

In the Matter of

THE LIBRARY OF CONGRESS
WASHINGTON, DC

and

CONGRESSIONAL RESEARCH EMPLOYEES
ASSOCIATION, LOCAL 75, IFPTE,
AFL-CIO

LOCAL 2910, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO

LOCAL 2477, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO

Case Nos. 13 FSIP 188,
189 & 190

ARBITRATOR'S OPINION AND DECISION

The Library of Congress, Washington, DC (Employer or LOC) and the Congressional Research Employees Association (CREA), Local 75, IFPTE, AFL-CIO; Local 2910, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO; and Local 2477, AFSCME, AFL-CIO (Unions), filed joint 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.

After an investigation of the requests for assistance, which arise from bargaining over the Employer's decision to restrict outdoor smoking on the LOC Campus, the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on November 15, 2013, a mediation-arbitration proceeding was convened at the Madison Building on the LOC Campus in Washington, DC. During the mediation phase, the parties addressed their interests and positions, but they were unable to resolve the issues. Consequently, the issues have been submitted for arbitration. In reaching my decision, I have considered the entire record, including the parties' final offer, documentary evidence and my observations of the exterior

areas surrounding the Madison building during a walk-around with Union and Employer representatives.

BACKGROUND

The LOC's primary mission is to make its resources available to Congress and to the American people, and to sustain and preserve a universal collection of knowledge and creativity for future generations. It has a subdivision, the Congressional Research Service (CRS), whose mission is to provide Congress, throughout the legislative process, comprehensive and reliable legislative research, analysis, and information services that are timely, objective, nonpartisan, and confidential, thereby contributing to an informed national legislature. CREA represents 474 professional and non-professional bargaining-unit employees who provide information to CRS's customers. Professional unit employees work as analysts, attorneys, librarians, and in the specialized areas of science, economics, and social science; non-professional unit employees are in such positions as library technician, clerical support employee, and mail room clerk. The grades of the former group range from GS-9 through the Senior Level, and the latter, from GS-3 through -8. The parties' collective bargaining agreement (CBA) has been extended annually since it expired in 1996. AFSCME Local 2910 represents 1,274 bargaining unit employees who work as catalogers, reference librarians, computer analysts, and specialists in acquisition and interpretation of collections, GS-7 through -15. The parties' CBA has been extended annually since it expired in April 2008. AFSME Local 2477 represents approximately 742 nonprofessional employees in such positions as library technician, clerk, and secretary, whose primary function is to move and process books. The parties' CBA has been extended annually since it expired in 1997.

In 2013 the Employer proposed major changes to the policy concerning smoking outside the three Library of Congress buildings. At the Madison building where this dispute centers, the revised policy would ban smoking at all external areas controlled by the LOC except for a small area at the southeast corner of the building.

Existing policy allows for smoking under a large portico that extends across the front of the Madison building (but at a distance from the main entrance doors). This portico adjoins a large open plaza with tables accommodating employees, and members of the public and users of the Madison building. On either end of the plaza are alcoves - narrower patio areas that

extend back along a portion of the sides of the building. Tables on the plaza and in the northwest alcove are currently marked "no smoking." The only other relevant signage directs smokers away from the front entrance.

During negotiations the three Unions agreed to eliminate smoking at the entire portico (the only outside space with a covering) from the area near a much-used entrance at the 1st and C Streets corner across from the Metro station, and at nearly all of the Madison plaza. All parties concur that second-hand smoke is a health hazard, and that smoking in the portico, main part of the plaza, and northeast alcove exposes non-smokers to this hazard to a degree sufficient to justify new restrictions.

The Madison building houses 2,374 employees (as compared to roughly 600 at the other two LOC buildings) performing a wide range of jobs. The building is a large square that takes up virtually an entire city block with almost no accessible space between the building and the public sidewalks except, as described above, the front plaza and alcoves. The Madison plaza and these two alcoves (the northeast alcove and northwest alcoves) are separated from the sidewalks by large planters with shrubs and small trees. Because of the steep grade on 1st Street, the northwest alcove and its adjoining planters are quite high above, and not visible from, street level. This is not the case at the northeast alcove.

Around much of the exterior edge of the Madison building property, including the front, is a low wall wide enough and low enough to sit on. These walls abut the public sidewalks. During the walk-around Employer representatives stated that they presume that smokers will utilize these walls along the sidewalks for sitting and smoking. A blueprint drawing of the building submitted by the LOC has small red dots indicating where smoking will be permitted under its policy and these appear all along the sidewalk areas where these walls are accessible. In one of these areas - the wide sidewalk in front of the building - are several bus stops. Another section of wall is on 1st Street where people walk up from the Metro station.

Other areas where the Employer indicated that smoking can take place are (1) in two large half-moon benches at the edge of the old LOC building directly across Independence Avenue from the front of the Madison building, facing the sidewalk and (2) on a patio area outside the Adams building, set back from the

street and catty-corner from the Madison building across Independence Avenue and 2nd Street.

ISSUES AT IMPASSE

The parties disagree over whether: (1) Smoking should be permissible in the alcove in the northwest quadrant of Madison plaza adjacent to 1st Street and whether tables should be added to accommodate this activity; and (2) the Employer should provide three benches at the southeast corner of the Madison building in a small area the Employer is prepared to designate for smoking but where presently there is no seating other than on the walls described above.

POSITIONS OF THE PARTIES

1. The Unions

The Unions propose that smoking be permitted in the alcove in the northwest quadrant of the Madison plaza adjacent to 1st Street and that additional tables be moved from the plaza to provide four in this area. They also propose that three benches be installed at the southeast corner of the Madison building.

The Unions urge adoption of their proposals because they accommodate the high concentration of employees in the Madison building, the difficulty presented by the building's configuration, and the reality that some employees will continue to smoke; while also addressing a mutual interest in protecting non-smokers from second-hand smoke. The Unions accepted the most significant parts of the Employer's proposed smoking policy changes but believe that on the remaining issues their position is more reasonable than relegating smokers who work in the Madison building to the public sidewalks populated by LOC employees and members of the public, including many tourists. The Union proposes allowing smoking in the northwest alcove of Madison plaza because it is high above street level, out-of-the-way and can be easily avoided by employees sensitive to smoke. While there are steps just below it that run between the sidewalk and Madison plaza, a short distance around the corner is another access point to the plaza. It is highly unlikely that many employees will take the time to cross Independence Avenue or use the space at the Adams building so these areas will not reduce the use of the sidewalks next to the Madison building.

The Unions' proposal that the Employer provide benches for the southeast corner of the Madison building, and additional

tables in the northwest alcove, is to make those areas more attractive to smokers at nominal cost. This would have the beneficial effect of reducing use of public sidewalks for smoking.

2. The Employer

The Employer urges rejection of the Unions' proposals and adoption of a full smoking ban for the Madison plaza and alcoves. The change in outdoor smoking areas is the result of complaints about exposure to second-hand smoke by employees going in and out of the Madison building. It is foreseeable that concentrating smoking in the northwest alcove will result in smoke drifting down onto the stairway area just below it, and beyond.

Implementation of the Employer's proposal would also present a better appearance to the public as it would reduce the amount of cigarette butts and empty cigarette packages that currently litter the area where smoking is permitted. It would also prevent discoloration of the building's marble façade as has occurred in the portico area. The Employer is opposed to installing benches in the southeast corner area because it does not wish to incur expenses of any kind to facilitate smoking by employees.

CONCLUSIONS

Smoking policy is a condition of employment for both smoking and non-smoking employees, and a change in that policy is a legitimate concern for both groups. The health concerns put forward by the LOC are acknowledged by the Unions who have agreed to substantial new restrictions. But both parties recognize that smoking is not being totally banned from LOC grounds, and that a certain number of employees will continue a personal habit of smoking during the workday. The disagreement here is about what accommodation to this reality makes the most sense in this very particular context.

I am simply not persuaded by the Employer's arguments for its proposals. Retaining smoking in the northwest alcove seems to me preferable to pushing smokers onto steadily used public sidewalks where they will be much closer to sidewalk users, including LOC employees and passers-by, so that second-hand smoke exposure will be inevitable. Smoking will also be much more visible, and the lack of cigarette and trash receptacles on the sidewalks will lead to littering there. In effect, the

Employer approach forces employees to be public nuisances. Having examined the space in question I believe smoke-sensitive employees can avoid the vicinity of the alcove. As to the one other places for smoking that is not on a public thoroughfare (the Adams building), it is unlikely that employee smokers will go that far.

The one outdoor area the Employer concedes - the southeast corner - I observed to be quite out of the way. That is both good - less visible, much less pedestrian traffic - and bad - it may feel far for smokers to go. Given what seems to me to be a strong interest to encourage its use, putting a few benches in this location makes sense and the Employer's refusal to do so is counterproductive. As to the Union's request about tables in the northwest alcove, the idea seems to be that if more people use the space, the existing seating and tables are inadequate. Given the Union's suggestion to simply move a table from elsewhere in the Madison plaza this should pose little cost.

In sum, having carefully considered the arguments and evidence presented in this case, I am persuaded that the Unions' proposals provide the more reasonable basis for resolving the parties' impasse and, accordingly, order their adoption.

DECISION

The parties shall adopt the Unions' proposals.



Mary E. Jacksteit
Arbitrator

December 10, 2013
Takoma Park, Maryland