

In the Matter of

NATIONAL SCIENCE FOUNDATION  
ARLINGTON, VIRGINIA

and

LOCAL 3403, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case Nos. 14 FSIP 100  
and 14 FSIP 104

ARBITRATOR'S OPINION AND DECISION

The National Science Foundation, Arlington, Virginia (Employer or NSF) and Local 3403, American Federation of Government Employees, AFL-CIO (Union) filed separate requests for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119.

After an investigation of the requests for assistance, which arise from bargaining over the Employer's determination to relocate its headquarters to Alexandria, Virginia, the Panel directed the parties to mediation-arbitration with the undersigned and issued an *Order to Maintain the Status Quo*.<sup>1/</sup> Accordingly, on September 16 and 17, 2014, a mediation-arbitration proceeding was convened at the Employer's current facility. During the mediation phase, the parties addressed their interests and positions, and were able to resolve some issues, but the more difficult ones remain. Consequently, the parties have submitted their final offers to me for a binding determination. In reaching my decision, I have considered the entire record, including the parties' proposals, documentary evidence, witness testimony, post-hearing briefs and information.

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<sup>1/</sup> The Order, issued on September 3, 2014, directed the Employer to take affirmative action to maintain the status quo while the matter is pending before the Panel, i.e., take steps to curtail finalization of architectural drawings for the interior design plan for the new facility to the extent necessary to preserve the Panel Member's ability to resolve the impasse on the basis of the Union's proposals should the Union prevail on the merits of the issues.

provided during post-hearing conference calls with the parties on October 8 and October 20, 2014.

#### BACKGROUND

The Employer, an independent Federal agency, awards grants to fund projects, primarily at academic institutions, involving science, technology, engineering and mathematics; it receives approximately \$7 billion annually in Congressional appropriations to fund grants. The Union represents a bargaining unit consisting of approximately 937 professional and non-professional employees; professional employees are mostly project directors or administrators who hold doctorates in their respective scientific fields, and review proposals for grants and convene panels which include other professionals, known as Intergovernmental Personnel Act (IPA) detailees, from outside the Agency to review requests for grant funding. Other bargaining-unit employees hold a wide variety of positions and provide administrative assistance to further the Employer's mission. Employees are paid under either the General Schedule or a pay banding system known as an AD schedule. The parties are governed by a collective-bargaining agreement (CBA) which they renew annually until it is replaced by a successor agreement.

In 2009, the Employer and the General Services Administration (GSA) began the process of drafting a Program of Requirements (POR) for the solicitation of office space for NSF inasmuch as the leases for the buildings it currently occupies are to terminate in 2016. It appears that the Union was not consulted during the process and the POR was issued without the Union having knowledge of its contents. Several staffing scenarios were included in the POR, but the Employer ultimately selected one that would accommodate 2,241 persons. Subsequently, representatives of the Union filed a request under the Freedom of Information Act (FOIA) to obtain the details of the Employer's requirements for a new headquarters building.<sup>2/</sup>

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<sup>2/</sup> According to information provided by the Employer during a conference call with the parties on October 20, 2014, the Employer came to the conclusion that the new building did not have sufficient space to accommodate 2,241 persons. As a result, it has scaled back the number to 2,000 persons, using the following breakdown:

1,423 Full-time Equivalent (FTE) employees  
197 IPAs

After reviewing bids in response to the FOR, on June 7, 2013, GSA selected a bid for a new building site in Alexandria, Virginia. The bid included a design for the exterior of the new building, which was yet to be constructed, with usable interior space to be approximately the same square footage as the space now occupied by the Employer. In the new building, the Employer will occupy a portion of the first floor and floors 2<sup>3/4</sup> through

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42 Pathway Students  
61 Einstein Fellows  
200 contractors  
77 employees (representing a 4-percent growth rate)

The Union disputes some of the Employer's numbers because they do not include temporary employees and the Union believes the Pathway Students have been counted twice in the Employer's calculations. The evidence suggests that there is no clear number that may be relied upon with respect to how many employees, contractors and IPA staff and others need to be accommodated in the new building or whether the Employer has included in its estimate a realistic number of staff that represent future growth. The Arbitrator's best understanding of the total number of employees that are to have office and cubicle space in the new building comes from estimates which both the Union and Employer presented during the hearing and it appears that the most recent assessment of 2,000 persons may be too high, by about 10 percent, given that other estimates revealed that the total number of staff would be 1,800. In this regard, other estimates presented were for private offices for 1,173 persons, cubicle space for 419, and space for 200 contract employees, for a total of 1,792 work spaces or approximately 1,800 persons. I find this number to be a more realistic assessment, and one that would seem to allow for somewhat larger workspace for employees. Therefore, the architectural test fits which were based upon space for 2,000 persons may have used a number that was 10-percent higher than other estimates presented.

- 3/ The second and third floors are to be devoted primarily for conference rooms where employees and IPAs may meet with prospective grantees who request funding for projects. The inclusion of entire floors for conference room space appears to be an effort by NSF to have sufficient space to convene meetings "in-house," rather than continue the current practice of renting outside space for such conferences.

19, with the exception of a portion of unleased space on the 6<sup>th</sup> floor. The Employer's seven science directorates and two business offices where bargaining-unit employees work, will be located on floors 4 through 14.

Impact-and-implementation bargaining between the parties over the "35-percent design" plan (the initial stage of space planning that covers 1/3 of the complete design) was late in starting. On at least two occasions, "tests fits" were conducted by the interior design architect to determine whether the Union's proposed office sizes of 130 square feet (SF) and 100 SF, and cubicle size of 80/81 SF, could be accommodated. At least one test fit was based on office space for 2,002 individuals. On both occasions, the conclusion was that the office and cubicle sizes proposed by the Union would not fit by a significant amount.<sup>4/</sup> GSA delayed the construction schedule while the interior design architect performed the test fits but, on September 22, 2014, it determined that no further delays could be tolerated and GSA issued to the developer a "Notice to Proceed" that required an interior design plan to be based upon 120 SF offices for approximately 1,173 bargaining unit (BU) and non-bargaining unit (NBU) employees, and 64 SF cubicle workstations for 419 BU and NBU employees. On two occasions, September 11 and 30, 2014, the Employer requested that GSA maintain the *status quo* while the matter is pending before the Panel but, apparently, GSA does not appear willing to agree to the NSF's requests.

#### ISSUES AT IMPASSE

The key issues involve whether GS-12 employees should be assigned to offices or cubicles and the size of their space, and

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<sup>4/</sup> It is undisputed by the parties that when the test fits were prepared by the architect, the space proposed by the Employer for panel conference rooms, team rooms, kitchenettes, refreshment centers, other shared meeting space on each floor, and file and storage areas were drafted into the plan first, and the office and cubicle space with the dimensions proposed by the Union were added thereafter. The Union maintains that by including its proposed office and cubicle sizes last, the test fits were "designed" to fail and would show a shortage of space on the floors where the test fits were conducted.

the size of cubicles for employees in grades GS 1-11.<sup>5/</sup> Other matters in dispute are: the height of cubicle partitions and whether cubicle doors should be lockable; the size of kitchenettes (pantries) on each floor; whether there should be "refreshment centers" with vending machines and seating on each floor; the number and size of shared meeting space on each floor; the number of team rooms on each floor; and file and storage space.

#### POSITIONS OF THE PARTIES

##### 1. The Employer's Position

The Employer proposes the following:

1. GS-12 employees and all other bargaining-unit employees, whose cubicle size remains in dispute, to occupy cubicle workstations no smaller than 72 SF, with partitions no higher than 66 inches, all without lockable doors;
2. Each floor to have two shared kitchenettes with microwave ovens, refrigerators, ice makers and a sink;
3. No more than five floor-shared refreshment centers with vending, and seating for no less than six persons, to be distributed on alternating floors;
4. Floor-shared meeting space to be maintained at current design level, one per floor (20-40 person seating);
5. Team rooms to be allocated at least one per division; and

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<sup>5/</sup> During the hearing, the parties reached agreement that bargaining-unit employees in grades AD 4-5 and GS-15 would occupy private offices no less than 120 SF. Furthermore, they agree that employees in grades AD 2-3 and GS 13-14 should occupy individual offices of no less than 100 SF. Other agreements executed by the parties during the mediation-arbitration hearing require the standardization of office and workstation sizes among bargaining-unit employees across all organizational entities; storage space for equipment used by IT specialists, and dedicated rooms for the Employee Assistance Program and Alternative Dispute Resolution offices.

6. File space to be distributed according to the need of the organization and adjusted to the space available.<sup>6/</sup>

Essentially, the Employer contends that the 90 employees who are at the GS-12 level should occupy cubicles in the new facility because the prevailing practice for employees at that grade level is that they are stationed in cubicle space. The parties have negotiated eight agreements on work space which place GS-12 employees in cubicles, except for one agreement which allows 11 GS-12 employees in the Math and Physical Science (MPS) Directorate to occupy offices. Continuing to allow a small subset of GS-12 employees to have offices likely would cause some derision among those who are to have cubicles. Furthermore, throughout most of the parties' negotiations, the Union was proposing that GS-12 employees would occupy cubicles and the architectural test fits of the Union's proposals were based on that offer. Implementation of a proposal that would have GS-12 employees occupy offices, rather than cubicles, would require the floor plans to be redrawn and, thereby, result in a significant and unwarranted increase in design costs and construction delays.

The Employer's proposed workstation size of 72 SF should be adopted for all employees at and below the GS-12 level because a test fit on one floor, using the Union's 80 SF proposal, revealed that the larger cubicle size would result in a 40-percent shortfall. It is questionable as to whether even the Employer's proposal of 72 SF for cubicles could be accommodated but, based on information from GSA, management's proposal is more likely than the Union's to fit within the usable space on floors 4 through 14 in the new building. A 72 SF cubicle is adequate for employees to engage in all functions of their positions and the new furnishings for those workstations should provide employees with more storage, leg room, and book shelves

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<sup>6/</sup> During a conference call with the parties on October 20, 2014, the Employer elected to withdraw the following provision which heretofore had been part of its final offer:

Agreement with the proposed items shall not amend any provision in the current collective bargaining agreement unless specifically identified here. Nothing in this agreement shall be construed as a waiver of any right of employees or the Union as authorized by law or Government-wide regulation.

thereby allowing employees assigned to 72 SF cubicles to perform work in the same manner as they do now. A larger workstation would not provide more collaborative space as both 80/81 SF and 72 SF workstations provide room for only one chair. Team rooms would be available should employees assigned to cubicles need to convene larger meetings. No cubicles should have locks because it is cost-prohibitive to purchase lockable panels. In this regard, research reveals that, among the few manufacturers who even offer locking door panels for cubicles, the least expensive lockable panel would cost approximately \$1,200.

The height of cubicle workstation panels should not exceed 66 inches because not only are 66 inch panels currently installed in cubicle space but panels of that height also represent the industry standard and provide employees with sufficient privacy to accomplish their work. There is no need to change the status quo particularly when higher panels are likely to disrupt the flow of heating and air conditioning and impede light from accessing cubicles from perimeter glass.

As to kitchenettes, while the parties agree on amenities for them, the Union's proposal to contain their size to no more than 350 SF of space each cannot be accommodated. The Employer's design plan would place kitchenettes in areas that could not otherwise be utilized as employee work space. Therefore, the Employer's proposal, which does not designate the size of a kitchenette, allows for a better usage of space. Furthermore, the new building also should have "refreshment centers" for vending machines and employee seating because they provide employees with an alternative to going to the cafeteria. Management considers refreshment centers to be a benefit for employees, one that currently is provided to them and should be retained.

The Employer's proposal for one meeting room per floor that accommodates 20-40 persons should be adopted because it is critical to the furtherance of its mission. In this regard, a large meeting room on each floor would provide space for weekly division staff meetings, daily meetings within the Budget office during peak work periods, weekly seminars, meetings among Divisions/Directorates, and serve as panel rooms during peak panel conference meeting time. Such space currently exists to accommodate larger meetings and there is no need to reduce the size or number of such rooms.

Similarly, team rooms would provide the agency with space that is necessary for employees to collaborate and for employees

to meet with small groups of scientists who seek funding or are in need of discussing their research. While employee offices and workstations may be sufficient for holding very small meetings, there is a demonstrated need within NSF for larger space to accommodate small groups. Under the Employer's design plan, there would be at least one such room per division, and the team rooms would be placed in areas that are oddly shaped and otherwise could not be used as office space.

Finally, with respect to filing space, because the needs of directorates and divisions vary, the Employer proposes that the space be allocated accordingly, to accommodate those needs, and that it be placed into areas that may not be appropriate for employee offices or cubicles. The proposal provides the best solution for utilizing oddly-shaped space, rather than specifying a certain size limitation on filing space areas.

## 2. The Union's Position

The Union proposes the following:

1. GS-12 bargaining unit employees to occupy private individual offices no less than 100 SF;
2. Bargaining-unit employees in grades AD 1 and GS 1-11 to occupy lockable individual cubicle workstations no smaller than 80 SF, with wall panels no lower than 72 inches
3. Each floor to have two break rooms (pantries) with microwave ovens, refrigerators, ice makers and sinks, which combined do not exceed 350 SF on any single floor;
4. No space to be devoted to vending machines, except those co-located with the cafeteria/bistro;
5. The size and capacity of floor-shared conference rooms to be determined after workspace is assigned, if space permits on any floor;
6. Team rooms to be allocated no more than one per division, if space permits after workspace is assigned. Team rooms to be reserved for bargaining-unit members; and
7. Floor storage and filing space to be permitted up to a maximum of 400 SF per floor, if space permits after workspace is assigned.



The Union contends, in essence, that 100 SF offices for GS-12 employees and cubicle workstations no smaller than 80 SF for employees in grades AD-1 and GS 1-11 would better accommodate the way employees perform the mission-critical work of the agency. The mission does not change merely because of a move to a new location. It maintains that the Employer's interior space plan is flawed because it does not recognize the realities of how employees perform their work. The Employer has proposed an excessive amount of space for collaborative groups even though an increasing number of meetings among employees within the agency, and among employees and persons outside the agency, are conducted "virtually." Fewer in-person meetings should translate into less space devoted to meeting rooms, both large and small. Currently, more than 30 percent of review panels are conducted without the need for in-person meetings, which demonstrates that the agency has broadly accepted conducting its business in such a manner. Virtual panels are most often conducted from the private office of a program director and monitored in the cubicle of an administrative professional who has been paired with a program director or specific directorate to support the evaluation of individual research proposals for which funding is sought. Mission critical space, therefore, is the individual workspace of the employee.

Staff members work independently of each other and join across organizational lines, as necessary, to support NSF-wide efforts or collaborate on specific proposals. Consequently, collaboration space should be integrated into individual workspace, and not placed outside of employee workspace. Requiring NSF staff to leave their workspace to go to a designated collaboration space is not an efficient way to perform agency business. Rather, individual workspace is collaboration space and it should be large enough to accommodate the meetings that take place within it. Additionally, GS-12 employees should be assigned to private offices consisting of 100 SF because most employees at that grade level currently have private offices pursuant to negotiated agreements between the Union and NSF. Also, the Union's proposal should be adopted because it would avoid disparate treatment of GS-12 employees who perform some of the duties, and have equivalent salaries as employees in pay banding grades AD 2 and 3, who are to have private office space.

The Union's proposed office and cubicle sizes would fit within the usable space of the new building had the Employer not over-estimated the number of offices and cubicles that would be

necessary to accommodate staff at the new location. In this regard, at various times management has factored into its design plan office space for a projected 10-percent growth in personnel, a percentage that is unrealistic and unfounded given that, while NSF's budget has risen steadily over the past 20 years, there has not been a corresponding rise in its personnel numbers. In addition to these "phantom" employees, management had planned office space for 400 contractor employees, a number that has not been justified or approved by the Office of Management and Budget.<sup>2/</sup> There is a direct correlation between the Employer's unrealistic assessment of the office space it needs for current and future staff members and the Employer's proposal for small cubicles measuring 72 SF. The Union's proposal for 100 SF offices for GS-12 employees and 80 SF workstations for those at lower grade levels represent work space sizes that are likely to fit within available space if the Employer would reduce its estimate of the number of staff members who need workspace and reconsider the excessive amount of collaborative workspace it has proposed for the new facility.

The Union's proposals for lockable cubicles that are 6 inches higher than panel walls in current offices would provide employees with more security in their work space. Recent security breaches in Federal offices highlight the need for greater protective measures for employees should they have to "shelter in place"; the Union's proposals would serve that need. Partitions that are 72-inches high would afford more privacy during meetings that take place in employee workstations where members of the public often meet with employees to discuss confidential matters relating to funding for proposals.

Finally, with respect to space for break rooms, vending machines, floor-shared conference rooms, team rooms, storage and filing, the Union's proposals that, generally, would limit the size of those areas should be adopted because those spaces are not used for mission-critical work and, therefore, allotments for those spaces should give way to affording certain employees 100 SF private offices and 80 SF cubicle workstations as proposed by the Union.

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7/ Ultimately, the Employer appears to have reduced both the percentage of its employee growth rate and the number of contractor employees it intends to seat within the new facility.

OPINION

Having carefully considered the arguments and evidence presented in this case, I conclude that the impasse should be resolved on the basis of a compromise solution which would place GS-12 employees in cubicle workstations, no less than 80/81 SF, with partitions of not less than 66 inches, except for the approximately 11 GS-12 employees now occupying private offices who would have partitions not less than 72 inches high. The remainder of the issues shall be resolved, for the most part, on the basis of a modified version of the Employer's final offers.

I am not persuaded by either the Union's argument that all GS-12 employees should occupy private office space of 100 SF or the Employer's position that they be relegated to cubicle workstations of no more than 72 SF. The record reveals that there are approximately 90 GS-12 employees; currently, 11 occupy private offices while others have cubicle space. Consistent treatment of all GS-12 employees is warranted in terms of the size of their work space and, in my view, they should be able to perform their duties in 80 to 81 SF workstations.<sup>8/</sup> Furthermore, for those approximately 11 GS-12 employees who occupy private offices, I believe that their cubicle partitions should be no less than 72 inches high to better simulate the environment of private work space, which they now will have to sacrifice. I leave it to the Employer to determine how to accomplish the higher workstation panels for this group of employees.

For all other employees whose work space remains in dispute, the Employer's proposal for 72 SF workstations with 66-inch high partitions, provides the better alternative, given the concern that larger cubicle space may not fit within the Employer's plan which devotes more space in the new facility to conference rooms for panel meetings and, generally, more space in which employees may collaborate. Throughout the proceeding, the parties have presented different and sometimes changeable numbers with respect to how many offices and workstations are planned for the new facility. Those numbers appear to be different from those contained in the POR and those upon which the various architectural test fits were based and still different from data provided before, during and after the

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<sup>8/</sup> Resolution of this issue is consistent with the parties' agreement to have consistency in employee office/workstation sizes because GS-12 employees in all organizational entities are to be afforded workstations consisting of 80/81 SF.

mediation-arbitration proceeding. As a result, it is difficult to make a conclusive determination which of the parties' workstation proposals would fit within the available space. I note that the trend within the Government is to shrink the "foot print" for work space and, with that in mind, I have determined to adopt the proposal for a smaller workstation size of 72 SF as it is more likely to fit within the overall interior design plan for the new office. I shall not order locks for any cubicle partitions as the cost for having them seems high and there was not sufficient justification for lockable partitions presented by the Union.

With respect to the remaining issues concerning kitchenettes, refreshment centers, floor-shared meeting space, team rooms, and filing and storage space, I find that the Employer's proposals offer a balanced integration of those areas with employee office and cubicle space and, therefore, I shall order their adoption. I am persuaded that the Employer's need for collaborative work areas and space to maintain paper files, as well as space that enhances employee working conditions, are likely to better serve the interests of all of the parties. The Employer would place kitchenettes, refreshment centers, and space for filing and storage in areas that could not otherwise be used for employee offices or cubicles, which represents good space planning. I shall grant the Employer discretion, however, in determining the size and number of collaborative areas, filing and storage spaces, kitchenettes and refreshment centers because it may find it necessary to make adjustments to those areas in order to accomplish 80/81 SF cubicles for GS-12 employees.

#### DECISION

The following shall be incorporated into the parties' Memorandum of Understanding concerning the relocation of the Employer's office to the Alexandria, Virginia site:

1. GS-12 employees will occupy cubicle workstations, without lockable doors, no smaller than 80/81 SF. Partitions for their cubicles shall be no less than 66 inches high, except for the approximately 11 GS-12 employees currently occupying offices, and who shall occupy cubicles with partitions that are no less than 72 inches high.
2. All other bargaining-unit employees, whose cubicle size remains in dispute, will occupy cubicle

workstations without lockable doors, no smaller than 72 SF, with partitions no less than 66 inches high.

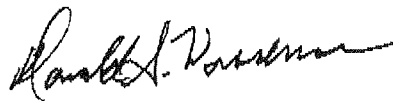
3. Each floor will have two shared kitchenettes, with microwave ovens, refrigerators, ice makers and a sink, provided that the kitchenettes are placed within space that could not otherwise be used for offices or cubicles.

4. There will be no more than five floor-shared refreshment centers with vending, and seating for no less than six persons, distributed on alternating floors, provided that the refreshment centers are placed within space that could not otherwise be used for offices or cubicles.

5. Floor-shared meeting space will be maintained at current design level, one per floor (20-40 person seating).

6. Team rooms will be allocated with no more than one per division; and

7. File space will be distributed according to the need of the organization and adjusted to the space available, provided that the filing areas are placed within space that could not otherwise be used for offices or cubicles.



Donald S. Wasserman  
Arbitrator

October 23, 2014  
Washington, D.C.