

In the Matter of

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

and

LOCAL 1450, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES, FEDERAL DISTRICT
1, IAMAW, AFL-CIO

Case No. 14 FSIP 71

ARBITRATOR'S OPINION AND DECISION

Local 1450, National Federation of Federal Employees, Federal District 1, International Association of Machinists and Aerospace Workers, AFL-CIO (NFFE or 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 Housing and Urban Development (HUD), Region IX, San Francisco, California (Employer).

Following investigation of the request for assistance, arising from negotiations over the relocation of approximately 180 bargaining unit employees (BUEs) from 600 Harrison Street to One Sansome Street, in San Francisco, California,^{1/} the Panel determined that the dispute should be resolved through mediation-arbitration with the undersigned, Panel Chairman Mary E. Jacksteit. The parties were informed that if a complete settlement of the issues at impasse were not reached during mediation, a binding decision would be issued to resolve them. In addition, the Panel ordered the Employer to:

[M]aintain the *status quo* while the matter is pending
[], i.e., limit on-going construction at the One
Sansome Street location to the extent necessary to
preserve [Chairman Jacksteit's] ability to resolve the

^{1/} The relocation will result in the employees switching from working on two floors to three-and-a-half smaller floors and an approximate loss of 20,000 square feet.

impasse on the basis of the Union's proposals should the Union prevail on the merits of the issues.^{2/}

Consistent with the Panel's procedural determination, on July 29, 2014, I conducted a mediation-arbitration proceeding with representatives of the parties at the Employer's current location on Harrison Street. During the mediation phase, the parties were able to resolve several issues but they remain at impasse over the central issue (the physical space plan) and two other matters. Thus, I am required to issue a final decision imposing terms in accordance with the Statute and 5 C.F.R. § 2471.11 of the Panel's regulations. In reaching this decision, I have considered the entire record, including the parties' pre-hearing submissions. The record was closed at the end of the hearing on July 29. By mutual agreement, I permitted the parties to submit final offers and closing memoranda on August 1, 2014.^{3/}

BACKGROUND

HUD's mission is to provide citizens with assistance for affordable housing and to enforce fair housing rules and regulations. It is organized into 10 regions. The Employer is

2/ See the Federal Labor Relations Authority's (FLRA) decision in U.S. Immigration and Naturalization Service and National Border Patrol Council, American Federation of Government Employees, AFL-CIO, 59 FLRA 69 (1999), which authorizes the Panel to take such action if an employer intends to implement changes in working conditions prior to the completion of bargaining.

3/ In lieu of a closing memorandum, the Union submitted its arguments in support of its final offers as part of its document containing those offers. The Union also submitted unsolicited additional documents to address the Employer's reliance on a reorganization of the Multifamily Division to justify its plan. The Employer mentioned this reorganization at the July 29, 2014, mediation-arbitration, but the Union did not indicate at that time that it wished to submit additional documents to address the matter. Accordingly, because the agreed upon post-arbitration procedure did not permit the offering of new evidence and because the Union was aware of this issue well before the close of the arbitration, I have not considered the Union's proffered documents, or its reliance on the information in those documents, as part of this decision.

Region IX and serves Arizona, California, Hawaii and Nevada. The Union represents approximately 550 professional and non-professional BUEs stationed throughout 11 offices in the four-state area. Employees hold positions such as appraiser, architect, fair housing specialist, housing project manager, housing program specialist, single family housing specialist, and program support assistant, GS-9 through GS-14. The approximately 180 BUEs affected by the relocation in San Francisco work primarily in four program areas - Commercial Planning and Development, Fair Housing and Equal Opportunity, Public and Indian Housing, and Multifamily Housing (Multifamily Division). The parties are governed by a collective-bargaining agreement (CBA) that is due to expire on September 11, 2014.

On September 11, 2013, the Employer informed the Union that the General Services Administration (GSA) had executed a lease with the lessor of the Sansome Street location for space having 20,000 fewer square feet than the current office.^{4/} The Employer, GSA, the lessor, and the lessor's architect began work designing a physical space plan during September 2013. This process was delayed until January 2014 because the Employer identified a need for an additional 7,000 square feet. On January 29, 2014, the Employer provided the Union with a copy of the designed physical space plan along with notice and an opportunity to bargain, pursuant to Article 38 of the parties' CBA and its specific provisions relating to office moves. Pre-negotiation consultation occurred during the month of February. Formal negotiations began on March 3 and continued into April 2014 during which time the parties initialed off on numerous issues relating to the move while remaining divided on key issues. On April 7, 2014, GSA informed HUD's national office that, for reasons it deemed compelling, it could wait no longer for conclusion of the collective bargaining process and was proceeding with the steps necessary to complete the build out of the space and the move of employees by December 31, 2014. It advised that no changes in the space plan would be possible after April 8. Both negotiating teams were immediately advised. Thereafter, on April 16, the last day of mediation with the Federal Mediation and Conciliation Service, the Union provided its own floor plan "design concept" as a proposal for resolving

4/ Prior to this the Union received notice in April 2013 when GSA put out a bid for new lease space for this HUD office. The Union participated in the market study examining alternative spaces under consideration by GSA and was made aware of the timetable, including the lease expiration date at the current site.

the impasse. The Employer took the position then, and has continued that position since, that it no longer has the ability to change the physical space plan because to do so would impose unacceptably high financial costs and legal liability, that GSA would pass on to HUD.^{5/}

In the backdrop of this move is a Presidential Executive Order and implementing OMB directives requiring executive agencies to reduce their physical space and associated costs.^{6/}

ISSUES AT IMPASSE

The parties' core disagreement is about the use of the Employer's physical space plan. The Union urges adoption of its own design concept, instead, with that concept to be translated into working plans in a collaborative effort with the Employer. The Union's concept maintains key elements of the space plan in the current location - bargaining unit workstations at existing sizes (cubicles of 64 square feet and offices of 150 square feet), placement of all management offices in interior locations, and numerous conference rooms (more than the current location) rather than the greatly reduced number in the Employer's space plan. The design concept intentionally incorporates fewer employee workstations than are provided in the Employer's plan. The Employer's plan incorporates a projected future need to house 55 additional employees as a result of a national HUD reorganization consolidating functions at the San Francisco office, and anticipated new hires. The Union plan does not attempt to accommodate this number of additional staff because it believes the Employer has overstated the need.

5/ Both parties have filed pending unfair labor practice (ULP) charges with the FLRA's San Francisco Regional Office asserting that the other engaged in bad faith bargaining that delayed negotiations.

6/ Presidential Memorandum "Disposing of Unneeded Federal Real Estate - Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency," dated June 10, 2010; and Office of Management and Budget (OMB) Memorandum M-12-12 "Promoting Efficient Spending to Support Agency Operations," dated May 11, 2012, requiring Executive agencies to ensure that total square footage remains at FY 2012 baseline levels and to dispose of excess properties.

This core disagreement manifests itself in two sections of the parties' MOU on the office relocation that directly implicate the physical space plan: Paragraph 16 dealing with the size of workstations and offices (and in the case of the Union's proposal, the accommodation of additional employees), and Paragraph 18 regarding the office layout/space location.

Two other issues remaining at impasse are Paragraph 8 concerning the office location for the "outstationed"^{7/} Senior Attorney who is also the Union's lead representative in this matter; and Paragraph 52b concerning selection of employee workstations.^{8/}

POSITIONS OF THE PARTIES

1. Paragraph 16: Workstation and Office Size

a. Union's Position

The following is the Union's final offer on this issue:

The Union's Design Concept Plan shall be adopted and translated into working plans for constructing the new San Francisco Regional Office.

All employees shall be provided with a cubicle or private office meeting the requirements for the specific class of employee as determined by HUD Administrative Services Handbook 2200.01 ("Handbook 2200.01"). The cubicle or office size for each class of employee shall be equal to each employee's current cubicle or office at the 600 Harrison Street location with the exception of architects. Architects shall be allowed to select two cubicles because of their unique job requirements. The cubicle or office size may vary or be reduced in order to better effectuate the Union's design concepts plan or because construction requirements, due to the physical dimensions of the office space, require variance. Any such variance, to

7/ "Outstationed" employees are physically located at HUD's San Francisco Regional Office but report to another office.

8/ The parties used "workstations" interchangeably to describe employee cubicles and private offices/cubicles. For purposes of this decision, workstations will refer to the cubicles only.

extent practicable, shall result in maintaining the current cubicle or private office sizes. Management has determined that the cubicle or office size for each manager or supervisor shall be no larger than proposed in the physical design plan attached to management's Article 38 notice to the Union with the exception of *de minimis* variations that may result from the construction process.

Notwithstanding any language to the contrary in any proposal contained in this MOU, should the private office size created for employees under this proposal result in an office that is larger than any office designated for non-bargaining unit employees, such non-bargaining unit employees shall receive similar sized offices.

Additionally, the cubicle or private office size may be adjusted to accommodate additional workstations upon a demonstrated need for additional workstations (cubicles and private offices) through the planning or construction phases for the new office as may be practicable.

A demonstrated need for additional workstations (cubicles or private offices) occurs when all workstations are assigned; occupied or will be occupied by actual, identified HUD staff (both BUE's and non-BUE's) as well as contractors requiring workstations currently in the San Francisco Regional Office, and additional actual, identified HUD staff who have or will be assigned to the San Francisco Regional Office require appropriately workstations pursuant to Handbook 2200.01 or past practice. A demonstrated need for additional workstations also occurs where there is current hiring authority for new employees; proof that HUD staff are being transferred to San Francisco; or, other non-speculative evidence that a workstation will be required for an actual, identified individual being placed in the San Francisco office.

The Union provides a design concept that can be adopted, through further discussion/negotiations, into a workable floor plan. The Union's proposal allows for "a process to identify and to accommodate all persons requiring workstations (cubicles and private offices)." At the Employer's current location the

size of employee cubicles/workstations is 64 square feet and private offices are 150 square feet, working conditions negotiated at the time of the move into 600 Harrison Street. Management has failed to demonstrate that these sizes, which now represent established past practice, cannot be accommodated in the new building. The Union's design concept shows how in fact they can be achieved.

HUD Handbook 2200.01, Chapter 13, which addresses space management for HUD regional offices, sets 150 square feet as appropriate for private offices. Though it allows for 8 feet x 7 feet cubicles/workstations (the size in the Employer's plan) the Handbook states that "actual allocations will be determined by local circumstances." The local circumstances in San Francisco are a past practice of 64 square feet. While management claims that it needs to adhere to certain space initiatives promulgated by the Obama Administration, there is nothing mandating reduction of individual work space and by moving to a location that has 20,000 less square feet and lower rent, the Employer has satisfied the foregoing Obama initiatives. In fact, the space package used to solicit leasing bids dated November 8, 2012, called for 64 square feet cubicles and 150 square feet offices. The Employer's initial intent was to move the 64 square feet workstations at 600 Harrison Street to the new site and that only changed because the building's architect advised that 8 feet x 7 feet workstations would be more efficient.

The Union's concept plan also proposes 16 conference rooms, whereas the Employer proposes only 7. Eight of the Union's conference rooms can also be divided into two conference rooms by the use of retractable dividers. BUEs make extensive use of conference space to meet with external clients and stakeholders and for internal meetings. The conference room space that employees have at Harrison Street is already "insufficient," and the Employer should not be permitted to further reduce such space.

The Employer's reliance on the increased costs that could arise from adopting the Union's concept plan is misplaced. These costs are attributable entirely to the Employer's intransigence at the bargaining table. Had management involved the Union earlier in the design process, none of these costs would be at issue. Moreover, it is not true that changes cannot be made to its floor plan, but only that such changes come with a cost that are not construction costs; they are only costs

associated with relocation delays for which management is fully responsible.

Management has devised a floor plan based on a claim that it needs to reserve 55 spaces for additional employees. This claim is pure speculation. Although it has asserted that more employees will be gained following a reorganization of the Multifamily Division in Region IX, the Employer has never provided an "actual head count" or other evidence that proves the number of employees to be reassigned. And management has not produced any sort of count for the number of employees that will be gained within the next several years. The Employer has also given inconsistent figures on the number of employees currently in HUD's San Francisco Regional Office (at different times it has alleged the office has 170 employees, 162 employees, and 179 employees). Thus, management should not be permitted to rely on this asserted need to justify reducing the size of employee cubicles and offices. Even so, the Union proposal does allow for 35 vacant workstations and includes a process permitting the construction of additional workstations/offices for additional employees if, during the construction phase, "non-speculative evidence" demonstrates that identified employees will transfer to the new location.

The Union's concept "is far superior to the management plan's cube farm." As testified by an architect presented by the Union, the Union's approach supports flexibility, teamwork space, and collaboration; it allows 21st Century construction "with improved traffic flow"; (2) implements workstation and office sizes "that allow the paper intensive program work to be done efficiently"; and (3) "encourages interaction along with teamwork among the employees."

b. Employer's Position

The following wording is proposed by the Employer:

16) All employees shall be provided with a cubicle or private office meeting the requirements for the specific class of employee as determined by HUD Administrative Services Handbook 2200.01 ("Handbook 2200.01"), or in accordance with an exception or directive relating to employees entitled to a private office issued by the Deputy Secretary in existence at the time of the signing of this MOU. Management has determined that the cubicle or office size for each manager or supervisor shall be no larger than proposed

in the physical design plan attached to management's Article 38 notice to the Union [refers to the Employer's physical space plan implemented by GSA], with the exception of *de minimis* variations that may result from the construction process.

[The language that follows was proposed for paragraph 52b but because it does not address selection of workstations and furniture but concerns post-move adjustment of employee work station size and configuration and relates to directly to physical space plans, it is inserted here.]

Management will establish "Pod(s)", an open seating arrangement comprised of 4 to 6 workstations that enable employees to work together within their assigned seating area within the GSA-approved and planned 7x8 workstation configuration utilizing [SIC]. Management will also establish "teaming areas", based on the availability of vacant workstations that can accommodate a small open conference area for employees to gather and meet for team and project collaboration. A "Pod & Teaming Area Committee", comprised of equal management and union officials will meet 60-90 days after the relocation to One Sansome to determine the need and location of these areas. The process must ensure that supervisors and employees have an opportunity to evaluate and determine the need and location of both Pod and Teaming Areas, as appropriate, for their respective program area work needs. This Committee will dissolve 6 months after the decision to locate these work areas has been determined. Management agrees to complete the workstation realignment to complete the realignment of the Pods and Teaming areas within 1 year of the final decision, based on funding availability. Should teaming area space be required to support additional staff in the future, Management will reconvert the Teaming area to employee workstations.

The Employer requests the adoption of its proposal incorporating the physical space plan proposed to the Union in January 2014, which provides for 56 square feet cubicles/workstations and private offices of 125 square feet for employees (with *de minimis* variations that may arise during construction). The Union's design concept, and its requirement that the Employer maintain the same employee workstation/office size as exists in 600 Harrison Street have not been demonstrated to be feasible, and must be rejected. Relocating to Sansome

Street will result in a loss of approximately 20,000 square feet, reflecting Obama Administration initiatives directing federal agencies to reduce and more effectively manage space.

To manage this space reduction the Employer's plan makes reductions across the board, including management offices, conference space and employee workstations/cubicles. The new space needs to accommodate not only current but future employees. The HUD Region IX Director, Office of Field Administrative Resources (Region IX Director) testified that she was informed by GSA that 8 feet x 8 feet workstations/cubicles would not fit in its floor plan because of electrical designs. The Employer's floor plan "efficiently work[s] around the columns in the space, ensure[s] ADA accessibility for the corridors, and fits the required number of workstations in the smaller space selected by GSA." Importantly, it also allows for 254 cubicles and offices (for 179 current employees and 55 future employees); the Union's plan, by contrast, allows for only 190, a difference of 64 cubicles/offices. The Union's plan also removes the 12th floor law library, reduces the square footage in the mail and supply rooms, and is not drawn to scale. The One Sansome Street location will also not have enough square footage for the number of conference rooms proposed by the Union, particularly since the Union wants larger rooms. Plus, the Agency believes that the dividers for these rooms that the Union proposes would be very costly.

The Union's plan prevents the Employer from accommodating expected additional employees. Because of a planned reorganization of the Multifamily Division, the Employer needs additional spaces that will remain vacant until these employees arrive. Although this reorganization is dependent upon Congressional action, the Employer intends to fully pursue it. The Employer further plans to absorb employees from another division - Asset Development - and must also plan for potential future hires and transfers. All told, the Employer has determined that 55 employees will arrive at some point during the period of this lease. The Union's assertion that the Employer will gain only around 30 employees and never grow any larger cannot be relied upon.

The Employer has incorporated into its proposal a means for allowing flexibility after the move is completed and incorporating some elements of the Union's design concept. A procedure is created allowing the Employer and Union to manage a process of identifying where "pods" can be created from 4 to 6 workstations to create more open work environments conducive to

collaboration; and/or teaming spaces where there are empty workstations that can be disassembled.

In addition, as the Employer's witnesses testified, adopting the Union's design concept now would result in significant, costly delays because construction would "return to the drawing board." The lessor's architect would need, at a minimum, several months to create a new floor plan because it would need to "draw[] the floorplan to scale using design software and adjust[] for building dimensions for each floor of the space and programmatic adjacencies." This would push deadlines back, which in turn would trigger a cascade of negative consequences. The Harrison Street lease expires on September 16, 2014; in order to stay there until December the Employer is already obligated to pay doubled rent through December 2014. Staying beyond December 2014 would require the Employer to initiate condemnation procedures because the lessor is unwillingly to extend the lease further and the lessor may sue for damages resulting from the new lessee being unable to take over the space. All this time HUD will also be paying rent at One Sansome. Moreover, as of July 1, 2014, the City of San Francisco requires building design plans to adhere to certain additional energy efficiency standards. Because GSA submitted its floor plans in April, the Employer's current floor plan is exempt. Submitting new floor plans would require conforming to these new standards, which would "result in an estimated \$600,000 in additional construction costs for HUD." The Union's new plans can also be expected to cause construction cost increases because in San Francisco such costs are constantly escalating. As explained by HUD's Chief Administrative Officer, the agency has no budget for these additional costs, requiring it to go to Congress for additional funding.

In the Employer's view, the "small difference in cubicle size . . . balanced against the substantial disruption and added costs to the government . . . clearly should weigh in the taxpayers' favor."

2. Paragraph 18: Office Layout/Space Location [Window Offices for Managers]

a. Union's Position

The Union proposes the following:

The relative locations of workstations; conference rooms; interview rooms; and other space within the

office; i.e., the physical layout of the office space, is reflected in the Union's Design Concept proposal. The Union proposal reflects the relative locations of similar structured space at 600 Harrison Street which has been negotiated previously. Variations may occur where made necessary by the physical dimensions of the building or to accommodate the requirements of the Union's design concepts.

By requiring adherence to workstation locations as they are configured at 600 Harrison Street the Union's concept plan prohibits window seating for all but a few top managers. As a result of a negotiated agreement adopting egalitarian principles for the assignment of seating for over 10 years management has not had window seating; it seeks now to change this arrangement because some managers have complained. Pursuing this course of action would undercut this past practice. Management has not shown a need for additional supervisors to be seated at windows. The Union plan allows for the Regional Director and Deputy to have window offices as well as the Regional Counsel. The Union's plan uses the other corner window offices for conference rooms that all employees can access.

Should the Arbitrator order the adoption of the Employer's floor plan, the Union then "offer[s] to place a small buffer zone between the windows and the cubicles; and where possible, to move employee offices to the interior of the building."^{9/}

b. Employer's Position

The Employer proposes that:

"The relative locations of work areas; conference rooms; interview rooms; and other space within the office; i.e., the physical layout of the office space, is reflected in the attached[] floor plan [refers to the Employer physical space plan implemented by GSA]."

The Employer's floor plan provides corner window offices for senior level managers. Other corner spaces are designated for conference rooms. Many more managers will have interior offices, and some are being shifted to cubicles. Making all the corners conference rooms and moving management offices to the interior areas would not create more conference rooms because

^{9/} The Union does not elaborate on this concept further or explain its rationale for this suggestion.

the interior offices would have to be located in space now designated for conference rooms. The Union's proposed restriction serves no real purpose. Although management does not have window seating in the Employer's current location, managers have complained about not having natural light, so permitting a few of them to have window seating now is fair. As BUEs also have window seating, the Employer's approach is a balanced one.

3. Location of Senior Attorney's Office

a. Union's Position

The Union offers two proposals:

Alternative 1-Management Physical Design Plan: HUD employees outstationed to the current office (hereinafter "outstationed employee") shall be seated at work areas within their associated SFRO program area pursuant to Proposals 3-7, above, with the exception of the incumbent outstationed Senior Attorney who shall be seated in the office designated for the Senior Attorney by Management's physical design plan attached to its Article 38 notice, on the 10th floor. This office shall meet acoustical standard of STC greater than or equal to 45. The adjacent conference room shall be converted to the Union office in place of the Union office designated by the Management physical design plan on the 9th floor.

Alternative 2-Union Proposed Plan: HUD employees outstationed to the current office (hereinafter "outstationed employee") shall be seated at work areas within their associated SFRO program area pursuant to Proposals 3-7, above, with the exception of the incumbent outstationed Senior Attorney. The Senior Attorney, whose office shall meet acoustical standard of STC greater than or equal to 45, and the Union office shall be located in adjacent offices. The locations of the two offices shall be determined during the design process and shall be located where feasible as well as consistent with the Union's design concept plan. The two offices shall not be placed within or adjacent to the office area reserved for the Regional Counsel's office. The two offices shall be placed on the tenth floor-east side, if practicable.

If the Employer's proposed floor plan is imposed by the Arbitrator, the Union requests the adoption of Alternative 1.

The Employer's floor plan places the Senior Attorney on the 10th floor next to a conference room and a break room. The Senior Attorney is the only employee whose office is located next to two such high-traffic areas. This location would undoubtedly be noisy. Consequently, the Union proposes changing the adjacent conference room to the Union's office, which the Employer proposes to be located on the 9th floor. This configuration would reduce noise and, because the Senior Attorney is also a Union officer, would enable him to more efficiently perform both of his duties.

If the Union's proposed concept design is adopted by the Arbitrator, it requests similar accommodations but also wants memorialization that the Senior Attorney's office and the Union office will not be on the 12th floor. The Union also requests that the location of these offices be explored further during the design process of any new floor plans (with an eye towards relocating to the east side of the 10th floor, if possible). The Union, therefore, essentially seeks a plan that is similar to the Employer's plan, but its approach provides the Union with more input.

b. Employer's Position

The Employer's proposal is as follows:

HUD employees outstationed to the current office (hereinafter "outstationed employee") shall be seated at work areas within their associated SFRO program area pursuant to Proposals 3-7, above, with the exception of the incumbent outstationed Senior Attorney. Per the request of said Attorney, Management has agreed to allow the Attorney to sit in a location different from the associated SFRO program office and the Attorney shall select from two options identified by management. The two offices designated by Management are the offices on the 10th floor on the East side of the elevator, currently designated on Management's floorplan as the "Outstationed Attorney's Office" and the "Conference Room", which is directly adjacent to the Outstationed Attorney's Office. Said office shall meet acoustical standard of STC greater than or equal to 45.

It is the Union, not the Employer, that is singling out the Senior Attorney for differential treatment. The Employer has agreed to his request to be seated away from the rest of the attorney's offices on the 12th floor. But this accommodation necessarily limits his remaining seating options. The Employer's proposal treats the Senior Attorney fairly because it is consistent with the agreed-upon process that will be used to seat other outstationed employees.

4. Employee Workstation Selection

a. Union's Position

The Union's proposed wording on this issue is the following:

Workstations for Employees: The Union and management shall select up to three (3) systems furniture workstation configurations which shall be made available to employees for viewing. The workstation configurations, to the extent practicable, shall be sufficiently flexible to be used as pods (suites) or individual cubicles. All employees shall be provided with an electronic ballot on which each employee shall select one of the choices. The workstation configuration with the most votes shall be selected for all workstations. Private office furniture shall be moved from the current office to the new office with each employee retaining his/her furniture. If the private office furniture is not suitable for the private offices at One Sansome Street, e.g., the furniture will not fit or will result in an office so cramped that the employee's ability to work efficiently is impaired, the Union and management shall select up to three (3) collections of office furniture which shall be made available to employees for viewing. All employees entitled to private offices shall be provided with an electronic ballot on which the employees shall select one of the collections. The collection with the most votes shall be used for all private offices.

The parties have already bargained over workstation chairs and color schemes; bargaining should continue over the type of workstations employees will have. Management has provided the Union with a drawing of a workstation that could be converted to a pod or a cubicle, so granting employees voting options should

not be "problematic." Management must not be allowed to table this issue simply because it no longer wants to bargain over it.

b. Employer's Position

The Employer has no proposal on the subject of workstation furniture selection.

CONCLUSIONS

The initial issue to be decided is whether to order the parties to utilize the Union's design concepts in lieu of the Employer's physical space plan that has been adopted by GSA to prepare the build-out of the new HUD location. For the reasons below the Arbitrator will not order adoption of the Union's design concept.

Since April 7 the Union has been aware of both GSA's insistence on moving forward on the basis of the Employer plan, and GSA's position, concurred in by HUD, that no changes can be made at this point without incurring delays that have a substantial but also unknowable cost. The construction completion date has already been pushed back from September to December 2014 with the 600 Harrison Street lessor doubling the rent for the extension period. To have HUD stay in that location beyond December - a foreseeable consequence of ordering the Union's proposal - would likely be contested by the lessor with legal and major financial ramifications - millions of public dollars. There would also be additional costs in paying rent in two locations, incurring obligations to comply with new green building requirements, and absorbing other increased costs.

The Union is quite direct in acknowledging these consequences and justifying the results with allegations of Employer responsibility for the delays (allegations mirrored by the Employer's accusations about the Union). Great emphasis has been placed on what the Union charges as management's refusal to bring it into the process on a timely basis. The Arbitrator views this stance as, essentially, an effort by the Union to achieve remedies for what the Union believes has been a violation of its collective bargaining rights. It essentially wants the Employer ordered to restore the *status quo ante* and resume bargaining. The Panel, however, does not adjudicate statutory rights or provide remedies. The Panel's statutory responsibility is to bring impasses - failed negotiations - to a close. The question of the parties' adherence to the Statute is

currently before another component of the FLRA with dueling ULP charges having been filed by both the Employer and the Union.

Carrying out the Panel's responsibility to resolve this impasse involves addressing not legal issues but the practical realities and range of interests presented by the case. The Union's overriding interest is in maintaining the arrangements it negotiated for its current space - the same square footage, the same location of management offices - what it considers to be collectively bargained "past practice." The Employer's interests are to proceed with its space plan and conclude the move by December 31, 2014, to avoid potentially huge unbudgeted costs and liabilities. The Union reduces this concern to "only money" but the Arbitrator must take seriously a request to expose a federal agency to large unbudgeted costs and legal liability.^{10/} Under the Statute the public interest, and the effective conduct of government, are interests in the calculation as well.

The Employer's final proposal incorporates a means for making post-move modifications to reconfigure employee workstations into "pod" configurations and utilize unused space to create "teaming" areas. This post-move flexibility is a way to at least partially meet the Union's interests in not sacrificing employee space to empty workstations, and in increasing the number of areas in which groups of employees can meet together. Both of these ideas have their source in the Union's design concept.

The Union's proposal requires ordering its design concept to be used to restart the whole process when at this point we have no way of knowing whether it will work. In the arbitration hearing it was not encouraging to see that a simple hand count of the spaces in the Union's design concept added up to 64 fewer work spaces than the Employer's plan (a much higher number than the Union represented) and that certain needed offices were not accounted for. It was also not encouraging to hear that the Union's design is *premised* on accommodating significantly fewer people. As the Union's space design witness said: "The crux is the number of people we're designing for." To adopt the Union's proposal would be, in effect, to order a build-out preventing the Employer from meeting contingencies that it believes are realistic.

^{10/} 5 U.S.C. § 7101 offers collective bargaining as a means to "safeguard the public interest" and "contribute to the effective conduct of public business."

There was a point in time, maybe several points, when alternative floor plans and design concepts could have been discussed by the parties. The course of this dispute demonstrates how unfortunate it is that this did not occur. But GSA's intervention in early April changed the game. The Union's response was to simply stay on course 10 days later offering a design concept requiring HUD to dial the whole process back. It has remained unwilling to pursue its interests in any scenario other than one that, in the Arbitrator's view, cannot be reconciled with the realities of the situation. At the same time we have nothing establishing specific and compelling negative effects on employee working conditions from moving forward under the Employer's space plan.

The issue of the physical space plan having been decided, the Arbitrator's conclusions on the specific proposals are as follows:

Office Sizes, Locations and Conference Rooms (Paragraphs 16 and 18)

Having determined that the Employer's physical space plan provided in the Article 38 notice is the one to be utilized in the build-out at One Sansome Street, it follows that the employee workstation and office sizes, locations of management offices and conference rooms will be according to that plan subject to possible alteration by the post-move process included in the Employer's proposal. The latter may lead to creation of pods, and teaming areas utilizing space occupied by empty workstations.^{11/} The language being ordered is a modified version of the Employer's proposal.

Senior Attorney's Office

The Union has a proposed alternative that it urges be adopted if the Employer's physical space plan remains in place. The difficulty with this "Alternative 1" is that it converts to the Union office one of only two conference rooms on the 10th floor, a floor with a high number of workstations, and adds a second conference room to a floor with far fewer employees. This cuts directly against the strong need for conference space that the Union has asserted. Given that this alternative was not raised nor its consequences examined at the mediation-

11/ The 11th floor seems particularly to call for that exploration since there is only one conference room and it is in the interior of the building.

arbitration I am reluctant to issue an order with that result. The Employer's proposal places the Senior Attorney at the same location but keeps the adjacent space as a conference room and leaves the Union office on the 9th floor. Given the number of employees to be located on the 10th floor that result seems preferable to the Arbitrator.

Employee Workstation Furniture

The Employer's final proposal does not include language that appeared in the proposal it provided to the Panel during the investigation of this impasse. That language (paragraph 52b) describes a process for employee selection of furniture. The language inserted into paragraph 52b by the Employer in its post-mediation arbitration final proposal does not concern selection of workstation furniture but rather the reconfiguring of cubicle furniture after the move for work pods and teaming areas. Apparently, the Employer considers a selection process moot because according to an email in the record, GSA proceeded in May to order furniture. That email string shows the Union being given notice of a GSA deadline to order furniture on May 2 and requesting to assist in getting employee input on furniture. The Union's response was that this was part of the impasse before the Panel. The Panel was never informed subsequently that this proposal was no longer considered at impasse by the Employer, and this issue was one over which the Panel asserted jurisdiction in early July. Thus, it remains to be resolved.

There is no information in the record about the status of the furniture order or any costs or problems that would be caused by reopening the workstation selection process. At the same time, there is clearly an issue of timing and potential impact on the construction schedule (GSA's document says that furniture delivery by October 27 is important). The Arbitrator's decision to order the parties' MOU to incorporate the Employer's physical space plan is based on the need to avoid restarting the space design and delaying completion of the build-out and office move. Therefore, the workstation selection issue must be resolved at this point in a manner that does not undercut that intention while affording employees as much input as is feasible. The language ordered is intended to achieve that result.

As for the office furniture, it has no effect on the build out. Both parties apparently agree about having the existing furniture moved into the new space. But the Union provides for selection of new office furniture suites if the old furniture

cannot be comfortably accommodated. Since this matter received no discussion before the Arbitrator, the parties will be permitted to determine in the future how to deal with that situation if it occurs.

DECISION

The following shall be incorporated into the parties' MOU concerning the relocation of the San Francisco Regional Office from 600 Harrison Street to One Sansome Street.

Paragraph 8: The parties shall adopt the Employer's final proposal.

Paragraph 16: The parties shall adopt the Employer's final proposal. This paragraph will also incorporate the following language that is a modified version of the Employer's final proposal for Paragraph 52b:

Post-Move Creation of Pods and Teaming Areas

Management will establish pods (open seating arrangements comprised of 4 to 6 workstations enabling employees to work together from their assigned seating area with modular furniture altered to reduce physical barriers between workstations) and teaming areas (small open conference areas for meetings for team and project collaboration created by disassembling vacant workstations) in locations where a determination has been made that one or the other (or both) are needed or desirable. Such determinations will be made by a "Pod and Teaming Area Committee" comprised of equal numbers of Union and management representatives, that will be convened in 60 to 90 days after the relocation to One Sansome Street. The Committee's determination process must ensure that employees and supervisors/managers have an opportunity to evaluate and determine the need, desirability and location of pods and/or teaming areas for their respective program work areas. Other factors to be considered will be determined by the Committee. Management agrees to complete any workstation realignments to pods or teaming areas within 6 months of the determination of the Pod and Teaming Area Committee unless the Committee is informed of financial constraints and a new timetable. Should established teaming area space be required to house workstations for additional staff

in the future management will reconvert the teaming area to workstations. The Pod and Teaming Areas Committee will be dissolved 6 months after it has completed its determinations of pod and teaming area locations.

Paragraph 18: The parties shall adopt the Employer's final proposal.

Paragraph 52b: The parties shall adopt the following wording:

Workstations for Employees

Immediately upon receipt of this Arbitrator's Opinion and Decision the Employer will notify GSA that the FSIP has ordered a procedure for employee selection of workstations. Within 7 days of this Arbitrator's Opinion and Decision employees will be offered an opportunity to view the GSA-selected workstations and two alternatives and select a preferred workstation via electronic ballot. If the winning workstation is not the GSA selection, HUD will immediately notify GSA and request replacement of the workstations and delivery on a schedule permitting conclusion of the build out and move by December 31, 2014. Any financial consequences of an expedited order will be assumed by HUD if demanded by GSA.

Office Furniture

Office Furniture from 600 Harrison Street will be moved to the new location. Should issues arise about compatibility of the furniture with the new space the Union and Employer will meet to determine the process for resolving such issues.



Mary E. Jacksteit
Arbitrator

August 8, 2014
Takoma Park, Maryland