members of the public returned to disturb or harass employees at workstations where they had been interviewed, that is highly unlikely to occur in an office as small as this one, especially with a guard on duty at all times.

Taking all of the above into consideration, it is not reasonable to require the Employer to purchase two additional workstations and the necessary accompanying equipment in order to provide three workstations in the interior of the office, as mandated by the Union's proposal. The Employer demonstrated that, in addition to purchasing additional systems furniture to conform to the Union's plan, it would also have to provide additional wall and window framing, roll-down shutters, panic alarms, computers and telephones for each of the additional workstations. I recognize that the total expenditure is not huge when measured against the costs of relocating an office. However, in a time of budgetary constraints I have concluded that requiring such purchases would be inefficient and unwise, in the absence of a clearly demonstrated need for the duplication of employee workstations.

Nonetheless, I am not persuaded that it would be a burden - either financial or in the allocation of space - to require the Employer to provide additional cabinets or other space for the storage of PII or other documents that should remain confidential. The Union contends that a member of the public can view much of the interior of the MA-95 workstations while sitting or standing at the window. The Employer adamantly claims that very little of the interior space can be viewed from the outside of the unit. Without actually viewing the workstation in question, the only determination I feel

comfortable in making, based on the record, is that there is at least a corner of the desk and a small area of the wall next to the window where an employee could ensure the privacy of documents or personal items. Although the Employer asserts that it is moving to a paperless office, with all relevant records stored on the computer, the Union persuasively argues that the claims representatives still handle large amounts of documents when doing adjudication work, including paper queries and prior records not available online. From the diagram in the record, it does not appear that the MA-95 units have sufficient storage space for these documents, in addition to purses and other personal items an employee might want to stow away from the public eye. Significantly, the Employer's floor plan indicates that there is space in the interior of the office that could be used for lockers, cabinets or other methods of storing documents. In view of the fact that employees who fail to safeguard PII can be severely disciplined, up to and including removal from Federal Service, and taking into consideration the availability of space in which to store such documents, I conclude that the Employer's proposal should be modified to require the provision of such storage.<sup>4/</sup>

#### MOU

The parties have agreed on 21 items in an MOU, with the exception of items 8 and 20. In both instances, the Employer has added introductory clauses that would condition the Employer's obligation to consider certain matters in determining adverse or disciplinary action on the employee's having raised those concerns. The Employer has made no convincing argument as to why it should not have an affirmative obligation to take those matters under consideration without regard to whether the employee has raised them as a concern. A good collective-bargaining relationship is based on mutual trust; it seems reasonable to require an employer to take the effects of its relocation into account in determining whether to impose adverse or disciplinary action.

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<sup>4/</sup> This should not be read to indicate that proposals in other cases would - or should - be modified to provide document storage. Each case that comes before the Panel is decided solely on the facts and unique circumstances presented in that case.

With regard to item 20, it is unlikely that there will be an inadvertent disclosure of PII, given the modification of the Employer's proposal discussed above, but in the unlikely event that disclosure is alleged, the Employer would merely have to take the PWBW design into account when deciding whether to take action against the employee. This is not a heavy burden. In contrast, inclusion of the proposed introductory clauses would create ambiguities that would be grist for an arbitrator's pen: most particularly, when and in what manner should the employee raise such concerns and how would they be documented? Insofar as possible, such ambiguities in an agreement should be avoided.

Accordingly, I conclude that the Union's proposed language for both items 8 and 20 provides the more reasonable resolution of this impasse.

#### DECISION

##### 1. Floor Plan


The parties shall adopt the Employer's proposed floor plan for the new Globe-Miami Residence Station, with the following modification: The Employer shall provide additional storage space in the interior of the office for all employees to store documents that could constitute PII or should remain confidential for any reason.

##### 2. MOU Item 8

The parties shall adopt the Union's proposal.

##### 3. MOU Item 20

The parties shall adopt the Union's proposal.

  
Barbara B. Franklin  
Arbitrator

March 17, 2011  
Washington, D.C.