

In the Matter of

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
EDISON, NEW JERSEY

and

LOCAL 3911, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 16 FSIP 26

ARBITRATOR'S OPINION AND DECISION

The Environmental Protection Agency, Region 2, Edison, New Jersey (Employer or EPA) 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 Local 3911, American Federation of Government Employees, AFL-CIO (Union).

After an investigation of the request for assistance, which arises from bargaining over the Employer's decision to relocate approximately 43 professional employees and two clerical employees in the Division of Environment Science Assessment (DESA) from Building 10 to Building 209, Bay A, a refurbished former munitions warehouse on the Edison Environmental Center's campus, the Panel directed the parties to mediation-arbitration with the undersigned.<sup>1/</sup> On April 12 and 13, 2016, a mediation-arbitration proceeding was held in Edison, New Jersey with representatives of the parties. During mediation, the parties were unable to reach agreement. Immediately thereafter, the undersigned held a pre-arbitration session with the parties. As directed during the pre-arbitration session, the parties submitted their final offers on the floor plan and the MOU and statements of position. In reaching this decision, I have considered the entire record in this matter.

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1/ The Panel asserted jurisdiction over the floor plan for the new office and the Memorandum of Understanding (MOU) concerning the move. It declined to assert jurisdiction, however, over that aspect of the Union's floor plan proposal which concerns the location of management offices because that matter is outside the scope of bargaining.

## BACKGROUND

Typical DESA bargaining-unit positions include engineer, biologist and chemist. The primary duties of most DESA employees are to collect environmental samples and perform assessment work. The parties are covered by a collective-bargaining agreement that is in effect until August 1, 2016. The Employer determined to close Building 10 because of its age and condition, and undertake a renovation of Building 209, Bay A, where employees would be moved.<sup>2/</sup>

During Phase I of the renovation project, the space was gutted, new windows installed, and the electrical, plumbing and HVAC systems were put in place. The parties then bargained and participated in mediation over Phase II of the renovation project, which involves the floor plan and an MOU on the move, but they reached an impasse in their efforts.

## ISSUES

The parties' disagree over the size of cubicle workstations, whether there should be a buffer of 3 ft. between the windows and the workstations adjacent to them, the height of partitions surrounding the cubicles, and storage space for employee equipment. With respect to the MOU, the parties' primary dispute appears to be whether the Employer would move employee personal effects from one office to another.

## POSITIONS OF THE PARTIES

### I. Floor Plan

#### The Union's Position

Essentially, the Union proposes a floor plan with cubicle workstations measuring 96 sq. ft., surrounded by partitions that are 66-inches high and topped with translucent material that would add another 11-12 in. to the height of the partitions. Cubicles located on the perimeter of the office would be placed against the windows and there would be an internal walkway, measuring 5½ ft. wide, for access to the cubicles.

The Union contends that its proposed floor plan is consistent with the parties' past practice of building cubicles that fit the

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<sup>2/</sup> The Employer did not involve the General Services Administration in the renovation plans because EPA owns the building outright.

space available. Rather than have one standard size of cubicle, the parties have agreed in other office renovations in Region 2 to determine cubicle size based on the space available and, in the past, those cubicles have routinely been much larger than 75 sq. ft. Cubicle workstations measuring 96 sq. ft. would fit the office space in Building 209A, and provide employees with enough room to store the personal equipment they use in the performance of their duties. Workstations located near windows should be flush with the windows; such placement would create more space in the office interior thereby allowing for larger-size cubicles which can accommodate DESA employees with the space they need to properly store and manage their protective and sensitive equipment.

The Employer's plan to move employee workspace away from windows by creating a 3-ft. buffer between the windows and cubicles is unnecessary. In this regard, the Union maintains that there is no need to move workstations away from the windows because the more energy-efficient windows installed in the renovated space would protect against temperature extremes inside the office. Moreover, the larger cubicles proposed by the Union would allow employees to move their seating away from the windows should they find the temperatures cooler near them.

#### The Employer's Position

The Employer proposes a floor plan that includes cubicles measuring 88 sq. ft., enclosed by 60-in. high fabric panels that are perpendicular to the windows and 53-in. high panels that are parallel to the windows of which 42 in. would be fabric and 11 in. would consist of opaque or frosted glass. Perimeter workstations would be placed 3 ft. from the windows thereby creating a corridor between the rows of workstations and the windows. ORD employees no longer would be included in the relocation to Building 209A.

The Employer contends that leaving space between the cubicles and windows is consistent with the parties' past practice for other office configurations in Region 2, such as the renovation of Building 205B on the Edison campus. Most buildings on the complex were constructed during the early 1900s and are situated on a concrete slab which fosters heat loss through the floor and more so around the edges of the slab. Based upon a thermal study of Building 209A, and three other similar buildings on the Edison campus taken on a cold winter day on February 17, 2016, the Employer's Facilities Administrative Management Branch determined that the closer the cubicles are to the windows the lower the temperature is within the cubicle space. Thus, the Employer contends that placing cubicles next to windows will require more energy to compensate for the

decreased temperature closer to the windows and to accommodate the comfort of the employees who will occupy the external cubicles.<sup>3/</sup>

The Employer maintains that it follows the Leadership in Environmental Energy and Design (LEED) green building rating system which provides for third-party verification of buildings utilizing a rating system that could earn one of four levels of LEED certification (certified, silver, gold or platinum). For Building 209A, management is attempting to obtain one of the two higher LEED certifications. The Employer's proposal to have workstations separated from the windows with a 3-foot corridor has LEED implications because the closer the workstations are to the window, the more energy will be used to cool and heat the space. It contends that placing a 3-ft. wide corridor between the window and the cubicles increases energy efficiency and increases the LEED points the Employer would receive.

Furthermore, in order to increase the size of cubicles for the new office, the Employer no longer will include in the move six or seven employees from the Office of Research and Development (ORD) which management initially intended to be part of the relocation. By eliminating offices for ORD employees, additional space has been created to accommodate larger workstations for bargaining-unit employees. Fifty workstations are required in the new space for current DESA employees and potential new hires and, to meet that need, cubicles should be a maximum of 88 sq. ft. Employees also will be provided with adequate filing space outside of their workstations but within the 209A office space. There will be an equipment room in the office and, for all other sampling equipment, the Employer will provide storage space in Building 209C. Finally, the Employer notes that it has moved from its initial proposal of 60 sq. ft. cubicles to 88 sq. ft. cubicles while the Union has retreated from its 75-80 sq. ft. cubicle-size proposal to its current proposal that cubicles measure 96 sq. ft. Clearly, this is not the direction the parties should be moving.

#### OPINION

Having carefully considered the arguments and evidence presented in this case, the parties are hereby ordered to resolve their dispute

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3/ The study revealed that the average temperature of the floor in Building 209A, taken 3 inches from the perimeter wall, was 52.8° F. The temperature of the floor increased to 57.3° F a foot from the wall, and to 60.1° F when a temperature reading was taken 4 ft. from the wall.

on the basis of the Employer's final offer for the floor plan, to include filing space within Building 209A, that is in addition to the filing cabinets in employee workstations and storage space for sampling equipment in building 209 Bay C. The overarching disagreement on the floor plan is whether the cubicles should be located directly against the windows or whether a 36-inch corridor should buffer the space between the windows and cubicles. I credit the Employer's evidence which reveals that temperatures near the windows are lower than the temperatures farther from the windows and that a corridor between the windows and the cubicles provides a buffer that increases the temperature in the exterior cubicles lining the corridor. In its position statement, the Union, in effect, concedes that employees would be subject to colder temperatures under its floor plan when it stated that "(e)mployees would be free to have their cubicles reconfigured to face the windows if they did not suffer or mind ... temperature issues."

With respect to the parties' past practice of utilizing a corridor as a buffer between windows and cubicles, the record reveals that Building 205A, which was renovated in 2010 and viewed by the undersigned during the subject proceedings, has a corridor adjacent to the windows that is utilized as a buffer for the external cubicles in that building. I am persuaded that the Employer's floor plan, which provides a similar buffer space, would successfully accommodate the environmental issues and maximize the available space in 209A. In order to accommodate employees who will be relocating to smaller cubicle workstations, I also shall require the Employer to provide storage space in Building 209 Bay C and filing space outside employee cubicles, but within the 209A office space.

## II. Memorandum of Understanding

At the close of my meeting with the parties on April 13, 2016, the Union requested that the parties be given an opportunity to reach a voluntarily resolution on the MOU concerning the implementation of the move. The request was granted. The parties subsequently submitted to me their final offers on the MOU which show no apparent movement towards a voluntary agreement.

### OPINION

The record reveals that the parties' primary dispute in the MOU concerns whether employee personal effects should be transported by the Employer to the new office. The Union contends that the past practice has been for the Employer to make such an accommodation. The Employer objects on the basis that it does not want any liability should the personal property of employees be lost or damaged during

the transition. In resolution of the MOU issues, I shall order the parties to adopt the Employer's final offer, modified to provide that the Employer will transport to the new office properly packed personal items of employees but the Employer shall not be responsible for any loss or damage to them that may occur during the move.

### DECISION

#### Floor Plan

The parties shall adopt the Employer's final offer, to include adequate filing space outside of employee workstations, but within Building 209A office space and storage space in Building 209C for sampling equipment.

#### Memorandum of Understanding

The parties shall adopt the following modified version of the Employer's final offer:

#### MEMORANDUM OF UNDERSTANDING

This Memorandum of Agreement (MOA) is between the American Federation of Government Employees (AFGE), Local 3911 ("Union") and EPA, Region 2 ("Agency"); collectively called "the parties," and pertains to the relocation of Division of Environmental Science and Assessment (DESA) employees located in Building 10 and Building 209 Bay B to Building 209 Bay A on the Edison New Jersey campus.

#### General and Logistics

The Region shall continue to adhere to the law and the National Reasonable Accommodations Program Agreement with regard to reasonable accommodation issues associated with the move.

The new space shall conform to provisions in the Master Collective Bargaining Agreement between EPA and AFGE, and relevant local Supplemental Agreements between Region 2 and AFGE.

The Region shall maintain adequate space for EPA official files. The Region shall make available the Region's Records Liaison Officer to work with

effected staff prior to any move to determine filing needs and options for relocating files.

To the extent practicable, employees may retain their current phone number.

Bargaining unit employees will be provided as much advance notice of their moving date as possible but not less than two weeks.

DESA shall hold "clean up days" prior to the move. Clean up days may begin immediately and continue, periodically, until the effective date of the move.

Employees shall be provided with sufficient quantities of boxes, tape and all other necessary moving materials.

The Agency will provide moving services to transfer items owned by the Agency and personal items of employees that are properly packed.

The Region will hold no less than two information sessions with bargaining unit employees to discuss relocation and address comments and concerns. The first meeting will be held as soon as possible. The second meeting will be held no less than 1 month prior to commencement of moves. The Union shall be notified and provided the opportunity to attend any formal discussions related to the implementation of this agreement held between a member(s) of management and bargaining unit employees to the extent required by law.

The Agency shall ensure that all fire regulations, protocols and procedures are adhered to and that fire warden assignments are updated and posted to reflect changes associated with the move.

#### Workstation Selection

(The parties may adopt the final Regional seating plan being developed by the Local Labor

Management Partnership Council; however, for now the following proposal shall suffice)

The spaces available for consideration will be those identified on the floor plans for the employees' Branch or organization. Employees may only select seating from those within their Branch which is identified on the drawings.

Employees who are in need of a specific workstation due to a medical condition, must follow the procedures set forth by the EPA National Reasonable Accommodation Procedures (NRAP). Any employee who has a medically documented need for a reasonable accommodation under the Rehabilitation Act/ADA and National Reasonable Accommodation Program agreement (NRAP) for which selection of a cubicle is formally determined to be an appropriate and necessary accommodation under the above, shall select in their order of seniority as defined below, though a workstation that satisfies their Reasonable Accommodation needs will be reserved. Some examples of Reasonable Accommodations that relate to workstation location may include but are not limited to, proximity to restrooms, ramps, automatic exit doors, sun light or equivalent and others.

Definition of Seniority: If more than one bargaining unit employee selects a particular workstation in the area designated for their relocation, selection of new workstations shall be governed in the order specified below within those areas designated on the floor plans for the employee's Branch and provided such selection does not excessively interfere with the Agency's mission.

Barring Reasonable Accommodations, for all bargaining unit employees, the order of workstation (cubicle) selection will be as follows:



Non-Managerial Bargaining Unit Staff\* GS-15 to GS-1:

1. by EPA EOD date,
2. if a tie, Federal government-wide SCD date,
3. if a tie, coin flip.

\*It is understood that clerical staff and some administrative staff shall be assigned to appropriate workstations outside of this selection process.

The employee's SCD that is used in this workstation selection criterion is specified on the employee's most recent Standard Form 50, Notification of Personnel Action.

This procedure is for the sole purpose of this relocation and is non-precedential.

To facilitate this process, at the time a particular group of bargaining unit employees are notified of their move and need to make workstation selections, the Agency will make available to the Union and those bargaining unit employees being moved, a list of those employees showing their arranged grade and Government-wide SCD. Disputes over seniority will be handled on a case by case basis between the employee, Union and Management in an informal way if at all possible.

#### Packing and Moving


Employees will be responsible for packing their own personal property in the office (e.g., plants, pictures, radios, etc.). Employees will also be responsible for packing Agency owned property that is within the employee's area of responsibility. For example, this property may include, but is not limited to files, books, disks, and other non-electronic equipment at the employee's workstation. Employees can move their own laptops, but the Agency will be responsible for packing desktop computers and electronic equipment at the employee's workstation including, but not limited to monitors, printers,

scanners, etc. The Agency is not responsible for employees' personal property that are left behind, lost or broken at the existing facility, in transit or at the new facility.

The Agency will provide the time and appropriate materials (e.g. boxes and tape) for employees to pack their work-related materials and files in and around their existing workstations and their personal items. Employees will be required to mark-up boxes and other moveable Agency property with specific information. The Agency will ensure that common areas and materials are packed. The Agency will move all Agency property and material, and employee personal items unless employees elect to move personal items themselves. Further guidance and instruction on packing and identifying Agency property and boxes will be given closer to the relocation date.

**Precedence**

The procedures set forth in this MOU have no precedential affect and are solely for the purpose of negotiations over the up and coming relocation of DESA employees to Building 209 A in Edison, New Jersey.



Marvin E. Johnson  
Arbitrator

May 19, 2016  
Silver Spring, Maryland