In the Matter of

DEPARTMENT OF HOMELAND SECURITY
U.S. COAST GUARD
WASHINGTON, D.C.

and

LOCAL 3313, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 12 FSIP 157

ARBITRATOR'S OPINION AND DECISION

The Department of Homeland Security (DHS), U.S. Coast Guard, Washington, D.C. (Employer) 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, 5 U.S.C. § 7119, between it and Local 3313, American Federation of Government Employees, AFL-CIO (Local 3313 or Union).

After an investigation of the request for assistance, which arises from bargaining over the relocation of the Employer's headquarters from Buzzard's Point to the St. Elizabeth's Hospital campus in the District of Columbia, the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on November 27, 2012, a mediation-arbitration proceeding was convened at the Employer's current Headquarters location in Washington, D.C. with representatives of the parties.[1/] During the mediation phase the parties addressed their interests and positions but they were unable to come to a voluntary resolution of the issues at impasse. Consequently, the issues were submitted for arbitration. In reaching my decision, I have considered the entire record, including the parties' final offers, documents submitted prior to mediation, and the parties' post-hearing written statements of position.

1/ The distance between the two locations is about 4 miles, and the target date for the start of the physical move of employees is August 2013.

BACKGROUND

By law, the Employer has 11 missions, all of which involve the safeguarding of the Nation's maritime interests in the heartland, in the ports, at sea, and around the globe, including the protection of the maritime economy and the environment, the defense of maritime borders, and saving those in peril. Local 3313 is part of the AFGE Coast Guard Council of Locals 120, which represents a nationwide consolidated bargaining unit of approximately 2,700 professional and non-professional employees, GS-5 through -14. It represents about 750 employees at the U.S. Coast Guard headquarters who are affected by the relocation. The parties' Master Labor Agreement (MLA) is due to expire on December 7, 2014.

ISSUES AT IMPASSE

The parties essentially disagree over: (1) whether shuttle service from L'Enfant Plaza to the St. Elizabeth's campus should continue after the transition period ends; (2) the size of the Union's office; (3) how employee workstations will be designated; and (4) the amount of administrative leave that should be provided for vanpool/carpool members during the transition period.

POSITIONS OF THE PARTIES

1. Shuttle Service

a. The Union's Position

The Union proposes that "the Agency [] continue to provide the same level of shuttle service from L'Enfant Plaza to the St. Elizabeth's campus. The Agency will also provide shuttle service from the Anacostia Metro Station." The "only argument" the Employer raised against its proposal "is that funding comes from the [DHS], and therefore, the Coast Guard would not be able to offer continued shuttle service from the L'Enfant Plaza Metro Station to St. Elizabeth's after the completion of the move." While the Union acknowledges that the Coast Guard is a part of the DHS, it receives its own appropriation and can "spend the funds as it sees fit" without the DHS's approval. Moreover, the Employer is unable to show how continuing the shuttle service "would negatively impact Agency operations." In fact, the Union's survey of bargaining unit employees reveals this issue "to be by far the greatest concern of employees regarding the HQ move." The L'Enfant Plaza Metro Station is a large transfer

point accessible to numerous other Metro Stations and commuter rail and bus lines, whereas the Anacostia Metro Station is accessible only by the Green line. Under the Employer's proposal, many employees would travel to L'Enfant Plaza, as they currently do, and then travel via the Green line to the Anacostia Metro Station. Terminating the L'Enfant Plaza shuttle would cost employees an estimated "$80 a month in additional commuting costs," increase commuting times, and "require many employees to find alternative modes of transportation for work" which undoubtedly will increase pollution. Finally, because the Anacostia Metro Station "is located in a high-crime area," continuing shuttle service to the new site from L'Enfant Plaza would better ensure the safety of bargaining unit employees.

b. The Employer's Position

The Employer's counteroffer is as follows:

> During the transition period, shuttle service will continue between the Transpoint/Jamal Buildings and the L'Enfant Plaza Metro Station, as well as the shuttle between the St. Elizabeth's campus and the Anacostia Metro Station. For one month once the transition period has ended, an employee affected by the discontinuation of shuttle service to or from L'Enfant Plaza Metro Station may meet with his or her supervisor to discuss the option to request accrued annual leave or accrued credit hours, or make up the missing time at the end of the work day. In addition, nothing in the provision limits the ability of the Union to explore other options to expand shuttle service availability outside the formal bargaining process for future consideration.
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> Management agrees to conduct an employee survey, or to ensure DHS management conducts an employee survey, by 31 October 2014, in order to explore the effectiveness of the Transportation Management Plan. Upon completion of the survey, and if requested by the Union, Management agrees to arrange a meeting between Union officials and the DHS Office of Administration staff in order for Union officials to discuss any transportation concerns and present recommendations.

Its proposal addresses "the short-term impact of employees who will need to develop new commuter routes to a new work location" by continuing the shuttle service between the current

headquarters location and the L'Enfant Plaza Metro Station during the transition period, and initiating the shuttle service between the new location at the St. Elizabeth's campus and the Anacostia Metro Station. It also would provide employees who previously took the L'Enfant Plaza Metro shuttle an opportunity to meet with their supervisors after the transition period ends to discuss additional options if they are having trouble adjusting their daily commuting route, such as the utilization of leave. In the Employer's view, its proposal is reasonable because "most employees will have the ability to learn new transit routes and plan their commute accordingly," particularly in light of the fact that a commuter arriving at the L'Enfant Plaza Metro Station is able to continue their commute by using the Metro to arrive at the Anacostia Metro Station.

The Union's proposal, which requires the Employer to increase existing shuttle service by running two shuttle service routes "and to maintain [them] perpetually," would result in the expenditure of "unbudgeted millions of dollars so that a very small portion of commuters would have their own shuttle service." It also is unnecessary because "commuters who arrive at the L'Enfant Plaza Metro have the ability to continue their commute by utilizing the Metrorail," and inconsistent with the transportation planning assessments conducted by DHS and the General Services Administration (GSA), where it was determined that the shuttle service route from the Anacostia Metro Station to St. Elizabeth's campus would provide services for a greater number of employees than any other transit station. Finally, as the Employer testified during the mediation-arbitration proceeding, "the Coast Guard lacks the authority to establish shuttle service beyond the [] Anacostia Metro Station to St. Elizabeth's route" approved in *The DHS Consolidation at St. Elizabeth's Master Plan Amendment Transportation Management Program* (*TMP*) issued by the GSA on March 30, 2012.

CONCLUSIONS

Contrary to the Union's contentions and the understandable hopes of the employees it represents, the Employer made a convincing presentation that it lacks the authority to create a shuttle service between L'Enfant Plaza and the St. Elizabeth's campus and that in fact it sought such authority and was denied it. There are both federal and local transportation and environmental policies that apply here and no element of transportation planning appears to be severable from the overall DHS Headquarters Consolidation Master Plan developed by the GSA. The Employer provided a copy of the transportation-related *TMP*.

Policies of the regional planning authority dictate highly restricted parking at the new campus and the shifting of commuting patterns. Unfortunately, Coast Guard employees will be moving before the full panoply of transportation options that are intended for the future (if and when all of DHS moves) are put into place (new commuter buses, possible new park and ride lots, etc.). The *TMP* provides only a new shuttle service from the Anacostia Metro Station for the Coast Guard. In January 2012 the Coast Guard Commandant made a written request to DHS for a shuttle to run from L'Enfant Plaza for Coast Guard employees riding VRE trains and commuter buses.[2/] The request was not approved. Apparently an earlier request to run a shuttle for anyone preferring to use it was also refused. According to testimony, transportation planners expressed skepticism about the feasibility of running a fleet of shuttle buses back and forth over the South Capitol Street bridge during rush hour. Management's witness, Captain Stephano, testified also that the Coast Guard is prohibited by DHS from operating any shuttle on its own with its own funds. He indicates such a shuttle would cost "some millions" of dollars.

Given all of this, and the Union's lack of effective rebuttal, the Arbitrator does not believe an additional shuttle can be ordered even though it would alleviate significant adverse impacts on employees that agency management acknowledges.

However, it is clear from the *TMP* that nothing is fixed in stone. The first months after the move will provide a test of how well the Anacostia Metro Station can accommodate a high volume shuttle service (the actual arrangements remain an open question) during rush hour. The *TMP* document calls for a review 2 years out. The Employer has offered a review of the situation on that same timetable - by the end of 2014.

The Arbitrator does not find these measures responsive to the level of employee and Union concern, including Union complaints about being kept in the dark about transportation planning. It would be salutary for this agreement to clearly

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2/ The Memorandum states: "Given the challenges employees will face as Coast Guard headquarters moves to a location with extremely limited parking and mass transit options available, the additional expense to provide maximum transportation assistance to employees is justified." Memorandum R.J. Rabago, RADM COMDT to J.G. Orner, DHS-CAO "Transportation Services at St. Elizabeth's", 1/18/2012.

establish a means for Union access to information on ongoing developments and reviews, and for providing feedback to both the Coast Guard, and to DHS through the Coast Guard. The Arbitrator will order the adoption of language to that effect.[3/]

2. Union Office

a. The Union's Position

The following wording is proposed by the Union:

> The Agency will provide the Union with one 180 sq. ft. office. The parties will meet to find a space that is conveniently located to allow most employees easy access. The Agency will provide the same furniture as it does for other 180 sq. ft. offices. The Union office will be ready for use prior to the first move. Union officials will have an opportunity to inspect the office prior to occupation.

Its current office of 155 sq. ft. is cramped and providing even smaller space at the new location, as the Employer proposes, "would hinder the Union's ability to represent its members." The Employer's offer of 120 sq. ft. also would make Local 3313's office "by far the smallest Council 120 Local Union office" even though it represents many more employees than a number of other Locals in the Council with larger offices. The Union also needs to have a "hard-walled office to hold confidential meetings with employees or stewards to discuss private representational matters." In addition, it is "clear that there would be more than sufficient 180 sq. ft. walled offices to meet management needs" at the new location, and the Employer has not established that designating one of them as the Union office "would affect [its] ability to manage." Thus, because the Union has demonstrated the need for its proposal and "more suitable space" than the Employer is offering "is readily available," there is no legitimate reason that it should not be adopted.

b. The Employer's Position

The Employer's proposal is the following:

3/ The *TMP*, and particularly its final chapter on evaluation and monitoring, makes no acknowledgment of the existence of employee representatives.

> At the St. Elizabeth's campus, the union will receive an office of at least 120 sq. ft. and be equipped in accordance with the provisions of the MLA, Article 37 ("Section 6.0 Facilities and Services"). The Union will have a choice of at least three office spaces from which to select. The Agency will provide the union a copy of the floor plan of the selected Union office prior to occupancy.

Its proposal would provide the Union a choice from among three standard supervisory size (120 sq. ft.) offices, each of which is "conveniently located to allow most employees easy access, as required by the MLA."[4/] The Union, however, "continues to demand the agency provide it with a 180 sq. ft. office, which is the standard size office for senior managers," without demonstrating a need for an office of that size or establishing that its demand is comparable "with other Coast Guard/AFGE union officials or for that matter in accordance with union officials in a broader comparison grouping." The only justification it has provided for a larger office space is "the need to provide 'side-by-side' council when [] bargaining members sat in the office." The Employer recognizes this need, and has offered to provide the Union with access to Coast Guard team rooms and conference rooms to conduct meetings when its office is insufficient. As office spaces "are a limited resource," particularly at St. Elizabeth's where the Employer is responsible for assessing the needs and priorities of 157 activities currently scheduled to move there, its offer of a 120 sq. ft. office is adequate to meet the Union's needs and should be adopted. The Union's proposal also contains wording "seeking to renegotiate new terms regarding office furniture" that are expressly contained in the MLA. While the Employer's proposal specifically refers to the provision in the MLA that identifies the furniture the Union is entitled to, as these matters are "covered by the MLA [] there is no further need to negotiate them." Thus, the Arbitrator should find that the MLA covers Union office furniture and uphold the agreement contained in the previously negotiated MLA.

4/ Article 37, Section 6.1 D of the MLA states:

> Any Union office space will be conveniently located to allow most employees easy access to the extent permissible by space availability. Any new Union office spaces will be mutually agreeable to both parties, but must take into consideration space limitations.

CONCLUSIONS

The governing criteria for determining the appropriate size and furnishings of the Union office is not, in the Arbitrator's view, what is or is not given to managers. The functions of the spaces are quite different. The MLA indicates that new union spaces are to be "mutually agreeable." In the absence of mutual agreement the Arbitrator will look to the status quo - what is currently "mutually agreeable."[5/] The current office is an enclosed office with 155 sq. ft. It serves both the Local and Council and a 750-person bargaining unit. The office accommodates a small round table and chairs as well as a desk and filing cabinet thus providing a private space for impromptu meetings involving more than two people as well as an individual workspace. The Arbitrator sees no justification for imposing a reduction of the size or furnishings of the Union office. No plausible argument was made that space does not allow it at this juncture of space planning. While it seems that this will require allotting the Union one of the 180 sq. ft. offices, that decision is up to the Employer. In terms of furnishings, the Arbitrator will order that the Union have furnishings comparable to what it currently has (and is supposed to have under the MLA[6/]), including a table and chairs.

3. Workstation Selection

a. The Union's Position

The Union proposes the following wording:

> Employees in a particular component (for example, Office, Division, Branch, etc.) will select workstations based upon seniority. Seniority is based on the employee's SCD (service computation date for retirement purposes). If the SCD's are the same, the

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5/ Despite its complaints now, there is no evidence that the Union has ever grieved or formally contested the state of its current office. Thus the Arbitrator considers it appropriate to use the current office as a benchmark for what is "agreeable."

6/ The Union is supposed to have a working computer in its current office. There is not one, though management representatives said this is not intentional. Whatever the current office has and is supposed to have is the standard being adopted.

> tiebreaker will be the higher numeral in the SSN, starting with the last digit (if the last digit in two SSNs are 8 and 6, 8 gets preference). If the last digits are the same, a coin flip will be used to break any ties.

According to FLRA case law, "seat location/assignment is central to an employee's working conditions."[7/] Its proposal, which would assign seating on the basis of seniority within the functional group, "is within the scope of bargaining" and "fair and equitable." The proposal is also comparable to provisions in the Customs and Immigration Service MLA, another DHS agency, which "allows seating by seniority." Although a Coast Guard official testified that he could only effectively manage his employees if they were within the "line of sight" of his office, such thinking is contrary to the direction that the Federal government is moving in the 21st century with increased telework, and inconsistent with the Employer's new floor plan for the St. Elizabeth's space, where the management official will no longer have a clear view of the employees he supervises. Thus, the Employer never explained how the Union's proposal "harms anyone or infringes on Management's Rights to manage." By contrast, the Employer's approach would result in the assignment of all seats "by management fiat" and, if accepted, "will give preference in seating assignments to contractors" and military Coast Guard employees. This is unfair to the civilian employees the Union represents because they "would be given last priority for seating and all seats would be arbitrarily assigned." Bargaining unit employees "provide the Coast Guard continuity in highly technical jobs" and should be rewarded for their years of service by having priority selection of seating assignments, whereas military Coast Guard employees "rotate in and out every 2-3 years, so seating assignment is not that important to them."

b. The Employer's Position

The Employer proposes that:

> Upon the initial move to the St. Elizabeth's campus, each employee will be able to select from available non-office workspaces within the branch to which he or she is assigned in order from highest to lowest grade.

7/ During the hearing the Union cited the FLRA's decision in *DHS, U.S. Citizenship and Immigration Services, National Benefits Center, Lee's Summit, Missouri*, 66 FLRA 175 (September 26, 2011) (*CIS*) to support its position.

> If more than one employee is of the same grade, the employee with the oldest service computation date will select first. If the employee is assigned to a division, and not to a branch, then employees will select from available workspaces within the division. An amount of non-office workspaces equal to the number of employees in a branch or division, as appropriate, will be available for selection. Employees who primarily provide administrative support, provide reception services, and/or who work in secure areas are exempt. This procedure applies only to the initial move to St. Elizabeth's campus. When the Agency directs negotiable relocations of employee workspaces subsequent and unrelated to the initial move to the St. Elizabeth's campus, the Agency will provide the Union with notice and an opportunity to bargain to the extent required by 5 U.S.C. 71 and under the terms of the MLA.

Its proposal essentially maintains the Employer's current practices with respect to seating assignments, practices which were found to be "fair and equitable" by 60.7 percent of the respondents to a Union survey of bargaining unit employees. Significantly, only 11.3 percent of the respondents claimed that the current method of assigning seating involved "favoritism." Thus, because the Union "has not articulated a reasonable basis for a change to the *status quo*," if the Union's proposal is found to be within the duty to bargain, the Arbitrator should order its withdrawal. For the reasons that follow, however, the Arbitrator should find that the Union's proposal is nonnegotiable and "outside the purview of the [Panel]."

The Union's position is that bargaining unit "employees should be permitted to select their workspaces, including areas outside the branches they work," and "be given a status enabling them to select workspaces before managers have assigned workspaces to non-bargaining unit employees, military personnel, and even ahead of their leads." Among other things, the Union's proposal interferes with management's right to determine the methods and means of performing work, under section 7106(b)(1) of the Statute, "because seating must occur based on the functional grouping of employees."[8/] In this regard, as one of

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8/ The Employer cites the FLRA's decision in *Local 2910, AFSCME and Library of Congress*, 19 FLRA 130 (1985) to support its contention.

its management officials testified during the mediation-arbitration proceeding, Coast Guard headquarters has "working groups that require functional grouping in close proximity" so that a team is able to work and resolve problems collectively. Therefore, permitting employees to choose seating without regard to their primary functions, as the Union proposes, is "substantively nonnegotiable." In addition, by demanding that bargaining unit employees choose workspaces prior to non-bargaining unit employees, the Union's proposal is nonnegotiable because "it directly impacts the working conditions of non-bargaining unit employees,"[9/] *i.e.*, "such a process would prohibit the agency from assigning non-bargaining unit employees and military personnel from workstations the agency deems appropriate/necessary." The Union's proposal also interferes with management's right to determine its internal security practices, under section 7106(a)(1) of the Statute, because "it seeks to restrict management's ability to assign employees to ensure the security requirements are being met based on operations" and "to determine the levels of security that are required of employees as related to the work they perform."[10/] Finally, the Union's proposal "is outside the duty to bargain because it excessively interferes with management's right to assign work, assign employees, and determine employee qualifications" by, among other things, preventing supervisors from moving employees "into areas to meet clearance requirements and other qualification requirements, necessary to ensure the secure accomplishment of the mission."[11/]

9/ The FLRA's decisions in *NAGE, Local R1-144 and Navy, Naval Underwater Systems*, 28 FLRA 352 (1987) (*Naval Underwater Systems*) and *AFGE Local 12 and Department of Labor*, 17 FLRA 674 (1985) are cited by the Employer in this connection.

10/ The Employer cites *NTEU v. FLRA*, 550 F.3d 1148 (D.C. Cir. 2008) and the FLRA's decisions in *Luke Air Force Base*, 63 FLRA 174 (2009) and *NTEU, Chapter 101 and Department of Treasury, Customs Service, Washington, DC*, 58 FLRA 653 (2003) to support its allegations in this regard.

11/ To support this claim, the Employer cites *NFFE v. FLRA*, 412 F.3d 119 (D.C. Cir. 2005) and the FLRA's decisions in *Supervisor of Shipbuilding, Conversion and Repair*, 62 FLRA 328 (2007) and *Bureau of the Public Debt*, 3 FLRA 769 (1980).

CONCLUSIONS

Both parties' arguments ignore the fact that both final proposals provide that employees will select workstations within areas designated by the organizational component to which employees are assigned. The Union states in its brief that it is proposing seating assignments by seniority "within the functional group" which in its proposal is expressed as organizational components. In its brief it goes on to say, "The Union recognized that argument [Mr. Thomas' interest in 'mak[ing] sure he didn't have to run all over the building to supervise his people'] and modified its proposal to seat employees within the same workgroup by seniority" (Emphasis added). The Employer's proposal makes seating assignments within the branch, or if there is none, division. The Union's proposal expressly includes "branch" in its list of components.[12/] There being no substantive difference but greater clarity in the Employer proposal on location of seating, the latter will be adopted by the Arbitrator.

Where the disagreement remains is on how employees will select workstations within their functional groups. The Union's proposal is for employees to select, by seniority, from all available workstations. The Employer challenges the negotiability of this proposal because, among other things, it would limit the workstations available for it to assign to military personnel, supervisors and contractors. Thus, the Employer's argument that the Union's proposal is outside its duty to bargain because it directly impacts the working conditions of non-bargaining unit employees must be addressed before the Arbitrator can reach the merits of the parties' positions on the issue.

When faced with such claims, the Panel and interest arbitrators are guided by the FLRA's decisions in *Commander, Carswell Air Force Base, Carswell AFB, Texas and American*

12/ When, at the close of the arbitration, the Union offered its final proposal it indicated it was agreeing with seating by functional grouping. Its later submission seems to argue against seating by branch, relying on *CIS*, but as stated, "branch" is in its proposal, and at no time did the Union ever provide an alternative or limiting formulation or explain away its inclusion of this component in its proposal. It focuses on Mr. Thomas' testimony but Thomas was not seeking functional groupings other than divisions and branches.

Federation of Government Employees, Local 1364, 31 FLRA 620 (1988)(*Carswell AFB*),[13/] and *U.S. Department of the Interior, Bureau of Reclamation, Lower Colorado Region, Yuma Arizona and National Federation of Federal Employees, Local 1487*, 41 FLRA 3 (1991)(*Yuma*).[14/] Contrary to the Employer's position, in *Naval Underwater Systems* the FLRA found a proposal substantively identical to the one proposed here to be negotiable.[15/] As the Union's proposal does not designate seating areas for non-bargaining unit employees, in accordance with the guidance provided by the FLRA in *Carswell AFB* and *Yuma*, the Employer's contention that the Union's proposal is outside its duty to

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13/ In *Carswell AFB*, the FLRA stated that the Panel and interest arbitrators may resolve duty-to-bargain questions concerning union proposals raised by employers in the course of its proceedings by applying the results of previous FLRA decisions where "substantively identical" proposals have been found negotiable.

14/ The FLRA's decision in *Yuma* extends the guidance provided in *Carswell AFB* concerning the authority of the Panel and interest arbitrators to resolve impasses where duty-to-bargain issues are raised. In essence, the FLRA stated that the Panel may apply the results of previous FLRA decisions finding substantively identical proposals negotiable to resolve duty-to-bargain issues even in circumstances where an employer raises a new legal argument before the Panel that was not previously considered by the FLRA when it rendered its negotiability decision. Thus, in *Yuma*, the FLRA stated: "The fact that an agency's arguments differ from those previously considered [by the FLRA] will not, standing alone, compel a conclusion that [the Panel or interest arbitrators] improperly resolved a negotiability dispute." Otherwise, "agencies could be encouraged to raise novel, even frivolous, negotiability arguments so as to impede impasse resolution."

15/ In this regard, in *Naval Underwater Systems* the FLRA stated that the union's proposal does not address working conditions of non-bargaining unit employees and would only "influence their conditions of employment . . . in a limited, indirect way in that it would limit the space into which they could be assigned. It stops well short of actually determining their workspace assignments or prescribing the manner in which such assignments would be made."

bargain is therefore rejected.[16/] Consequently, the Arbitrator will consider the merits of the seating proposals.

The Employer offered testimony about the value of seating supervisors (branch chiefs) where they can engage "walk-in customers" entering the work area as to their needs and direct them appropriately. Other issues raised - proximity for mentoring and supervision, employee interaction, evacuation plans, etc. - are fully addressed by the functional grouping requirement. Floor plans submitted by the Employer make clear that functional group workstations will be in adjacent cubicles in close proximity to one another, to shared file cabinets, and so on. Thus, the Arbitrator sees no impact on any of these other factors by the Union's selection process. The Employer's assertions concerning security implications are equally unpersuasive. This will be a highly secure worksite where sensitive and classified information, and safety, will be managed by much more sophisticated measures than the seating order in a group of cubicles. The Employer is simply conditioned to its current process.

Where no mission-related factors dictate otherwise, seating location is a condition of employment and though the Union has not shown a high level of dissatisfaction with seating practices at Buzzards Point, what we are addressing here are new workstations resulting from a move that will alter employees' work lives in major ways, and about which there is significant concern by employees. The Arbitrator has no information to compare the new seating arrangements with the configurations that exist now. For this reason, the Arbitrator does not think it appropriate to give particular weight to the *status quo*.

After considering the various alternatives, the Arbitrator will order adoption of language providing that after the Employer assigns workstations to supervisors, the remaining

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16/ Given the FLRA's guidance in *Yuma*, it is unnecessary to address the Employer's other nonnegotiability claims that the Union's proposal also interferes with management's right to determine its internal security practices and excessively interferes with management's rights to assign work, assign employees, and determine employee qualifications. Nevertheless, the Employer's contentions appear to be based on bare assertions and, because the Union has acceded to the Employer's demand that unit employees be seated by functional groups, are inapposite.

seats will be available for bargaining unit employees to select in order of their Service Computation Date (SCD).

4. Administrative Leave for Vanpool/Carpool Members During Transition

a. The Union's Position

The following wording is proposed by the Union on this issue:

> While the Coast Guard is transitioning its workforce from the Buzzard's Point location to the St. Elizabeth's location, employees who are part of a carpool/vanpool that has employees at both locations will be granted administrative leave of no more than a total of 45 minutes per day for the purpose of covering the additional time to pick up and drop off passengers (15 minutes one way and 30 minutes the other way).
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> Employees who are part of such "split carpools/vanpools" will notify their supervisor via email that their start time and leave time may vary when applicable, and make any appropriate entries to Web TA.

The Employer plans to implement the relocation of employees from Buzzard's Point to the St. Elizabeth's campus through 15 separate moves over a period of 4 months. During the transition period vanpools/carpools will experience increases in their commute times when they have employees at both campuses. While each of the parties attempts to address this matter, unlike the Employer's proposal, the Union's "is fair and reasonable." In this regard, the data collected by the Employer to demonstrate that 15 minutes of administrative leave each way is adequate to cover the extra time needed to pick up employees from both locations "should be considered flawed" because they were gathered during "lighter-traffic days" that "do not capture the actual commuting times." The Union's data, which were collected during peak rush-hour commute times, showed that the morning commute between the two locations took an average of 15-30 minutes and the afternoon commute took an average of 20-30 minutes. The "necessity of the Union's proposal" is further demonstrated by the Employer negotiators' admission that "15 minutes would not be a reasonable amount of time to travel from one location to the next for an important meeting." Nor did the

Employer present any compelling arguments for denying administrative leave during the transition period to employees on leave restriction. This portion of the Employer's proposal would "violate the privacy of the employee[s] on leave restriction" because they would have to inform the other riders of their inability "to drive or possibly even participate in the car/vanpool." Moreover, management has other ways of addressing leave abuse issues without punishing the entire car/vanpool. Finally, under the Union's proposal, "car/vanpool drivers and passengers will only use the time necessary to travel to one location or another." Both the time requested and the actual time used "may be recorded in the timekeeping system so supervisors will know when to expect their employees to arrive to and depart from work."

b. The Employer's Position

The Employer's proposed wording is as follows:

> In order to facilitate a smooth transition to the St. Elizabeth's campus, employees registered in a vanpool or carpool, the members of which are split between the Transpoint/Jamal Buildings and St. Elizabeth's campus, will be entitled to a maximum of 15 minutes of administrative leave in the morning commute and 15 minutes of administrative leave in the afternoon commute, in the event transit between the two worksites necessitates delayed arrival/early departure. For time-keeping purposes, employees must notify his or her supervisor of each occurrence of delayed arrival/early departure. In the event more time than the 15 minutes specified above is necessary, employees will be allowed to request accrued annual leave or accrued credit hours, or make up the missing time at the end of the workday, with supervisory approval. This provision shall remain in effect for a period of four months, commencing with the first physical move of employees to the St. Elizabeth's campus. It is understood this provision does not apply to an employee who is on a leave restriction or has been officially disciplined for being absent without permission for more than five days in any calendar year.

Its proposal to permit vanpool/carpool occupants to receive 15 minutes of administrative leave in each direction during the transitional phases to St. Elizabeth "is unparalleled in

addressing an office move." In this regard, the Agency conducted eight commute round-trip test runs between the two facilities and found that "on average, the 1.6 mile drive from Transpoint/Jamal headquarters to St. Elizabeth's took approximately 6 minutes, regardless of rush-hour direction, and the 2.4 mile return drive took on average 9 minutes." This demonstrates that the Employer's proposal is sufficient to meet the needs of car/vanpoolers during the transition period, particularly where it is well established that "the Federal government does not pay its employees for rush-hour congestion" or compensate vanpool/carpool riders for their time. Contrary to the Union's position, the data provided by the Employer on actual commuting times are far more compelling than the testimony offered by the Union, based on a single timed commute, that the journey between Transpoint/Jamal headquarters and St. Elizabeth took 20-30 minutes. More importantly, the transportation issues were more thoroughly examined in the *TMP*.

CONCLUSIONS

Both parties are seeking to ameliorate the time and trouble imposed on car/vanpool employees by the staging of the Coast Guard's move that will temporarily put people in the same pool on opposite sides of the river. Truthfully, neither set of data is very reliable. The Employer's drives were carried out mostly during Thanksgiving week and there is no way to say that the single day of the Union's test is typical. We do know that the South Capitol Street bridge is heavily used in rush hour – that is confirmed by the *TMP*.

What we have is a 15-minute difference between the parties' proposals for a temporary accommodation to ameliorate adverse impacts on employees. This will likely be the least significant challenge to productivity during this moving period. In the Abitrator's view the allowance should be uncomplicated, and with enough leeway built in to account for the uncertainties. Making people use leave or credit hours if the ride takes more than 15 minutes and refusing this accommodation to people on leave restriction are both counterproductive. The Union's proposal requires employees to enter information about arrival time into the time-recording system and in that manner makes it possible for managers to monitor administrative leave usage. For these reasons the Arbitrator will order the parties to adopt the Union's proposal.

DECISION

The parties shall adopt the following wording to resolve the impasse:

1. Shuttle Service

During the transition period, shuttle service will continue between the Transpoint/Jamal Buildings and the L'Enfant Plaza Metro Station, as well as the shuttle between the St. Elizabeth's campus and the Anacostia Metro Station. For one month once the transition period has ended, an employee affected by the discontinuation of shuttle service to or from L'Enfant Plaza Metro Station may meet with his or her supervisor to discuss the option to request accrued annual leave or accrued credit hours, or make up the missing time at the end of the work day. In addition, nothing in the provision limits the ability of the Union to explore other options to expand shuttle service availability outside the formal bargaining process for future consideration.

Management agrees to conduct an employee survey, or to ensure DHS management conducts an employee survey, by 31 October 2014, in order to explore the effectiveness of the Transportation Management Plan. Upon completion of the survey, and if requested by the Union, Management agrees to arrange a meeting between Union officials and the DHS Office of Administration staff in order for Union officials to discuss any transportation concerns and present recommendations.

Prior to that time, beginning with the signing of this agreement, Management agrees to provide to the Union on a timely basis any new or updated elements of the Transportation Management Plan or any other documents relevant to employee commuting and will meet with the Union upon request. Should the Union request this prior to the completion of the survey described in paragraph 1, Management agrees to arrange a meeting between Union officials and the DHS Office of Administrative staff.

2. Union Office

At the St. Elizabeth's campus, the Union will be provided an office of at least 155 sq. ft. that is conveniently located to provide employees with easy access. The Union will have a choice of at least three office spaces from which to select. The Agency will provide the Union a copy of the floor plan of the selected Union office prior to occupancy.

The new Union office will be equipped with the same level of furnishings as in the existing Union office and any other furnishings provided by the provisions of the MLA, Article 37 ("Section 6.0 Facilities and Services").

The Union office will be ready for use prior to the first move. Union officials will have an opportunity to inspect the office prior to occupation.

3. Workstation Selection

After workstations have been designated for supervisors, each employee will have the option to select from all of the remaining workspaces within the branch to which he or she is assigned. If the employee is assigned to a division, and not to a branch, then employees will select from all of the remaining workspaces within the division.

Employees will select workstations based upon seniority. Seniority is based on the employee's SCD (service computation date for retirement purposes). If the SCD's are the same, the tiebreaker will be the higher numeral in the SSN, starting with the last digit (if the last digit in two SSNs are 8 and 6, 8 gets preference). If the last digits are the same, a coin flip will be used to break any ties.

Employees who primarily provide administrative support, reception services, and/or who work in secure areas are exempt from these provisions. This procedure applies only to the initial move to St. Elizabeth's campus. When the Agency directs negotiable relocations of employee workspaces subsequent and unrelated to the initial move to the St. Elizabeth's campus, the Agency will provide the

Union with notice and an opportunity to bargain to the extent required by 5 U.S.C. 71 and under the terms of the MLA.

4. **Administrative Leave for Vanpool/Carpool Members During Transition**

While the Coast Guard is transitioning its workforce from the Buzzard's Point location to the St. Elizabeth's location, employees who are part of a carpool/vanpool that has employees at both locations will be granted administrative leave of no more than a total of 45 minutes per day for the purpose of covering the additional time to pick up and drop off passengers (15 minutes one way and 30 minutes the other way).

Employees who are part of such "split carpools/vanpools" will notify their supervisor via email that their start time and leave time may vary when applicable, and make any appropriate entries to Web TA.

Mary E. Jacksteit
Arbitrator

January 11, 2013
Takoma Park, Maryland