In the Matter of an Interest Arbitration

between

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SAN FRANCISCO REGIONAL OFFICE
REGION IX
SAN FRANCISCO, CALIFORNIA

and

LOCAL 1450, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Case Nos. 91 FSIP 95
92 FSIP 20

ARBITRATOR'S OPINION AND DECISION

Local 1450, National Federation of Federal Employees (Union or NFFE) filed a request 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 Housing and Urban Development, San Francisco Regional Office, Region IX, San Francisco, California (Employer). After the investigation of the request for assistance, the Panel directed the parties to submit the dispute concerning two separate office relocations to the undersigned for mediation-arbitration. In accordance with this procedure, I was vested with authority to mediate with respect to all outstanding issues and to render a decision should any remain unresolved.

On February 20 and May 4, 1992, representatives of the parties convened before me at the Employer's premises in San Francisco, California. During each meeting, I conducted a site visit to both the eighth and ninth floors, which are the subject of this relocation dispute. Also, the parties were afforded the opportunity to present in full their respective final positions, offer testimony, and submit documentary evidence for the record. Accordingly, the record is now closed, and I have considered all of the evidence and arguments contained therein.

BACKGROUND

The Employer's mission is to administer Federal housing and community development assistance programs. The Union represents approximately 292 employees in the San Francisco Region, some 210 of whom are affected by the moves to different floors within the Employer's facility. They occupy such positions as clerical support, architect, engineer, attorney, loan specialist,

accountant, and appraiser. Their grades range from GS-4 to -13. The parties are covered by a master collective-bargaining agreement, which was to expire on August 12, 1988, but has been rolled over on an annual basis since then. This dispute arose during negotiations pursuant to the settlement of an unfair labor practice charge, which reads, in relevant part, as follows:

> We [the Employer] will negotiate in good faith with NFFE over the relocation of unit employees of the San Francisco Regional Office, including negotiating over the floorplan and office design. This obligation to negotiate includes, if necessary, reconstruction of the new offices to conform to the agreement negotiated by the parties.

In transmitting the settlement agreement to the Employer's representative, the Acting Regional Director of the Federal Labor Relations Authority explained that:

> The negotiations over the relocation of the San Francisco Regional Office unit employees will, if necessary, be given retroactive effect. This includes the reconstruction of the new offices to conform with the agreement negotiated by the parties.
>
> You agree that NFFE Local 1450's proposed floorplan concerning the relocation provided to you on approximately October 26, 1990, includes proposals that are negotiable. You agree to negotiate in good faith on each and every topic and proposal which has already been found to be negotiable by the Federal Labor Relations Authority (FLRA) caselaw, as illustrated by the decisions in Department of Labor, 25 FLRA 979 (1987); Office of Personnel Management, 33 FLRA 335 (1988).

THE ISSUES

The issues which were still unresolved when the dispute was given to me are as follows:

*1. A proposal by the Union for the complete revision of the configuration of the offices on the eighth and ninth floors to allow natural light to reach employees' work areas -- this, despite the fact that the ninth floor had been completed and was already occupied and construction on the eighth floor was virtually completed.

*2. A Union proposal to increase the height of the permanent partitions that divide the cubicles in which the employees work, from the currently constructed 4 feet, to 5 feet.

*3. A Union request for the installation of moveable dividers within the cubicles where four persons are assigned to one cubicle so that each employee would be separated from the others on three sides.[1]

4. A Union request that all non-supervisory GS-13 employees be supplied with semi-private offices.

FINDINGS

At the conclusion of the meeting with the parties on February 20, 1992, I proposed the following settlement:

1. The Union would withdraw its proposal for a complete change in the configuration of the seating and office arrangements of the two floors, on the basis that (a) it was virtually impossible from a cost and programming standpoint to consider, and for the further reason that (b) the superiority of the new plan over the present one had not been established.

2. The Employer would install a decorative piece, of an appropriate quality, on the cap of each of the constructed 4-foot permanent partitions on both the eighth and ninth floors, that would increase the height of these partitions to at least 4'10", and that, if possible, it would be of a material that would give a maximum suppression of the sound traveling over the partitions. (The Union had previously stated that it was withdrawing the sound problem as an issue at impasse.)

3. The Union agreed that it would alter its request for a semi-private office for each person classified as a non-supervisory GS-13. Instead, the parties would jointly examine the work of employees holding such positions to determine their need for semi-private offices, on the basis of the requirements of their particular work assignments. It was further agreed that, if they could not agree on any particular job assignment, the matter would be submitted to a private arbitrator for resolution.

4. Moveable dividers would be supplied where four employees were assigned to one cubicle, in order that employees might have the maximum privacy practicable.

This was to be a negotiated settlement, leaving the parties to work out the details in the best interests of all parties, including the cost to the taxpayers as one of the major interests considered. It was estimated that by utilizing the moveable

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[1]These asterisked items were subject to the unfair labor practice settlement agreement.

dividers that were available, the cost would be approximately $50,000.

All of the representatives indicated their acceptance of this agreement, and their belief that it could be the basis for a settlement of the dispute. The principal spokesman for the Employer at this meeting, however, further indicated that he would be required to get the approval of the Regional Administrator; he had been restricted from finalizing any agreement regarding changing of the height of the partitions because of the estimated cost involved. It was agreed that (1) he would consider this as a settlement and he would present the proposal to the Regional Administrator for final approval and (2) a decision would be forthcoming immediately. The representatives of both sides left the meeting that day with the firm belief that the dispute had, at last, been resolved. I indicated to the parties that I felt we had exhausted all efforts to negotiate a settlement and, if the Regional Administrator did not approve it, I would proceed to decide the dispute and issue an award.

We anxiously awaited a reply. Five days later, not having received a reply, I called the labor relations attorney who attended the meeting on behalf of the Employer, and was told that another individual on the Employer's team at the time of the negotiations had talked to the Regional Administrator who had rejected the proposed settlement because the cost for implementing it had been estimated to be over $200,000.

When we finally received a written communication from this representative, he referred to the cost of demolition and other matters such as tearing down the newly-constructed partitions, which were not at all part of the settlement proposal that I had made earlier. Therefore, a question arises as to the information considered by the Regional Administrator.

Because of the complicated nature of this problem, and the difficulty of writing a formal award with so much contradiction between the parties, two additional conference calls were arranged following my first meeting with the parties. At the conclusion of each of those calls I asked each party to (1) send me a definitive description of its position and (2) serve such position on the other party, thereby giving each additional opportunities to clarify just what it was proposing and rebut or comment on the other's position. I received an amended proposal from the Union with respect to the plan to increase the height of the partitions which paralleled my proposed settlement, as set forth above, as well as a detailed cost estimate for implementing it. Those changes to the employees' work areas would provide them with privacy. The Employer submitted an estimate from GSA indicating that the cost of demolishing existing partitions and building new ones, including dividing partitions, would be $270,000. It stated that expenditure of this amount of money is "a heavy financial

burden at a time when the agency is facing a budgetary shortfall[.]" The new Employer representative did say, in his letters, that he did not feel that the Union's cost estimate was reliable. The Employer's position, therefore, was that the space "should remain as it is currently 'built-out'."[2]

In order to make sure that I had all of the facts that were available, I met once more with the parties in San Francisco on May 4th. I let the Employer know that, based on the evidence and arguments in the record, I was going to base my decision on the Union's proposals for moveable dividers and higher permanent partitions. I, however, was making myself available to hear any final comments that the representatives might want to make. The second representative was not at the meeting; the original representative once more was the spokesman for the Employer. He had few comments to make, except that the Employer did not want to use the old dividers; if it were ordered to install dividers in a Decision, it would buy new ones.

One more visit to the workplace found serious discord and low morale among employees clearly to be evident. That is, the employees expressed dissatisfaction with the ostensible congestion regarding their working papers and the auditory confusion related to numerous unidentifiable telephone signals as well as conversations. This has reinforced my conviction of the need for the dividers which the Union is requesting. Moreover, clearly before construction was undertaken on the eighth floor, both parties were admittedly in agreement on the desirability of 5-foot partitions. But the Employer proceeded to have lesser height partitions built when the Union declined to forego other proposals in exchange.

CONCLUSIONS

On the basis of the findings which are outlined above, I have concluded that the changes requested with respect to the height of the partitions, and the availability of dividers to separate individual employees within each cubicle, are fully justified by the needs of the bargaining-unit employees in the workforce. The morale of these employees has been damaged to such a degree by the Employer's handling of this matter that in my judgment, even with these changes, a serious morale problem will remain for some time.

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[2]In the alternative, the Employer indicated a willingness to (1) raise the height of the partitions to 4'10", using smoked plexiglass and (2) soundproof the existing partitions using acoustic wall covering at a total cost of $46,920.

DECISION

1. The Employer will proceed forthwith to make the changes in the height of the partitions in accordance with the last proposal submitted by the Union to the Arbitrator and the Employer in its communication of March 6, 1992.

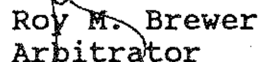
2. The Employer will install dividers in those cubicles where four employees are stationed. Each will be 8 feet in length in order to match the permanent partitions. This will give privacy on three sides to the employees as well as diminish distractions as the Union proposes. The blueprints which were supplied with the Union's submission of April 21st, clearly designate the areas referred to in its proposal.

3. The parties will accept as an addition to their current contract a clause which will read as follows:

> Any non-supervisory GS-13 employee, who does not have a semi-private office and who feels that a semi-private office is necessary in order to properly discharge the duties of the position, may make application to the appropriate Employer representative to be assigned to such office. If the request is not granted, the denial may be grieved, through the negotiated grievance procedure, and the issue determined by a private arbitrator. The parties shall share equally the costs and expenses associated therewith.

4. The Union will withdraw all other proposals.

5. The Decision of the undersigned will be implemented within a period of 60 days from the date of issuance by the Arbitrator.



Roy M. Brewer
Arbitrator

May 27, 1992
Tarzana, California