

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

ENVIRONMENTAL PROTECTION AGENCY
REGION 7
KANSAS CITY, KANSAS

and

LOCAL 907, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case Nos. 12 FSIP 130
and 12 FSIP 134

DECISION AND ORDER

The Environmental Protection Agency, Region 7, Kansas City, Kansas (EPA or Employer) and Local 907, American Federation of Government Employees (AFGE), AFL-CIO (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,^{2/} the Panel determined that the dispute

^{1/} The Panel also received separate requests for assistance from the EPA and the union that represents its professional employees concerning an impasse over the same issues. See the Panel's *Decision and Order in Environmental Protection Agency, Region 7, Kansas City, Kansas and Chapter 294, National Treasury Employees Union*, Case Nos. 12 FSIP 129 and 133, issued this same date.

^{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

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, the parties timely submitted their responses.^{3/} 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 200 bargaining-unit employees, GS-4 through -14, mainly in non-professional positions, except for 38 attorneys.^{4/} The parties are covered by a collective-bargaining agreement (CBA) which was to have expired on August 1, 2010, but whose terms and conditions continue in effect until negotiations over its successor are completed.

location on that same date but if occupancy occurs prior to November 1, 2012, lease payments will commence with occupancy.

3/ In its supporting SOP, the Union requests for the first time that the Panel "issue an order to the agency to not purchase cubicle panels for workstations for AFGE bargaining unit employees until this impasse has been resolved." With the issuance of the Panel's decision on this date, the impasse has been resolved and the request has been rendered moot. Accordingly, the Union's request that the Employer be ordered to maintain the *status quo* is hereby denied.

4/ An impasse concerning the attorneys recently was resolved by Panel Member Martin Malin through the issuance of an Arbitrator's Opinion and Decision in Environmental Protection Agency, Region 7, Kansas City, Kansas and Local 907, AFGE, AFL-CIO, Case Nos: 12 FSIP 79 & 81 (June 6, 2012).

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^{5/}; 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 Region 7 non-attorney, non-management employees" represented by AFGE Local 907 "located in the Lenexa RO be provided cubic[le] wall heights of approximately 68½" using sound absorbent materials to the architect recommended 46" level and opaque glass above the 46" level." It maintains that all Region 7 non-professional employees require a workspace amenable to audio and visual privacy, document security, and employee concentration "as was determined in the recent [Panel] ruling concerning AFGE Local 907 attorneys."^{6/} With respect to the review of existing work functions and positions the Employer claims it conducted in 2009 to determine which positions have a business need for increased privacy and security, the Union is unaware of such a study, was not consulted, and never received its results.

Under the Employer's final offer, cubicle heights would be 7" lower than they are now, and there would be 11" glass panels at the top of each partition, both of which would reduce employees' level of privacy. Employees also would experience decreased audio privacy "now provided by the 64["] fabric

^{5/} "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, they only come in 11" and 22" heights.

^{6/} See Panel Member Martin H. Malin's *Arbitrator's Opinion and Decision in Environmental Protection Agency, Region 7, Kansas City, Kansas and Local 907, AFGE, AFL-CIO, Case Nos. 12 FSIP 79 & 81 (June 6, 2012)*, where he resolved the parties' impasse over the size of offices and whether they should be private by ordering EPA to provide all of the bargaining unit attorneys with DIRTT workstations that have panel heights of 86" and are constructed with demountable floor-to-ceiling glass partitions and lockable doors.

panels" and "be subjected to increased visual distractions at the line of sight when seated." The problem is exacerbated "by the increased population density in the new building." Instead of fostering an open and collaborative work environment, as the Employer asserts, 57" panels and glass stackers "will create an inefficient workspace and foster chaos." Moreover, if the Employer were serious about encouraging an open and collaborative work environment, supervisors, managers and attorneys also would have 57" workstations rather than the 86"-87" cubicle wall heights they will be afforded at the new location. Finally, while the Employer states that "cost is a significant factor" in not agreeing to the Union's final offer, the added expense "is negligible when compared to the benefits." In this regard, using the Employer's estimate that 22" stackers would cost \$200 per workstation, "\$200 divided by a 20-year lease is \$10 per employee per year."

2. The Employer's Position

The Employer proposes that:

Employees [represented] by AFGE Local 907 [] who currently sit in cubicles will be provided a cubicle with a 46["] high panel with an additional 11["] high glass stacker.

- 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 AFGE Local 907 [] 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

^{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.

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 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

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

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

^{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

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.

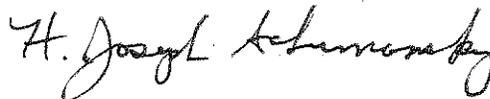
It is clear from the affidavit of the Region 7 Move Project Manager that the Employer also has some 22" frit stackers in its existing inventory. Unlike the precise accounting it provided for the 11" stackers, however, we are unable to determine the exact number on the basis of the record. In any event, 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 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.

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.