

In the Matter of

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER
PROTECTION
PORT OFFICE
HONOLULU, HAWAII

and

Case No. 11 FSIP 23

NATIONAL TREASURY EMPLOYEES UNION

ARBITRATOR'S OPINION AND DECISION

The National Treasury Employees Union (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 Department of Homeland Security, Bureau of Customs and Border Protection, Port Office, Honolulu, Hawaii (Employer).

After an investigation of the request for assistance, which arises from bargaining over the relocation of the Honolulu Port Office, the Panel directed the parties to mediation-arbitration with the undersigned on four issues. Accordingly, on March 7, 2011, a mediation session, by telephone, was held with representatives of the parties. During the teleconference and, as a result of continuing voluntary efforts by the parties, agreements were reached on three of the four issues. During the arbitration phase, the parties submitted their final offers and statements of position, including documentary evidence and affidavits. On May 10, 2011, a teleconference was convened to clarify the parties' positions. A supplemental statement of position was submitted by the Employer on May 31, 2011, and the Union's response was submitted on June 6, 2011; thereafter, on June 15, 2011, the Employer submitted rebuttal information.

BACKGROUND

The Employer's mission is to protect U.S. borders from terrorism, human and drug smuggling, and agricultural pests while simultaneously facilitating the flow of legitimate travel

and trade. The Union represents a bargaining unit consisting of approximately 22,000 professional and non-professional employees; in the Honolulu Port Office, it represents about 40 employees. The parties are covered by a master collective-bargaining agreement that was effectuated in February 2011.

In September 2010, the Union became aware that the Employer had proceeded to implement a floor plan for a new location where the office would move on the same floor of the Federal building.^{1/} The Union, therefore, did not have an opportunity to bargain over the floor plan before it was finalized^{2/}; however, the parties engaged in post-implementation bargaining following the filing of an ULP charge and the involvement of the FLRA's San Francisco Regional Office regarding several issues over which they ultimately reached impasse. The relocation to the renovated space took place in March 2011.

In the previous location, the CBP Technician who performed cashier duties at the Port occupied an office consisting of approximately 120 sq. ft. Known as the cashier's room, it was the location for the safe and equipment used by the employee to process fees, duties, and seized currency, including cash received from the Seaport Office. The cashier's room was a secure, access controlled area, with a closed circuit camera.^{3/}

1/ An earlier attempt by the Union in March 2010 to bargain over the relocation was refuted by management as being premature.

2/ On or about November 9, 2010, the Union filed an unfair labor practice (ULP) charge alleging that the Employer violated the Statute when it commenced construction of the new office prior to completing bargaining over its layout and design. On April 27, 2011, the parties entered into a settlement agreement, approved by the Regional Director, San Francisco Region, Office of the General Counsel, Federal Labor Relations Authority (FLRA), to resolve the matter by continuing to negotiate post-implementation concerning the impact and implementation of the relocation of the Honolulu Port Office.

3/ The parties disagree over whether the cashier's room served as the employee's permanent workstation or whether the employee maintained a separate cubicle as his permanent work station. In any event, it appears that the employee spent most, if not all, of his duty time working in the cashier's room.

That space was large enough to accommodate the additional personnel who, by way of past practice, were present to verify the processing of seized currency or checks. When the Port Office was relocated, the employee was assigned a cubicle and a separate cashier's room consisting of approximately 49 sq. ft. In many respects it was little more than a closet. Due to the small size of the cashier's room, the equipment used by the employee to perform his cashier functions could not be co-located in the same confined area office but, rather, was dispersed among three areas, the employee's cubicle, the cashier room, and workspace in the receptionist's area.

ISSUE AT IMPASSE

The sole issue before me is the size of the cashier's room.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union has alternative proposals. Its first option is to unify the cashier and receptionist work areas by erecting a wall at the entrance to the receptionist room and installing a door on the left side of the wall to enclose the room. Further renovations would be needed to effectuate the change including relocating the cashier's room door, furniture, computer equipment, and the "red bubble camera device"; installing an access card swipe on the relocated door, two data lines, a telephone line, electrical outlet, drywall where the cashier's door previously was located, one-way privacy film tint next to the receptionist window, and a door release button; renaming the existing cashier's room the Trade Service Center; and removing a section of the rear wall of the existing cashier's room to provide access to the room by other CBP employees. The Union contends that re-designating the space as a unified receptionist/cashier room would improve the efficiency of agency operations and also provide an expanded work area where both the cashier and the receptionist may properly perform their duties.

In the alternative, the Union proposes to extend the rear wall of the cashier's room by 5 feet to create a larger work area. Doing so would provide the cashier with 120 sq. ft. of space, the equivalent size of the previous cashier's office, and allow sufficient room for all equipment, and personnel needed to verify seized currency and money deposits, to fit into one office, including an individual in a wheel chair. The safe, currently situated in the receptionist area and visible by

members of the public standing at the receptionist's window, is in an open area in the office where passersby could observe the cashier opening the safe using a combination lock. The Union's proposal would allow the safe to be placed in an area where visibility by the public and other CBP personnel is limited. Expanding the office by 5 ft. would enhance efficiency because the CBP technician who performs cashier duties no longer would have to go to three different locations to carry out his job. Finally, expanding the space would place the cashier's office in compliance with CBP Design Standards which require it to consist of at least 80 sq. ft.

2. The Employer's Position

The Employer proposes to maintain the current space. In this regard, it contends that the cashier's room is adequate for receiving monies. All other functions associated with collections and deposits can be performed, in compliance with Agency security processes, in other areas located outside the cashier's room. The employee is not compelled to perform all of his duties in the cashier's room and, therefore, it is unnecessary for the employee to confine himself in that space for the entire day. While the Union contends that the cashier's room is not large enough to accommodate other personnel who participate in a money verification process, that process, however, is not mandatory but merely a local courtesy extended by CBP to Immigration and Enforcement (ICE) which allows certain deliveries to be made and verified for deposit, with other personnel observing the transactions. Therefore, the cashier's room need not be large enough for two or three observers to monitor the process. Furthermore, there is no requirement that seized currency must be delivered in a work area that is monitored by a camera. Management has deemed the current space secure and there is no need to relocate to an area where currency may be counted under the eye of a camera.^{4/}

The Employer argues that the Union's proposal to create a combined reception/cashier workspace is outside the duty to bargain. In this regard, the Employer maintains, essentially, that the proposal implicates the duties of the receptionist position which is not a matter before the Panel, and interferes

^{4/} To accommodate the Union's interest that seized currency be counted on camera, management could relocate the currency counter device from the cashier's room to the Career Center, a room that is rarely used and has camera coverage.

with management's right under 5 U.S.C. § 7106(a)(2)(B) to assign work and determine the personnel by which Agency operations shall be conducted. Moreover, the alternative proposal to enlarge the current cashier's room by 5 feet interferes with management's right to assign work and, furthermore, involves the "technology, methods, and means of performing work," a permissive subject of bargaining under 5 U.S.C. § 7106(b)(1), which the Employer elects not to bargain. As to the Union's claim that its proposals are intended to protect the security interests of the Agency and the employee, the proposals interfere with management's right to determine internal security practices, an exclusive management right under 5 U.S.C. § 7106(a)(1).

Contrary to the Union's claim that enclosing the current reception area would improve the Agency's operational efficiency, the Employer contends that the purported result merely is speculative. More likely, the proposal to enclose the cashier/reception area not only would be costly, but it would hinder the receptionist's ability to serve the public. It asserts that expansion of the cashier's room by 5 feet is unwarranted as well. The current cashier's room is adequate for receiving monies^{5/}; all other functions associated with collection and deposit can be performed, in compliance with Agency security processes, outside the cashier's room. In other CBP port offices, such functions routinely are performed outside a cashier's room and there is no reason why the practice should not be similarly utilized in the Honolulu Port Office. Within 10 feet of the cashier's room is workspace where the cashier performs most, if not all, cashier duties. Thus, access to equipment for the performance of cashier duties is within a reasonably close area outside the cashier's office rendering it unnecessary to expand the cashier's office so that equipment could be located within that space.

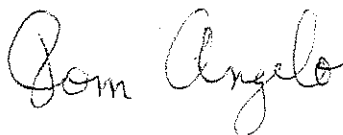
^{5/} The Employer maintains that the current cashier's office, which it is undisputed consists of 49 sq. ft. of space, is in compliance with the Americans with Disabilities Act. It also asserts that the office size conforms with the U.S. Land Port of Entry Design Standard (April 2009) and the Airport Technical Design Standards (August 2006), which state that a cashier's room must measure 50 to 80 sq. ft. Meeting these guidelines may permit use of the word "adequate" but meeting such a mediocre goal is hardly persuasive.

CONCLUSION

Having carefully considered the arguments and evidence presented in this case, I conclude that the impasse should be resolved on the basis of the Union's proposal to expand the cashier's room by 5 feet. Doing so would place the employee in an office comparable to the size he occupied prior to the relocation and allow the employee to have all the equipment and space needed to perform the duties of a cashier in one office so that he no longer would have to go to three separate locations to perform his job. Had the Employer negotiated fully with the Union prior to unilaterally implementing its floor plan for the new office, I believe that the parties would have agreed upon a resolution similar to the one I shall impose.^{6/}

DECISION

The Employer shall enlarge the cashier's room by 5 feet and take whatever steps may be necessary to modify the infrastructure to accommodate the larger office size.



Tom Angelo
Arbitrator

July 8, 2011
Mill Valley, California

^{6/} Toward the end of the process, the Employer raised duty-to-bargain questions with respect to the Union's proposal. Other than bare jurisdictional assertions that the Union's proposal for an expanded office interfere with management's right to assign work, determine internal security practices, and determine the technology, methods and means of performing work, the claims were not supported by facts or case law; therefore, I have decided the issue based upon the merits of the parties' positions.