66 FLRA No. 69

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3937
(Union)

and

SOCIAL SECURITY ADMINISTRATION
(Agency)

0-NG-3056

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DECISION AND ORDER
ON NEGOTIABILITY ISSUES

November 30, 2011

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members[1]

I. Statement of the Case

This case is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute) and concerns the negotiability of two proposals relating to the relocation of the Agency's Mount Vernon, Washington Field Office (Field Office). The Agency filed a statement of position (SOP), to which the Union filed a response (response). The Agency filed a reply (reply) to the Union's response.

For the reasons that follow, we find that the proposals are outside the duty to bargain. Accordingly, we dismiss the petition for review (petition).

II. Background

While bargaining over the relocation of the Field Office, the Union submitted to the Agency the proposals at issue. SOP at 1. During negotiations between the parties, the Agency informed the Union that it planned to begin remodeling the new leased space (building). Record of Post-Petition Conference (Record) at 1. When the remodeling was completed, the Agency relocated the Field Office to the new building.[2] *Id.*

III. Preliminary Issue: Proposals 3 and 4 are not moot.

After the Agency moved the Field Office to the new building, the Union submitted its petition to the Authority. Agency's Response to Order to Show Cause at 2. Noting that proposals that address events that have already occurred are moot, the Authority issued an Order directing the parties to show cause why the Union's petition should not be dismissed as moot. Order to Show Cause (Order) at 2.[3]

The Union asserts that Proposals 3 and 4 are not moot because they are "meant to address ongoing conditions of employment." Union's Response to Order at 2. Moreover, the Union claims that "the relocation of the [Mount] Vernon office [will affect] . . . employees for years to come." *Id.* at 3.

The Agency argues that Proposals 3 and 4 are moot because they address the construction of the Field Office, which has already been completed. Agency's Response to Order at 2-3. Also, the Agency contends that "the Union should not be given through litigation what it failed to gain through bargaining" and that it has the opportunity to bargain at the national level as the parties currently are negotiating over a new national agreement. *Id.* at 3 (emphasis omitted).

Section 2429.10 of the Authority's Regulations states that the Authority will not issue advisory opinions. *See* 5 C.F.R. § 2429.10. Thus, where the issues that led to the filing of a negotiability petition for review have been resolved, or where there is no longer a dispute between the parties, the Authority will dismiss the petition for review as moot. *See AFGE, Nat'l Veterans Admin. Council*, 41 FLRA 73, 74 (1991) (citing *AFGE, Local 85*, 32 FLRA 210, 211-12 (1988)). Mootness, therefore, is a threshold jurisdictional issue. *See AFGE, Council 238*, 64 FLRA 223, 225 (2009) (citing *Ass'n of Civilian Technicians, Show-Me Army Chapter*, 59 FLRA 378, 380 (2003)). The burden of demonstrating mootness is heavy and falls on the party urging mootness. *Id.*

Although the Agency argues that Proposals 3 and 4 are moot, implementation of the proposals is not limited by a particular event or timeframe. Rather, the proposals' operation could have a prospective impact on

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[1] Member DuBester's separate opinion, dissenting in part, is set forth at the end of this decision.

[2] The Union sought assistance from the Federal Service Impasses Panel (Panel) in resolving the dispute, but the Panel declined jurisdiction over the proposals that are in dispute. Record at 1.

[3] In responses to the Order, the parties agree that Proposal 1 is moot. *See* Union's Response to Order at 1; Agency's Response to Order at 1. Therefore, we dismiss the petition as to Proposal 1. *See Nat'l Air Traffic Controllers Ass'n, Local ZHU*, 65 FLRA 738, 739 (2011) (finding that, when proposals are moot, the Authority dismisses the petition as to those proposals).

employees. As such, the parties continue to have a legally cognizable interest in the outcome. *See Nat'l Air Traffic Controllers Ass'n, Local ZHU*, 65 FLRA 738, 740-41 nn. 4 & 5 (2011) (finding proposal not moot when proposal could benefit employees in the future); *Nat'l Ass'n of Gov't Emps., Local R1-109*, 64 FLRA 132, 133 (2009) (Member Beck dissenting as to another matter) (same). Accordingly, we find that the petition is not moot as to Proposals 3 and 4.

IV. Proposal 3

A. Wording

> The existing door to the employee space on the [w]est wall of the building will be the primary employee entrance.

Petition at 6.

B. Meaning

The proposal requires the Agency to designate the emergency door located furthest away from the public entrance on the west wall of the building as the primary employee entrance.[4] Record at 2. According to the Union, the purpose of the proposal is to move the primary employee entrance to the west wall of the building to protect employees from transients who frequent the east side of the building. *See id.*; Petition at 6 (noting that, while the west wall has windows that allow employees to observe co-workers approaching or leaving the building, the east wall does not have windows, and "transients frequent the [e]ast side, in part because there are train tracks running along that side of the building").

C. Positions of the Parties

1. Agency

The Agency argues that Proposal 3 affects management's right, under § 7106(a)(1) of the Statute, to determine internal security practices. SOP at 2-3. In this regard, the Agency contends that the Union's proposal inhibits its ability to choose the method by which it will maintain the security of the workplace. *See id.* at 2. Moreover, the Agency maintains that there is a link between its ability to maintain internal security and the placement of the primary employee entrance. *Id.* Specifically, the Agency argues that it is easier to secure only two, rather than three, employee entrances. *Id.* According to the Agency, the current employee entrances are more secure than the proposed entrance because they have solid metal doors as opposed to glass doors. *Id.* Also, the Agency contends that, because members of the public who "have not yet been screened by the security guard" congregate along the west side of the building before the office opens, it is necessary "to establish some physical distance between members of the public gathering outside and the entryway where Agency employees regularly report for duty." *Id.* at 2-3. The Agency maintains that, although long hallways separate the current entrances from employee work space, the proposed entrance would be within only four feet of work space if the office expands. *Id.* at 3. Additionally, the Agency argues that it is concerned with safeguarding private information and that the locations of the current entrances "reduce the risk of unauthorized access to and disclosure of such information." *Id.*

Also, the Agency contends that the proposal is not an appropriate arrangement under § 7106(b)(3) of the Statute. *Id.*; Reply at 3-5, 8. In this regard, the Agency argues that the Union has failed to demonstrate that this proposal constitutes an arrangement for employees adversely affected by the exercise of a management right. SOP at 3; Reply at 3-5. The Agency maintains that the Union has not identified the "reasonably foreseeable effects on employees that flow from the exercise of management's [right] and how those effects are adverse." Reply at 3, 4. According to the Agency, the Union's alleged "benefits" are speculative because the door that "the Union proposes serve as the 'primary employee entrance' [actually] is used as an employee exit." *Id.* at 4. Also, the Agency contends that the Union's fear that employees might be accosted by transients while entering the building is speculative because both of the current entrances are well lit and clear of visual obstructions, and the train tracks running alongside the east wall are "some distance from the building and separated by a gully, blackberry bushes, and [a] chain-link fence." *Id.* Moreover, the Agency argues that the Union's proposal does not constitute an arrangement because it is not sufficiently tailored to compensate or benefit employees who are adversely affected by the exercise of a management right, but, rather, applies indiscriminately to all employees. *Id.* at 5. Finally, the Agency maintains that the Union has failed to demonstrate that the proposal is an appropriate arrangement because it "excessively interferes with management's right to determine its

[4] The building has four doors along both the east and the west walls. Petition at 6. According to the Union, "[m]anagement proposed that the door farthest [n]orth on the [e]ast wall be used for deliveries, . . . [that] the door farthest [s]outh on the [e]ast wall be the primary employee entrance[,] . . . [that the door] at the [n]orth end of the [w]est wall" be the visitor entrance, and that "all other existing doors . . . be secured and alarmed as emergency exits only." *Id.*

internal security practices" by completely negating the Agency's security decision.[5] SOP at 3.

2. Union

The Union asserts that the proposal does not affect the Agency's right to determine its internal security practices. *See* Response at 2-3. In this regard, the Union claims that its proposal neither expands access points nor changes existing security practices. *Id.* at 2. Specifically, the Union maintains that its proposal does not require the Agency to have more than two employee entrances. *Id.* The Union asserts that solid metal doors are not as secure as glass doors because "employees entering or exiting the building through an east wall door cannot see who, if anyone at all, is on the other side of the wall," and employees entering the building cannot summon help from a co-worker already in the building if accosted by a transient. *Id.* According to the Union, the majority of employees are already inside the building when visitors congregate around the visitor entrance; the visitor entrance is far from the proposed employee entrance; and a large number of visitors rarely are waiting by the visitor entrance before the doors open. *Id.* at 3. The Union maintains that the location of the proposed employee entrance would not reduce the Agency's ability to safeguard sensitive information because "[s]ensitive information on a computer or desk placed four feet from a locked glass employee entry after office expansion would be no less secure than if such information [were] four feet from a locked glass emergency exit." *Id.* Moreover, the Union asserts that intruders could be stopped more easily at the proposed entrance because employees would be more likely to see an intruder if their work stations were near the door than if they were separated from the door by a long hallway. *Id.*

Also, the Union claims that the proposal constitutes an appropriate arrangement. Specifically, the Union maintains that the proposal is an arrangement "for employees who are now more vulnerable to attack with the princip[al] employee entrance in a wall with no glass." *Id.* Finally, the Union maintains that the proposal does not excessively interfere with management's right to determine its internal security because the proposal does not negate the Agency's security decision, nor even hamper its ability to accomplish its mission. *Id.* at 3-4.

[5] The Agency also argues that Proposal 3 does not constitute a negotiable procedure. SOP at 3. As the Union does not claim that Proposal 3 is a procedure, we will not address this argument further. *See AFGE, Local 1367*, 64 FLRA 869, 874 n.11 (2010) (Member Beck dissenting in part) (noting that the agency argued that two proposals did not constitute procedures but determining that, because the union did not claim that the two proposals were procedures, there was no need to address the agency's argument further).

D. Analysis and Conclusions

1. Proposal 3 affects the Agency's right to determine its internal security.

The right to determine internal security practices includes the authority to determine the policies and practices that are part of an agency's plan to secure or safeguard its personnel, physical property, or operations against internal and external risks. *AFGE, Fed. Prison Council 33*, 51 FLRA 1112, 1115 (1996) (*Council 33*). The Authority has concluded that, where management shows a link, or a reasonable connection, between its objective of safeguarding its personnel, physical property, or operations and an investigative technique designed to implement that objective, a proposal that "conflicts with" that investigative technique affects management's rights under § 7106(a)(1). *Id.* (citations omitted). Once a link has been established, the Authority will not review the merits of an agency's plan in the course of resolving a negotiability dispute. *AFGE, Local 2143*, 48 FLRA 41, 44 (1993) (Member Talkin concurring) (citations omitted).

As set forth above, the Agency contends that it has demonstrated a reasonable connection between its internal security objectives of protecting employees, property, and operations, and its policy of having only two employee entrances on the east side of the building. *See* SOP at 2-3. The Authority previously has held that, where supported by a showing of a reasonable connection to internal security considerations, the determination of when and how employees gain access to agency facilities is within an agency's authority to determine its internal security practices. *See Patent Office Prof'l Ass'n*, 41 FLRA 795, 837 (1991) (*POPA*); *AFGE, Local 12, AFL-CIO*, 17 FLRA 674, 681 (1985) (finding that alarming of doors and limiting access to the work area clearly are measures directly related to the internal security of the agency); *see also AFGE, Local 1712*, 62 FLRA 15, 17 (2007) (noting that provisions dealing with locked doors in the workplace fall within management's right to determine its internal security practices).

Here, the Agency has chosen to limit "the number and kinds of access points to its facilities . . . [to] reduce [the] risk of unauthorized access from both internal and external threats." SOP at 2; *see also id.* at 3 (asserting that the current access points "reduce the risk of unauthorized access to and disclosure of" private information). The Agency has determined that the current employee entrances are more secure than the proposed employee entrance because they have solid metal doors as opposed to glass doors. *Id.* at 2. Moreover, the Agency has decided that it is necessary "to

establish some physical distance between members of the public gathering outside [who have not been screened] and the entryway[s] where Agency employees regularly report for duty." *Id.* at 2-3. Consistent with Authority precedent, we find that the Agency has established a reasonable link between its policy of having only two employee entrances on the east wall of the building and its internal security objectives. *See POPA*, 41 FLRA at 837 (concluding that, by demonstrating a need to control access to its facilities based, for example, on the presence of confidential and classified documents, the agency established a reasonable link between its practices and its internal security objectives).

The Union's arguments do not lead to a different conclusion. For instance, the Union argues that, at the Field Office, solid metal doors are not as secure as glass doors because employees entering or exiting the building would be unable to see if anyone was waiting outside the door. Response at 2. Also, the Union contends that sensitive "information on a computer or desk placed four feet from a locked glass employee entry after office expansion would be no less secure than if such information [were] four feet from a locked glass emergency exit." *Id.* at 3. However, the Authority does not review the merits of an agency's policy once it has established a reasonable link between its policy and its internal security objectives. *E.g.*, *AFGE, Local 221*, 64 FLRA 1153, 1157 (2010); *Int'l Fed'n of Prof'l & Technical Eng'rs, Local 25*, 33 FLRA 304, 307 (1988) (*IFPTE, Local 25*). Therefore, because the Agency has established a reasonable link between its policy and its internal security objectives, the Union's arguments challenging the merits of the Agency's policy fail. *See, e.g.*, *AFGE, Local 221*, 64 FLRA at 1157 (concluding that the union's contention that the testing method proposed by the agency did not detect or prevent tuberculosis and that a blood test was more reliable provided no basis for concluding that the agency's testing policy did not affect internal security); *IFPTE, Local 25*, 33 FLRA at 307 (finding that, although the union challenged the agency's determination that the new weapons policy was necessary to safeguard its installations, it would not review the agency's determination that its practice was necessary to protect the security of its installations because it established a link between its practice and its expressed security concern).

Moreover, by requiring the Agency to designate a door on the west wall as the primary employee entrance, the Union's proposal prohibits the Agency from having only two employee entrances on the east wall; as such, it conflicts with the Agency's policy. *See* Response at 1 (noting that the proposal states that the "existing door to the employee space on the [w]est wall of the building will be the primary employee entrance").

Based on the foregoing, we find that this proposal affects management's right to determine its internal security practices under § 7106(a)(1) of the Statute. *See AFGE, Local 1712*, 62 FLRA at 17-18 (finding that, by proposing that the information technology (IT) office door remain closed during business hours, the union, in effect, was proposing that the IT employees work behind a locked door, which affected the agency's ability to protect its personnel); *cf. AFGE, Local 221*, 64 FLRA at 1157 (concluding that, because the union's proposals obviously conflicted with the agency's policy of making annual testing mandatory, they affected management's right to determine its internal security practices).

2. Proposal 3 is not an appropriate arrangement.

The framework for determining whether a proposal is within the duty to bargain under § 7106(b)(3) is set out in *National Association of Government Employees, Local R14-87*, 21 FLRA 24 (1986) (*KANG*). Under that framework, the Authority initially determines whether a proposal is intended to be an "arrangement" for employees adversely affected by the exercise of a management right. *Id.* at 31. An arrangement must seek to mitigate adverse effects "flowing from the exercise of a protected management right." *U.S. Dep't of the Treasury, Office of the Chief Counsel, Internal Revenue Serv. v. FLRA*, 960 F.2d 1068, 1073 (D.C. Cir. 1992). To establish that a proposal is an arrangement, a union must identify the reasonably foreseeable effects on employees that flow from the exercise of management's rights and how those effects are adverse. *See KANG*, 21 FLRA at 31. Proposals that address speculative or hypothetical concerns do not constitute arrangements. *See, e.g., NFFE, Local 2015*, 53 FLRA 967, 973 (1997). The alleged arrangement must also be sufficiently tailored to compensate or benefit employees suffering adverse effects attributable to the exercise of management's rights. *See, e.g., AFGE, Local 1687*, 52 FLRA 521, 523 (1996). If a proposal is an arrangement, then the Authority then determines whether it is appropriate, or whether it is inappropriate because it excessively interferes with the relevant management rights. *KANG*, 21 FLRA at 31-33. The Authority makes this determination by weighing "the competing practical needs of employees and managers" to ascertain whether the benefit to employees flowing from the proposal outweighs the proposal's burden on the exercise of the management right or rights involved. *Id.* at 31–32.

Even assuming that Proposal 3 constitutes an arrangement, we find, for the following reasons, that it excessively interferes with the Agency's right to determine its internal security practices. *See Int'l Fed'n of Prof'l & Technical Eng'rs, Local 1*, 49 FLRA 225,

244 (1994) (*IFPTE, Local 1*) (concluding that, even assuming the proposal constituted an arrangement, it was not an appropriate arrangement because it excessively interfered with the exercise of management's right to determine its internal security practices).

Focusing first on the proposal's benefits to unit employees, as described by the Union, the proposal is intended to protect employees from transients who frequent the east side of the building. Record at 2; Petition at 6; *see also* Response at 3 (asserting that the proposal constitutes "an appropriate arrangement for employees who are now more vulnerable to attack with the principle employee entrance in a wall with no glass"). According to the Union, while the west wall has windows that allow employees to observe co-workers approaching or leaving the building, the east wall does not have windows, and "transients frequent the [e]ast side, in part because there are train tracks running along that side of the building." Petition at 6. However, the Agency challenges the Union's claim that employees will benefit from the proposal. In this regard, the Agency contends, and the Union does not dispute, that both of the current entrances are well lit and clear of visual obstructions, and the train tracks running alongside the east wall are "some distance from the building and separated by a gully, blackberry bushes, and [a] chain-link fence." Reply at 4. Also, the Union does not provide any support for its claim that transients could harm employees while entering or exiting employee entrances on the east wall of the building. *See id.* at 5 (maintaining that the Union has not presented any evidence indicating that a problem exists). Moreover, because the Agency has already taken steps to mitigate the Union's alleged adverse effects, including permitting employees to exit the building through the door that the Union wants designated as the primary employee entrance, the added benefit to employees is limited. *See id.* at 4 (indicating that it already allows employees to use the proposed employee entrance as an exit).

With regard to the burden on management's right to determine its internal security practices, the proposal would force the Agency to change the access points to its facility. *See* SOP at 3 (arguing that the current access points "reduce the risk of unauthorized access to and disclosure of" private information). Also, as noted by the Agency, the proposal would require it to have a glass door, as opposed to a solid metal door, on the proposed employee entrance and would compel the Agency to locate the primary employee entrance on the same wall as the visitor's entrance. *See id.* at 2 (contending that "the 'existing door' the Union refers to is a glass door" and that "the solid metal doors on the two current employee entrances are more secure for employee entrances"); *see also id.* at 2-3 (arguing that, for security reasons, it decided to locate the employee entrances on the east wall "to establish some physical distance between members of the public gathering outside and the entryway[s] where Agency employees regularly report for duty" because members of the public who "have not yet been screened by the security guard" congregate along the west side of the building before the office opens).

After weighing the putative benefits afforded to employees against the burdens on management's right to determine its internal security practices, we find that the burdens placed on the Agency outweigh the benefits to employees. Consequently, we find that the proposal excessively interferes with management's right and is not an appropriate arrangement. *See NTEU*, 62 FLRA 267, 271-72, 273 (2007) (finding that proposals two and four were not appropriate arrangements because they excessively interfered with management's right to determine its internal security practices); *IFPTE, Local 1*, 49 FLRA at 244 (finding that, because a particular proposal excessively interfered with management's right to determine its internal security practices, it did not constitute an appropriate arrangement). Accordingly, we conclude that Proposal 3 is not within the duty to bargain.

V. Proposal 4

A. Wording

> Polycarbonate shield will be installed at each of the four Reception Station windows.

Record at 2; Petition at 7.

B. Meaning

The parties agree that the proposal requires "the Agency to install [a] polycarbonate shield . . . between the employee and public visitors at each of the four reception stations." Record at 2.

C. Positions of the Parties

1. Agency

The Agency contends that the proposal affects its right to determine its internal security practices. SOP at 5-6. Specifically, the Agency argues that it has established a link between its security objective, namely protecting employees, equipment, and information, and its policy of installing only one transparent barrier. *Id.* at 6. According to the Agency, it has "determined that the proper method for safeguarding front-line personnel, government property, and public information . . . was to install a transparent barrier wall behind members of the public who are being served at the front counter." *Id.*

The Agency maintains that adding a polycarbonate shield at each reception window would reduce visibility and sound and "frustrate the on-site security guard's ability to . . . monitor and/or respond to emerging security incidents." *Id.* Moreover, the Agency contends that it has taken the following measures to protect the safety and health of employees working at the reception windows: (1) hiring an armed security guard and posting the guard in the reception area, (2) requiring the guard to search individuals' bags before they enter the building, (3) locking doors to employees' areas, (4) installing deep counters and heavy roll-down shutters at each reception window, (5) placing duress alarms at reception windows and interview stations, (6) creating systems "to warn and alert employees when they are presented with a visitor [who] has acted out in the past," and (7) providing employees with, among other things, tissues, hand sanitizer, N-95 respirator masks, and free influenza vaccines. Reply at 7.

The Agency argues that the proposal is not an appropriate arrangement under § 7106(b)(3) of the Statute. SOP at 6; Reply at 5-8. In this regard, the Agency notes that the Union's response "does not address whether [the] proposal is either appropriate or an arrangement." Reply at 5 n.4. Also, the Agency contends that the proposal does not constitute an arrangement for employees adversely affected by the exercise of a management right. *Id.* at 5-8. The Agency maintains that the Union's claimed harm is not reasonably foreseeable because most businesses in Mount Vernon do not use polycarbonate shields at reception windows, and the Agency has many offices without polycarbonate shields at reception and interview stations. *Id.* at 6. According to the Agency, the Union has not demonstrated that the shields are necessary to protect employees from spittle or communicable diseases and to prevent the public from touching them or throwing objects at them. *Id.* Moreover, the Agency argues that the proposal is not tailored to benefit only adversely affected employees because the "polycarbonate shields form a barrier for all employees at all reception windows . . . [and shield] against all members of the public, whether they are known to be violent or have contagious diseases or not." *Id.* at 7. Also, the Agency contends that, even if the proposal constitutes an arrangement, it is not appropriate because it completely negates the Agency's security decision.[6] *See* SOP at 6.

Also, the Agency argues that the proposal interferes with its right, under § 7106(b)(1) of the Statute, "to determine the technology, methods, and means of performing work" and that it has not elected to bargain over the proposal. *Id.* at 4. In this regard, the Agency contends that the proposal concerns the methods and means of performing work because there is a direct and integral relationship between the method and means that it has chosen, namely a low transparent barrier separating the employees from visitors, and the accomplishment of its mission. *See id.*; Agency's Response to Order at 2 (noting that, given the Agency's mission is "to administer programs such as retirement, disability, and survivor's benefits, it is essential that [its] offices are welcoming and allow the public to speak confidentially with . . . employees"). According to the Agency, "there is a direct and integral relationship between the absence of a second barrier and the Agency['s] need to enhance visibility and sound transmission" and "to enhance the on-site security guard's ability to . . . monitor and/or respond to emerging security incidents." SOP at 4. Moreover, the Agency maintains that the proposal would interfere directly with the mission-related purposes behind its decision not to install a second barrier. *Id.* Additionally, the Agency argues that, because "there is a technological relationship between having only one barrier and the accomplishment . . . of the Agency's work," the proposal interferes with the Agency's decision as to the technology of performing work. *Id.* at 5.

Finally, the Agency contends that it has no duty to bargain over the proposal because it is covered by Article 9 of the collective bargaining agreement (parties' agreement). *Id.* at 6-7. According to the Agency, "Article 9, titled 'Health and Safety[,]' . . . provides for specific procedures to address employee [h]ealth and [s]afety," *id.* at 6, and includes Section 20, titled Moves, Expansions, Relocations, and Renovations, *id.* at 6-7.

2. Union

The Union claims that the Agency has not demonstrated that the proposal affects its right to determine its internal security. Response at 5. In this regard, the Union maintains that the Agency's current barrier, a low, transparent barrier wall, "was not installed for the purpose of protecting employees from visitors in the waiting area, and does nothing to protect them from visitors . . . who . . . represent a potential threat to their health and safety." *Id.* According to the Union, the Agency trains its employees to use duress buttons to summon help if threatened or assaulted, rather than to shout to the security guard for help. *Id.* In addition, the Union claims that, despite the presence of a shield, the security guard is likely to hear an employee shout for help and that, with a shield, "there would be no chance that an employee under attack could be . . . rendered unable to speak or shout." *Id.* Moreover, the Union asserts that the "shields separate employee from visitor[s], not the guard from the visitors, so the guard's

[6] The Agency also argues that Proposal 4 does not constitute a negotiable procedure. SOP at 6. Because the Union does not claim that Proposal 4 is a procedure, we will not address this argument further. *See AFGE, Local 1367*, 64 FLRA at 874 n.11.

ability to monitor or respond to incidents involving visitors is in no way reduced." *Id.* at 4.

The Union claims that the proposal is an appropriate arrangement. *Id.* at 5. The Union maintains that "the Agency stands on its [m]anagement rights, while refusing to acknowledge that 5 U.S.C. [§] 7106(b)(3) constitutes a limitation on them, or an exception to them" and that the Agency's position "that any interference with the exercise of [m]anagement rights makes an arrangement inappropriate" is contrary to the Statute and case law interpreting it. *Id.* at 5-6.

Also, the Union asserts that the proposal does not interfere with the Agency's § 7106(b)(1) rights under the Statute. *Id.* at 4-5. According to the Union, the proposal "has nothing to do with how the Agency performs its work, or what it uses, or technology," and the "work of the Agency is accomplished in exactly the same way, with or without polycarbonate shields at reception stations." *Id.* (emphasis omitted). Finally, the Union claims that Article 9 clearly does not cover polycarbonate shields at reception windows. *Id.* at 6.

D. Analysis and Conclusions

1. Proposal 4 affects management's right to determine its internal security practices.

As noted above, the right to determine internal security practices includes the authority to determine the policies and practices that are part of an agency's plan to secure or safeguard its personnel, physical property, or operations against internal and external risks. *Council 33*, 51 FLRA at 1115.

The Agency argues that it has demonstrated the requisite link between its internal security objectives, namely protecting employees, equipment, and information, and its policy of having only one transparent barrier separating employees from visitors. SOP at 6. According to the Agency, it decided "that the proper method for safeguarding front-line personnel . . . from external risks was to install a transparent barrier wall behind members of the public who are being served at the front counter." *Id.* The Agency chose to install only one transparent barrier because it determined that adding polycarbonate shields at each reception window would limit visibility and sound transmission. *Id.* Also, the Agency determined that installing polycarbonate shields would "frustrate the on-site security guard's ability to . . . monitor and/or respond to emerging security incidents" and that the absence of such shields would facilitate "quick, immediate verbal and non-verbal communication with the security guard" and allow it to assess a potential threat before that threat becomes immediate. *Id.* Moreover, the parties do not dispute the fact that the transparent barrier is low and that it does not prevent the security guard from viewing the reception area or block his ability to hear. *Id.*; Response at 4. Consequently, we find that the Agency has established a reasonable link between its policy of having only one transparent barrier and its internal security objectives. *See AFGE, Local 1712*, 62 FLRA at 17 (finding that, because the agency established a reasonable connection between its security objective of safeguarding the well-being of its IT employees and equipment and its policy intended to implement that security objective, namely keeping the door to the IT office open so as to allow quick, immediate visual and physical access to the IT office, it demonstrated that the proposal affected its right to determine internal security).

The Union's arguments do not lead to a different conclusion. The Union argues that the transparent barrier wall "does nothing to protect [employees] from visitors . . . who . . . represent a potential threat to their health and safety." Response at 5. However, as stated previously, the Authority does not review the merits of an agency's plan once it has established a reasonable link between its policy and its internal security objectives. *E.g.*, *AFGE, Local 221*, 64 FLRA at 1157; *IFPTE, Local 25*, 33 FLRA at 307. Therefore, because the Agency has established a reasonable link between its policy and its internal security objectives, the Union's arguments challenging the merits of the Agency's policy fail. *See, e.g.*, *AFGE, Local 221*, 64 FLRA at 1157; *IFPTE, Local 25*, 33 FLRA at 307.

Moreover, by requiring the Agency to install a polycarbonate shield at each reception window, the Union's proposal prohibits the Agency from having only the low, transparent barrier; as such, it conflicts with the Agency's policy. *See* Petition at 7 (noting that the proposal states that a "polycarbonate shield . . . will be installed at each of the four [r]eception [s]tation windows"). Accordingly, we find that this proposal affects management's right to determine its internal security practices under § 7106(a)(1) of the Statute. *See U.S. Dep't of the Treasury, Internal Revenue Serv., Dallas Dist.*, 19 FLRA 979, 981 (1985) (finding that a proposal that required the installation of a barrier or device in front of the office to restrain the general public from entering the area to obtain tax forms and information interfered with the agency's right to determine its internal security practices); *cf. AFGE, Local 221*, 64 FLRA at 1157 (determining that, because the union's proposals obviously conflicted with the agency's policy of making annual testing mandatory, they affected management's right to determine its internal security practices).

2. Proposal 4 is not an appropriate arrangement.

As noted above, the framework for determining whether a proposal is within the duty to bargain under § 7106(b)(3) is set out in *KANG*. Under that framework, the Authority initially determines whether a proposal is intended to be an "arrangement" for employees adversely affected by the exercise of a management right. *KANG*, 21 FLRA at 31. If a proposal is an arrangement, the Authority then determines whether it is appropriate, or whether it is inappropriate because it excessively interferes with the relevant management rights. *Id.* at 31-33. The Authority makes this determination by weighing "the competing practical needs of employees and managers" to ascertain whether the benefit to employees flowing from the proposal outweighs the proposal's burden on the exercise of the management right or rights involved. *Id.* at 31-32.

Even assuming that Proposal 4 constitutes an arrangement, we find, for the following reasons, that it excessively interferes with the Agency's right to determine its internal security practices. *See IFPTE, Local 1*, 49 FLRA at 244 (concluding that, even assuming the proposal constituted an arrangement, it was not an appropriate arrangement because it excessively interfered with the exercise of management's right to determine its internal security practices).

Focusing first on the proposal's benefits to unit employees, as described by the Union, the proposal is intended to prevent visitors from harming employees working at the reception stations. Record at 2. According to the Union, the shields are necessary to protect employees from spittle or communicable diseases and to prevent the public from touching them or throwing objects at them. Petition at 7. Moreover, the Union claims that the security guard is likely to hear an employee shout for help, despite the presence of a shield, and that, with a shield, "there would be no chance that an employee under attack could be . . . rendered unable to speak or shout." *Id.* Response at 5. However, the Agency disputes this claim by arguing that the shields will greatly reduce sound. SOP at 6. Also, the Agency has already taken steps to mitigate the Union's alleged adverse effects; these steps include: (1) hiring an armed security guard and posting the guard in the reception area, (2) requiring the guard to search individuals' bags before they enter the building, (3) locking doors to employees' areas, (4) installing deep counters and heavy roll-down shutters at each reception window, (5) placing duress alarms at reception windows and interview stations, (6) creating systems "to warn and alert employees when they are presented with a visitor [who] has acted out in the past," and (7) providing employees with, among other things, tissues, hand sanitizer, N-95 respirator masks, and free influenza vaccines. Reply at 7. Because of the steps that the Agency has taken to mitigate the Union's alleged adverse effects, the added benefit to employees is limited.

With regard to the burden on management's right to determine its internal security, the proposal prohibits the Agency from maintaining its internal security practice – having only the low, transparent barrier – by forcing it to install a polycarbonate shield at each reception window. SOP at 6. The Agency indicates that the shields will greatly reduce visibility and "frustrate the on-site security guard's ability to . . . monitor and/or respond to emerging security incidents." *Id.* According to the Agency, the absence of such shields would facilitate "quick, immediate verbal and non-verbal communication with the security guard" and allow it to assess a potential threat before that threat becomes immediate.[7] *Id.* Additionally, as noted by the Agency, and not disputed by the Union, the transparent barrier is low and does not prevent the security guard from viewing the reception area or block his ability to hear. *Id.*; Response at 4.

We conclude that, on balance, the burden placed on the Agency outweighs the limited benefit to employees. Consequently, we find that the proposal excessively interferes with management's right to determine its internal security practices and is not an appropriate arrangement. *See NTEU*, 62 FLRA at 271-72, 273; *IFPTE, Local 1*, 49 FLRA at 244. Accordingly, we conclude that Proposal 4 is not within the duty to bargain.

VI. Order

The petition for review is dismissed.

[7] As a result, the dissent incorrectly states that the shields do not have an effect on the security "guards' ability to monitor and/or respond to emerging security incidents." Dissent at 15.

Member DuBester, dissenting in part:

I do not agree with the majority that Proposal 4 is not an appropriate arrangement. Nor do I agree that the proposal is nonnegotiable.

That Proposal 4 is an arrangement seems clear. The numerous steps the Agency has taken to mitigate the Union's alleged adverse effects, detailed in section V.D.2. of the majority opinion, are reliable evidence that such effects are reasonably foreseeable. And, as a prophylactic proposal, Proposal 4 is sufficiently tailored. *See, e.g., NTEU*, 65 FLRA 509, 511 (2011) (Member Beck dissenting) ("'Prophylactic' proposals . . . will be found sufficiently tailored in situations where it is not possible to determine reliably which employees will be adversely affected by an agency action so as to draft a proposal . . . to apply only to those employees.").

I would also find that Proposal 4's arrangement is "appropriate." The proposal's benefits to unit employees are substantial. The polycarbonate shields that Proposal 4 would require the Agency to install at the reception stations would provide an extra layer of security supplementing the measures the Agency has already taken to safeguard its employees, including hiring armed security guards. Conversely, Proposal 4's burden on management rights is slight. Because the security guards are positioned on the public's side of the shields, either in the reception area or the waiting area, the shields would have no effect whatsoever on the guards' ability to monitor and/or respond to emerging security incidents, including those involving threatening behavior by a member of the public at a reception station. Thus, on balance, I would find that Proposal 4's benefits to employees outweigh any burden the proposal places on management rights. Proposal 4 is therefore an appropriate arrangement.

Finally, I would reject as a bare assertion the Agency's claim that it need not bargain because Proposal 4 is covered by Article 9 of the parties' agreement. Among other things, the Agency fails to provide the Authority with a copy of Article 9, and it is not otherwise part of the case's record. Contrary to the majority opinion, I would therefore find that Proposal 4 is within the Agency's duty to bargain.