

**IN THE MATTER OF THE ARBITRATION****Between****EMPLOYER****United States Environmental Protection Agency****And****UNION****American Federation of Government Employees,  
AFL-CIO; Council 238****FMCS Case No. 07-50725****GRIEVANCE****Did the Agency Violate the  
The Master Collective  
Bargaining Agreement as  
Well as Applicable Sections  
of the Federal Statute,  
Title 5 of the U.S.C. For Its  
Alleged Failure to Negotiate  
With the Union the Closure  
of and Reduction of  
Services at a Number of  
EPA Libraries****OPINION and AWARD****PRELIMINARY INFORMATION****CASE PRESENTATION – APPEARANCES****FOR THE EMPLOYER****David E. Mick  
Human Resources Specialist  
Labor / Employee Relations Officer  
Human Resources Management Division  
Office of Administration & Resources Mgmt.  
U.S. EPA / Cincinnati  
26 West Martin Luther King Drive  
Mail Location - 275  
Cincinnati, OH 45268  
(513) 569-7818  
Mick.David@epa.gov (e-mail)****FOR THE UNION****Steven R. Roy  
Executive V.P., Council 238  
U.S. EPA, Suite 900  
Region 10  
Mail Stop UNI - 079  
1200 Sixth Avenue  
Seattle, WA 98101  
(206) 553-6221  
(206) 553-1775 (Fax)  
roy.steve@epa.gov (e-mail)**

## **CHRONOLOGY OF RELEVANT EVENTS:**

**EPA's Office of Environmental Information (OEI) Commissioned a Study of EPA Libraries Which Resulted in the Publication, *Business Case for Information Services: EPA's Regional Libraries And Centers*; Said Study Was Deemed by EPA as Providing an Opportune Time to Initiate an Agency-Wide Dialogue on the Extent and Nature of Library Services at the Agency; Date *Business Case* Report Issued** **January, 2004**

**In Its Annual FY 2004 Report, the Agency Reported that Following Completion of the *Business Case* Report, the EPA Libraries Underwent an Extensive Assessment Process to Identify the Services and Resources of Most Value to the Agency, and to Identify Ways in Which EPA Libraries Can Work Together to Enhance Services and Resources; This Annual Report Titled, *The EPA Library Network in 2004*, Set Forth a "Preliminary Action Plan" Which Apprised that, EPA's Libraries are Ready to Reinvent Themselves for FY 2006, Noting that Work Was Already Underway; Release Date** **Undated**

**The Agency Issued a Report Titled, *Optional Approaches To U.S. EPA Regional Library Support* that Apprised Senior and Mid-Level Management About the Issues Involved With Changing the Current Approach to Information Services and Provided Assistant Regional Administrators With Five (5) Service Options for Their Consideration, Accompanied by the Recommendation That Each Region Choose the Appropriate Approach to Meet the Needs of EPA Staff and to Ensure that the Region Could Continue to Assist the General Public in Understanding the Mission of the EPA; Report Dated** **June, 2005**

**In a Report Titled, *EPA Library Network: Challenges for FY 2007 and Beyond*, Containing the Findings and Recommendations of an EPA Library Network Workgroup, it Was Noted that Although the Demand For Library Services Remains High, EPA's Libraries Have Been Receiving Less Funding Every Year for the Past Four or Five Years and Apprised that the Agency's Draft Budget for FY 2007 Sent to the Office of Management and Budget (OMB) Contained a \$500,000 Budget Reduction for the EPA Headquarters' Library as well as a** **November 22, 2005**

**Proposed \$1.5 Million Reduction in the Regional Support Budget for the Agency's Ten (10) Regions and that this Reduction Specifically Targeted EPA's Regional Libraries, But Noting that Each Region Had Discretion in How It Chose to Spend Its Regional Support Monies; It Was Further Noted that Member Libraries of the EPA Library Network Agree to Study the Effects of a Potentially Large Funding Reduction in the Network's Ability to Continue Providing Core Services to EPA Employees and the General Public, As Well as Maintaining Library Collections; Date Report Issued**

**By E-Mail Memorandum From Region 5 Management, To AFGE Local 704 (Chicago), Management Apprised It Planned to Enter Into an Agreement With the EPA Office of Administration and Resource Management (OARM) in Cincinnati to Provide Region 5 Employees With Specified Services and Invited Local 704 to Join Them in Pre-Decisional Discussions to Best Meet the Needs of the Agency's Mission and Its Employees; Memorandum Dated**

**March 14, 2006**

**By Letter From AFGE Council 238 President, Charles Orzechoskie to Ruben Moreno, EPA Director, Labor and Employee Relations, Orzechoskie Informed the Agency That the Letter Constituted the Union's Demand to Bargain over the Closing and Major Reorganization of The EPA Headquarters' and Regional Libraries Pursuant to Article 45 of the Master Collective Bargaining Agreement; Letter Dated**

**March 16, 2006**

**By E-Mail Memorandum, AFGE Local 704 President, John J. O'Grady, Informed Region 5 Labor Relations Specialist Martin Mills that the Memorandum Constituted the Union's Demand to Bargain Locally On Procedures and Appropriate Arrangements Over The Change in Working Conditions [pertaining to the changes then being made and those changes contemplated being made to the Region 5 library] Pursuant to Article 45, Section 2 of the Master Collective Bargaining Agreement; Memorandum Dated**

**March 28, 2006**

**In a Draft Report Titled, *EPA FY 2007 Library Plan: National Framework* [Framework Report] the Agency Apprised that in Preparation to Respond to the Proposed Budget Reduction in Funding for Libraries, It Established**

**June 1, 2006**

**a Library Steering Committee In the Fall of 2005 Whose Goal it was to Develop a New Model of Providing Library Services to EPA Staff; As Part of Accomplishing This Goal, the Steering Committee Reviewed the Recommendations Made by the Staff Level Regional Library Network Workgroup and, in Addition, It Conducted Additional Analysis; Draft Report Dated**

**By Memorandum From David E. Mick, EPA Human Resources Specialist (Labor/Employee Relations) to a Number of Recipients Including Steven Roy, AFGE Council 238 Executive Vice-President, Appointed as the Union's Point of Contact for Bargaining on a National Level Over the Closing and Major Reorganization of the EPA Headquarters' and Regional Libraries, Informed that the OEI in Collaboration With The Library Steering Committee Had Produced the Draft Framework Report, Whose Design Was to Convey The New Paradigm the Agency Planned to Deploy So as to Perpetuate High Quality Delivery of Library Services to Employees and the General Public; Mick Further Apprised that the "Framework" Would Vary by Region and at the Headquarters' Level Resulting in the Reason Why "Impact and Implementation" Bargaining of Actual Library Service Changes Would Take Place Separately in the Regions and at Headquarters; the Memorandum then Stated that Before Final Decisions Were Made With Respect to Composition of the "Framework" Document, and thus, Prior to Its Being Sent Out for Further Action in the Regions and at Headquarters, it Was OEI's Desire to Have Input From The Unions Representing the Agency's Bargaining Unit Employees; Memorandum Dated**

**June 2, 2006**

**Exchange of E-Mail Memoranda Between Mick and Roy Regarding the Union's Interest in Seeking Negotiations On Behalf of AFGE Locals Over Proposed Regional Library Changes; Memoranda Dated**

**June 19, 2006**

**EPA Conducted a Two (2) Week Pilot Program Relative To Implementing Changes in Library Operations; Beginning and Ending Date of Trial Period**

**June 26, 2006  
July 7, 2006**

**On Behalf of the Agency, Mick, in an E-Mail Memorandum, Sent to Roy Responded to the Union's March 16, 2006 Demand to Bargain on a National Level the Closing and**

**July 18, 2006**

**Major Reorganization of the EPA Headquarters' and Regional Libraries Wherein, Mick Stated Among Other Responses, that the Agency Would, at the Regional Level And at the Headquarters Level Relative to the Headquarters' Library, Bargain "Impact and Implementation" Issues Attendant to Library Service Changes Once Local Level Library Service Change Plans are Developed; These Plans Will be Shared With the Unions Once They Are Completed by Management; Mick Apprised that OEI Had a Strong Commitment to Providing Employees Access to Necessary Library Services and that Management Remained Receptive to Informal Consultation With the Unions (Versus Formal Negotiations) On Substantive Library Service Changes; Memorandum Dated**

**Agency Release of the Final Version of Its Library Plan, With Minor Revisions From Its Draft "Framework" Document, Titled, *EPA FY 2007 Library Plan: National Framework for the Headquarters and Regional Libraries*; Date of Release, On or About**

**August 15, 2006**

**On Behalf of AFGE Council 238, Roy Filed a Step 1 Written Grievance Directed to EPA Acting Director, Office of Labor Relations Pursuant to Article 43, Section 7 of the Master Collective Bargaining Agreement Wherein Roy Asserted that Following the Union's March 16, 2006 Demand to Bargain on a National Level Over the Closing and Major Reorganization of the EPA Headquarters' and Regional Libraries, Subsequent Attempts by Him as the Union's Chief Negotiator to Initiate the Negotiation Process Have Been Rebuffed Both Orally and in a Written Memorandum Dated July 18, 2006 By Dave Mick, EPA's Chief Negotiator Wherein He Stated the Agency's Position that, it Is Not Appropriate To Negotiate at the National Level Since the Impacts Will Be at the Libraries in Headquarters and Regional Offices and Those Locations is Where the Negotiations Should Take Place; The Union Posited that the Agency's Position Constituted a Breach of Article 45, Sections 1A and 1B of the Master Collective Bargaining Agreement as well as 5 U.S.C. 7117(a)(1) of the Federal Labor Relations Act; As a Remedy, the Union Requested that the Agency. \*Immediately Initiate Negotiations in Good Faith With the Union Over the Procedures and Appropriate Arrangements Concerning the Implementation of the Agency's Closure Plan**

**August 16, 2006**

**Or Change in the Operations of the Headquarters and Regional Office Libraries, \*Immediately Release the Final Version of the EPA FY 2007 Library Plan: National Framework, so that Both The AFGE Council and the Public Can Review It, and \*Stop Implementing All Activities Under the Draft Framework Until the Document is Released in Its Final Form; Step 1 Written Grievance Dated\***

**In Responding to Notification that the Agency Would Be Closing Headquarters' Library Effective October 1, 2006, Council 238 President, Orzechoskie Sent an E-Mail to Mick Wherein He Referenced Mick's Correspondence to Roy on July 18, 2006, Quoting Mick as Stating, "Once such Details Have Been Determined, They Will Be Shared With the Unions Representing Headquarters Bargaining Unit Employees for Appropriate Impact and Implementation Bargaining", Inquiring of Mick as to When He, on Behalf Of the Agency, Intended to Begin "Impact and Implementation" Bargaining; E-Mail Dated**

**August 24, 2006**

**The EPA Made Formal Notification in the Federal Register that It Would Close Its Headquarters' Library Effective October 1, 2006; Date of Notice**

**September 20, 2006**

**The Agency Closed the Washington, D.C. Headquarters' Library and Regions 5 (Chicago), 6 (Dallas), 7 (Kansas City, Ks) and Its Chemical Library Located in Washington, D.C.; Effective Date of Closures\*\***

**October 1, 2006**

**In Not Receiving Any Positive Response From Mick In the Period Between October 16, 2006 and October 27, 2006 Through a Number of E-Mail Exchanges Relative to When the Agency Would Enter Into Bargaining Changes in the Agency's Library Operations, Roy Notified Mick, that On Behalf Of the Union, He Was Invoking Arbitration of the August 16, 2006 Grievance Pertaining to the Agency's Failure to Engage in Bargaining Over Changes in Its Library Operations Pursuant to Article 44 of the Master Collective Bargaining Agreement; Date**

**October 17, 2006**

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\* It is noted by the Arbitrator that the relief requested had, in part, been complied with by the Agency sometime within the 11 month period preceding the convening of this September 25, 2007 arbitration.

\*\* Both prior and subsequent to the closures of these five (5) EPA libraries, four (4) other Regional Libraries, at various times, instituted changes in their library operations that entailed reduction in hours and, in some cases, accompanied by a reduction in the number of librarians.

**Notification Made to EPA of the Union's Progressing  
The Subject Grievance to Arbitration**

**By E-Mail From Mick to Roy, Among Other Responses to the Union's Notification It Was Progressing the Grievance to Arbitration, Mick Indicated He Would Soon be Providing a Counter-Proposal to the Union's March 16, 2006 Demand to Bargain on a National Level Over the Closing and Major Reorganization of the EPA Headquarters' and Regional Libraries, and, in Addition, He Would Be Providing a Counter-Proposal to the Union's Ground Rules; Mick Further Responded by Indicating He Remained Hopeful that the Agency And the Union Could Resolve the Grievance Matter In Bargaining the Issue, Thereby Precluding the Need to Arbitrate the Matter; E-Mail Dated**

**November 9, 2006**

**By E-Mail From Roy to Mick, Roy Admonished Mick For Not Responding to any Further Communications After November 9, 2006, Regarding the Agency Entering Into Bargaining and, as well, Entering Into the Process Of Selecting an Arbitrator; Roy Then Requested of Mick that Pursuant to Article 44 of the Master Collective Bargaining Agreement, that He Make the Agency's Selection of an Arbitrator From the Arbitration Panel Submitted to the Parties by the Federal Mediation and Conciliation Service (FMCS); E-Mail Dated**

**November 22, 2006**

**In an Unfair Labor Practice (ULP) Complaint Filed With The Federal Labor Relations Authority, AFGE Council 238 Claimed the EPA Had Failed to Respond to Its Requests To Select an Arbitrator to Hear the Grievance Matter It Filed on August 16, 2006 Pursuant to Article 43, Section 7 of the Master Collective Bargaining Agreement, Protesting the Agency's Failure to Bargain Over Changes in Library Operations and Services Envisioned in Its Library Reorganization; Date Union Filed the ULP With the FLRA**

**February 5, 2007**

**The EPA Joined the Union in Selecting an Arbitrator to Hear the Union's August 16, 2006 Written Grievance; Date the Parties Selected This Arbitrator**

**June 25, 2007**

**By Notice From the Federal Mediation & Conciliation Service (FMCS) Dated June 28, 2007, This Arbitrator**

**July 2, 2007**

**Was Notified of His Joint Selection by the Parties (AFGE Council 238 and the EPA) to Hear the Grievance Matter Regarding the Union's Allegation that the Agency Violated the Master Collective Bargaining Agreement By Its Failure to Negotiate the Changes to the Headquarters' and Regional Libraries Asserting that Such Changes Resulted in a Change in Working Conditions; Date FMCS Notice Received in the Arbitrator's Office**

**FLRA Administrative Law Judge, Richard E. Pearson Ruled that the EPA Had Committed an Act of Bad Faith and "Failed to Comply With Section 7121 of the Federal Service Labor - Management Relations Statute and Thereby Committed an Unfair Labor Practice (ULP) as Alleged, in Violation of Section 7116(a)(1) and (8)"; This Decision in FLRA Case No. CH-CA-07-0425 Was Not Appealed by the Agency; Date FLRA Rendered the Decision**

**September 25, 2007**

**Date Arbitration Hearing Held as Scheduled**

**September 25, 2007**

**Date Post-Hearing Briefs Received by the Arbitrator**

**Agency  
Union**

**November 8, 2007  
November 13, 2007**

**By Letter Dated November 14, 2007, the Arbitrator Interchanged the Post-Hearing Briefs and Declared the Case Record In This Arbitration Officially Closed as of The Receipt Date of the Last Post-Hearing Brief; Date Case Record Closed**

**November 13, 2007**

### **LOCATION OF HEARING**

**Ralph H. Metcalfe Federal Building  
General Services Administration Room 330  
77 West Jackson Blvd.  
Chicago, Illinois 60604**



**CONTRACTUAL AUTHORITY TO ARBITRATE**

September, 1994 Master Collective Bargaining Agreement (Jt.Ex.1, pp 1-94 plus Appendices)

Article 43, Grievance Procedure, pp.85-88

Article 44, Arbitration, pp 89--90

**WITNESSES: (In Order of Respective Appearance)**

**FOR THE AGENCY**

Jeff Kelley  
Chief, Public Information & Education  
Section - - Office of Public Affairs

Mike Flynn  
Director, Office of Information Analysis  
and Access - - Office of Environmental  
Information (OEI)

**FOR THE UNION**

Charles Orzechoskie  
President, AFGE Council 238

Paul Scoggins  
Sergeant-at-Arms, Council 238  
and President, AFGE Local 1003  
EPA Region 6, Dallas

Margaret Herring  
Civil Investigator  
Superfund Division, Region 5

Warren W. Layne  
Chemist  
Regional Sampling Coordinator  
Region 5

**OTHERS IN ATTENDANCE AT HEARING**

**FOR THE AGENCY**

John Breslin  
Agency Labor Attorney

Martin Mills  
Labor Relations Specialist  
Region 5

**FOR THE UNION**

John J. O'Grady  
President, AFGE Local 704  
Region 5, Chicago

## ISSUE

In accord with Article 44, Section 3 of the Master Collective Bargaining Agreement (Jt.Ex.1), the Parties contractually agree to be bound and to stipulate to the statement of the issue(s) as set forth in the written grievance.

The issues presented by this grievance are as follows (Jt.Ex.24):

- Did the Agency breach Article 45, Section 1A when it failed to negotiate with the Union on the changes to the Headquarters' and Regional libraries resulting in a change in working conditions?
- Did the Agency breach Article 45, Section 1B by failing to negotiate appropriate arrangements with the Union over Management's right to close or change the operations of the Headquarters' and Regional libraries and the impact of that decision which creates an adverse impact on bargaining unit employees?
- Did the Agency violate 5 U.S.C. 7117(a)(1) when it failed to bargain in good faith and/or appropriate arrangements for employees adversely affected by the exercise of any authority under 5 U.S.C. 7106(a) by Agency officials?

## RELEVANT DOCUMENTATION

### I. APPLICABLE CONTRACT PROVISIONS (Jt.Ex.1)

#### ARTICLE 43 GRIEVANCE PROCEDURE

\* \* \* \*

#### Section 2. A grievance shall mean any complaint:

\* \* \* \*

#### C. By any employee, the Union or the employer concerning:

1. The effect or interpretation, or claim of breach of the collective bargaining agreement: or
2. Any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.

\* \* \* \*

**Grievance of the Parties**

- A. Should either Party have a grievance over any matter covered by this Procedure, it shall inform the designated representative of the other Party of the specific nature of the complaint in writing within thirty (30) Calendar days of the date of the act being grieved:
1. A local matter will be filed with the designated local representative of the other Party
  2. A national matter will be filed with the designated national level representative.
- B. Within thirty (30) calendar days after receipt of the written grievance, the receiving party will send a written response stating its position regarding the grievance. If the matter is not resolved, it may be referred to arbitration in accordance with the Arbitration Article.

**Section 8.** By mutual consent of the Parties, the time limits set forth in this Article may be extended.

**ARTICLE 44**  
**ARBITRATION**

**Section 1.** If a grievance processed under this Agreement is not resolved, such grievance may be submitted to arbitration by either the EMPLOYER or the UNION within thirty (30) days after issuance of the final decision.

**Section 2.** The party desiring to submit the grievance to arbitration shall request the Federal Mediation and Conciliation Service to provide a list of seven (7) impartial persons qualified to act as arbitrators. The parties shall meet within five (5) days after receipt by both parties of the list of arbitrators. If they cannot mutually agree upon one of the listed arbitrators, the parties will each strike three (3) names, and the remaining person will be the duly selected arbitrator. The flipping of a coin or other mutual agreeable means will be used to determine which party will strike the first three (3) names.

**Section 3.** Issues and charges raised before the arbitrator shall only be those raised at the last stage of the applicable grievance procedure. The arbitrator shall have no authority to alter in any way the terms and conditions of this Agreement, any supplemental agreement or any other condition of employment not properly before him/her.

**Section 4.** The UNION and the EMPLOYER agree to share equally the arbitrator's fee and expenses.

**Section 5.** Except in disciplinary and adverse action cases, the party requesting arbitration will make its presentation first in the arbitration proceeding. No later than five (5) work days prior to the arbitration, the parties will make available all evidence and proposed witnesses then within its knowledge to the other party. On the last work day prior to the arbitration, the parties will meet to exchange all evidence and proposed witnesses which they intend to enter into the proceeding. If evidence or information becomes available to a party prior to the start of the proceeding which has not been made available to the other party and it is intended to enter that evidence or information in the arbitration, the other party will be provided the evidence or information immediately. At its discretion, the other party may obtain a postponement of the arbitration for one (1) workday or until the arbitrator's next available date, whichever is less.

Prior to the arbitration hearing, the PARTIES will attempt to stipulate the issue(s) to be arbitrated and any factual matters which would expedite the arbitration. In the event no questions of fact exist, the PARTIES may, by mutual consent forego a formal hearing and present the grievance directly to the arbitrator by individual written submission. The arbitrator is empowered to make a finding and award based on those submissions.

**Section 6.** The arbitrator will be requested to render his/her decision as quickly as possible, but in any event not later than thirty (30) days after the conclusion of the hearing unless the PARTIES agree to extend the time limit.

\* \* \* \*

**Section 8.** Local level arbitration decisions will have effect only at the location where the arbitration was held and may not apply to other parts of the Unit unless the PARTIES to this agreement expressly agree in writing.

**Section 9.** The arbitrator's award shall be binding on the PARTIES; however, either party may file an exception with the Federal Labor Relations Authority under regulations prescribed by the Authority. The filing of an exception to the Authority will serve to automatically stay the implementation of the award until the exception is disposed of under the terms of this section.

\* \* \* \*

#### **ARTICLE 4** **RIGHTS OF THE EMPLOYER**

**Section 1.** Nothing in this Agreement shall affect the authority of any management official of the employer: to determine the mission, budget, organization, and internal security practices.

In accordance with applicable laws to: \*\*\* to determine the personnel by which agency operations will be conducted; \* \* \*

Nothing in this section shall preclude the Agency and the Union from negotiating:

At the election of the Agency: \* \* \* on the technology, methods, and means of performing work; or, appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

**Section 2.** The provisions of this Agreement must be applied and interpreted in a manner consistent with the requirements of an effective and efficient Government.

## ARTICLE 5 UNION RIGHTS AND DUTIES

\* \* \* \*

**Section 2.** The parties agree to strive to improve communications between Employees and the Employer; to promote and improve Agency efficiency; and to improve the morale of the Employees.

**Section 3.** Bargaining Unit employees have the right to participate, through the Union, in the formulation and implementation of policies and practices affecting conditions of their employment.

**Section 4.** The Employer will provide the Union with one copy of all changes to EPA orders, Directives, Manuals, and issuances relating to personnel policies, practices, procedures, and matters affecting working conditions of the Bargaining Units.

\* \* \* \*

**Section 7.** The Union shall have the right and responsibility to present its views to the Employer either orally or in writing.

\* \* \* \*

**Section 8.** The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit of their representation concerning \* \* \* any personnel policy or practices or other general conditions of employment.

\* \* \* \*

**Section 13.** Nothing in this Agreement shall be interpreted in a manner that will waive any employee rights under 5 USC 7102 of the Statute.

**ARTICLE 45**  
**SUPPLEMENTAL AGREEMENTS AND OTHER NEGOTIATIONS DURING**  
**THE LIFE AND TERM OF THIS AGREEMENT AND DESIGNATED**  
**REPRESENTATIVES OF THE PARTIES**

**Section 1.** The parties agree that the circumstances under which negotiations are appropriate during the life and term of this agreement are included and described below:

- A.** At the Union's option, when the Employer, at any level, proposes a change in the substance of an otherwise negotiable personnel policy, practice or working condition not part of this agreement;
- B.** At the Union's option, when the Employer, at any level, exercises a management right and the impact of that decision creates adverse impact on bargaining unit employees;
- C.** At either option, local level negotiations on matters delegated to the local level by this agreement;
- D.** By mutual consent, a reopening of this agreement; and
- E.** At a local level, a single supplemental agreement, on matters not set forth in (A) through (D) above by mutual consent of the parties at that local level.

**Section 2.** In situations (A) and (B) described in Section 1, the Employer will notify the authorized agent of the Union in advance in writing of the proposed change or management decision and its impact. (It is understood that the Agency is not required to negotiate on its decisions which do not adversely affect the bargaining unit.) Employer will notify the authorized agent of its decision and date of implementation. When negotiation is desired, the authorized agent will indicate his/her desire to enter into negotiations by advising the authorized Agency representative in writing within ten (10) days from receipt followed by written proposals within fourteen (14) days from receipt. Upon request, the Employer will explain the proposed change or the management decision and its impact to the designated union representative.

**Section 3.** In situations (C) and (D), the party desiring negotiations will so indicate by presenting written proposals to the authorized representative of the other party.

**Section 4.** In situation (E) the party desiring to negotiate will present its proposals in their entirety to the other party. \* \* \* .

**Section 5.** The parties agree to recognize each other's duly authorized representatives. At each location, the parties shall designate an authorized agent.

At the Agency and national levels, the parties shall designate an authorized representative. All dealings between the parties will take place between the appropriate authorized representatives unless an authorized representative designates another individual to act in his or her place. Understandings reached by unauthorized individuals will have no force and effect unless approved by the authorized representative of the parties. The parties will advise each other of their respective authorized representatives at the local levels at least annually. The parties will notify each other of their authorized Agency or national level representative in writing and such authorization will remain in effect until revoked.

**Section 6.** Nothing in this Agreement precludes the Employer, at its election, from negotiating on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

**Section 7.** Where appropriate, the parties will negotiate ground rules for bargaining of issues arising from the operation of this Article which are at the national level.

\* \* \*

\* \* \* \*

**Section 9.** Existing conditions of employment not in conflict with law or provision of this agreement will remain in effect.

\* \* \* \*

## **II. APPLICABLE FEDERAL STATUTE PROVISIONS (Jt. Ex. 20)**

### **TITLE 5 OF THE UNITED STATES CODE GOVERNMENT ORGANIZATION AND EMPLOYEES PART III - - EMPLOYEES SUBPART F - - LABOR MANAGEMENT AND EMPLOYEE RELATIONS CHAPTER 71 LABOR - MANAGEMENT RELATIONS**

#### **SUBCHAPTER I GENERAL PROVISIONS**

#### **Section 7101.      Findings and Purpose**

(a) The Congress finds that - -

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them - -

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

\* \* \* \*

#### **Section 7106.            Management Rights**

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency - -

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws - -

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;



(C) with respect to filling positions, to make selections for appointments from - -

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating -

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

\* \* \* \*

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

\* \* \* \*

**Section 7113.**

**National Consultation Rights**

\* \* \* \*

(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall - -

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization - -

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

**Section 7114.**

**Representation Rights and Duties**

\* \* \* \*

(a)(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

\* \* \* \*

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation - -

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

\* \* \* \*

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

\* \* \* \*

**Section 7116.**

**Unfair Labor Practices**

\* \* \* \*

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency - -

\* \* \* \*

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

\* \* \* \*

**Section 7117. Duty to Bargain in Good Faith; Compelling Need; Duty to Consult**

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government - wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government - wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government - wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

\* \* \* \*

(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government - wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall - -

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

## BACKGROUND

**The United States Environmental Protection Agency, hereinafter Employer, Agency, or EPA is an independent agency of the Executive branch of the Federal Government established December 2, 1970, and charged with the overall mission “to protect human health and the environment.”<sup>1</sup> In accord with EPA Order 1110.2 issued December 4, 1970 by the Agency’s first National Administrator, William D. Ruckelshaus, establishing the initial organization of EPA, the Order stated in Item #13 that there would be ten (10) regional offices with regional boundaries and headquarters locations prescribed by the Administrator with responsibility for the execution of the regional programs of the Agency to be administered on a decentralized basis but would not include field-based scientific and laboratory facilities carrying out national-level programs.<sup>2</sup> Currently, the Agency employs 17,000 people across the country, including at Headquarters offices located in Washington, D.C., the ten (10) regional offices (see fn.2), and more than a dozen labs. The Agency’s highly educated and technically trained staff is comprised of engineers, scientists, and policy analysts which accounts for more than half of all those employed. Others, comprising a large number of employees are legal, public affairs, financial, information management and computer specialists. Council 238 of the American Federation and Government Employees (AFGE) hereinafter the Union or Council 238, is the exclusive bargaining representative for non-supervisory and non-professional general schedule and wage grade employees employed throughout the Agency’s regional and other offices.<sup>3</sup> The Agency and the Union together, hereinafter the Parties, have maintained a formal collective bargaining relationship for an undisclosed period of years and currently are governed by the**

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<sup>1</sup> On July 9, 1970, President Richard M. Nixon in a special message to the Congress, set forth a plan to establish the Environmental Protection Agency acknowledging the concern on the part of the American public the need to know more about the total environment - - land, water, and air, noting that at that time, the national government was not structured to make a coordinated attack on the pollutants which debase the air we breath, the water we drink, and the land that grows our food. Noting further that there existed a number of initiatives dispersed among several existing Federal Agencies under the jurisdiction of several Cabinet Departments that pertained to a number of environmental issues and activities, but whose missions were different and varied from one another, President Nixon asserted that in organizational terms, such initiatives, specifically research, monitoring, standard setting and enforcement activities needed to be pulled together into one Agency. For example, the EPA would be given the functions previously the domain of the Department of Interior’s Federal Water Quality Administration as well as the Department’s functions with respect to pesticides; functions previously the domain of the Department of Health, Education, and Welfare’s National Air Pollution Control Administration as well as the Department’s Bureau of Solid Waste Management, its Bureau of Water Hygiene, portions of the functions of its Bureau of Radiological Health of the Environmental Control Administration, and certain functions with respect to pesticides performed by its Food and Drug Administration; among environmental functions performed by other Executive branch departments and agencies identified in this special message. (Source: the EPA’s web site, [www.epa.gov](http://www.epa.gov))

<sup>2</sup> The ten (10) Regional Offices are as follows: Region 1, Boston; Region 2, New York City; Region 3 Philadelphia; Region 4, Atlanta; Region 5, Chicago; Region 6, Dallas; Region 7, Kansas City; Region 8, Denver; Region 9, San Francisco; Region 10, Seattle. (Source: EPA’s web site, *op cit*)

<sup>3</sup> The Master Collective Bargaining Agreement under which the subject grievance was brought (Jt.Ex.1) provides for a bargaining unit description of who is included and excluded for each regional office as well as for Research Centers and particular Laboratories. Said bargaining units differ among these facilities.

terms, provisions and working conditions set forth in the September, 1994 Master Collective Bargaining Agreement as extended, hereinafter the Agreement (Jt.Ex.1).

Sometime in 1972, the Agency established a network of libraries to address the information needs of staff and the public. As of October, 2003 this National Library Network was comprised of libraries serving the ten (10) regional offices, two (2) research centers (Research Triangle Park, RTP located in North Carolina and the National Service Center for Environmental Publications, NSCEP located in Cincinnati, Ohio), Twelve (12) research laboratories, and four (4) separate libraries meeting the different needs of EPA staff at Headquarters, in Washington, D.C.(Un.Ex.15).<sup>4</sup> Additionally, as of October, 2003, these 28 libraries each differed in function, scope, supervisory chain (EAP Department jurisdiction see Un.Ex.16), and amount of resources available; supported both internal staff and public access at varying levels; and each were facing different budgetary and technological changes (Un.Ex.15).

Beginning in FY 2004, EPA's Office of Environmental Information (OEI) commissioned a study of EPA Libraries (Un.Ex.13) which resulted in the publication of the "*Business Case for Information Services: EPA's Regional Libraries and Centers*" (Un.Ex.12).<sup>5</sup> This report was issued January of 2004 as EPA document 260-R-04-001 and is cited in pertinent part as follows: "The EPA's

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<sup>4</sup> In addition to the library known as the Headquarters' Library, the other three (3) libraries located at Headquarters in Washington, D.C. are: Office of General Counsel Library; Chemical Library, under the jurisdiction of the Office of Prevention, Pesticides, and Toxic Substances (OPPTS); and the Legislative Reference Library, under the jurisdiction of the Office of the Administrator (Un.Ex.16).

<sup>5</sup> The Agency formed a task force which commenced research for the report sometime in August of 2003, prompted by a request to OEI in February of 2003 to address the future of EPA Libraries, the feasibility of a Network that takes advantage of technology, pools resources and leverages requirements from a variety of users and, the end result of compiling a business case for continuing to support library and information services (It is noted that OEI has jurisdiction over the Headquarters Library and the 10 Regional Libraries). The Study Components comprising this research were the following: \*Under the heading of Business Case, to review the current activities being conducted in EPA libraries and assess their value to the institutions they serve; to analyze the cost/benefit of these activities as a basis for developing the strategic direction of the program. \*Under the heading of Strategic Plan, develop a vision for information services within the EPA that folds in electronic materials. \*Under the heading, Recommendations: review the components in place today and recommend changes, implementation, and areas for further study. This study was prompted by the following "Drivers", to wit: \*Information is an asset that needs to be managed strategically; \*Direct costs for libraries are increasing; \*The physical space requirements need to be reviewed to make the most of the available space for regional operations; \*Budgets are susceptible to quick and radical shifts, creating further difficulty to collect and manage information; \*Organizations are bearing some costs on their own such as, subscription services, direct acquisition of materials and information and, contracts often include research costs outside of using library to support efforts; \*The Agency is shifting away from producing printed materials yet there is no controlled repository of electronic EPA documents. The task force considered the following issues: \*Are there services that could be consolidated, reducing duplication in the 10 regional libraries and three (3) centers (RTP, Cincinnati, and HQ)?; \*Are there information services being done by government staff that are not inherently governmental ...?; \*Can technologies be utilized to improve current processes and enhance Agency-wide capabilities?; \*Are there potential funding models that preserve freedom yet build efficiencies?; \*What are the Agency requirements for public access and can they be leveraged with internal needs for efficiency?; \*Are there partnerships outside of EPA that could provide benefits to the Agency and the Agency's stakeholders? (Un.Ex.14).

network of regional libraries and environmental center libraries provides substantial value to the Agency, its professional staff, stakeholders, and the public. Calculated conservatively, the benefit-to-cost ratio for EPA library services ranges between 2:1 and 5.7:1. Libraries and librarians are nonetheless a significant investment, costing the Agency roughly \$6.2 million dollars annually to operate and maintain. It is an opportune time to initiate an Agency-wide dialogue on the extent and nature of library services at the Agency. \* \* \* Numerous questions can be posed, including the following: \*Do individual EPA libraries need to own everything, or could collections or parts of collections be more centralized?; \*Is it necessary for all libraries to support all business functions, and if not, which libraries should support which business functions?; \*Do all EPA libraries need the same array and level of site support services, and if not, how should site support features be apportioned among the various units?; \*Is it necessary that all EPA libraries act as service centers for their respective host unit, and if so, is there a minimum or core level of services that must be available at all sites? (Un.Ex.12).

In its Annual Report for Fiscal Year 2004 (covering the fiscal year October 2003 – September 2004) titled, “The EPA Library Network in 2004” (Un.Ex.13), the Agency noted that, “after the Business Case [report] (Un.Ex.12) was completed, the libraries underwent an extensive assessment process to identify the services and resources that are of most value to the Agency, and to identify ways in which EPA libraries can work together to enhance services and resources \* \* \*”. This Annual Report also set forth a “Preliminary action plan” in which the Agency apprised that, “EPA’s libraries are ready to reinvent themselves for FY2006, noting that work is underway in four (4) key areas as follows: \*Centers of Excellence (CoEs): The CoE’s will exploit library strengths where they currently exist through staff skills and available resources. The staff of a CoE may be virtual, allowing employees working in different geographic areas to pool resources to meet a common need. A Business Research Center of Excellence will be formed as a pilot project in FY2006 to provide business and financial research services for all libraries that need this type of information. The Agency identified potential seller members of the Business CoE as Regions 3, 5, 9, and 10 libraries and potential buyers of business research services as Region 8 and Headquarters libraries and others; \*Leveraged Buy of Electronic Journals and Resources: Based on results of the information Audit (Appendix C of the Annual Report), the EPA Library Network will identify a core set of highly-valued journals and databases. These items will be purchased online in FY2006 for access by all EPA employees at the desktop, where appropriate, or for access in libraries, where appropriate. The cost of and access to the resources will be apportioned to each library based on the value of that resource to the library; \*Gateways to EPA Libraries: Existing gateways to EPA libraries – such as telephone services, online research request forms, and intranet sites – will be evaluated for their value, and new access methods will be considered. A plan to redesign the Library Network web sites will be developed in order to enhance access to resources and services by EPA library patrons; \*Collections & Repositories: User survey feedback and library statistics both show that less emphasis is being placed on the maintenance of collections of print materials. Users overwhelmingly want

expanded access to electronic resources, while recognizing the need to maintain at least some access to print materials. To meet this need, EPA libraries will evaluate current distribution of its print collections across the country. Repositories will be established to maintain print materials, and it is expected that other libraries will reduce the size of their print collections. Some libraries may transfer most of their print materials to a repository, becoming an information service center with only a small reference collection for local use (Un.Ex.13).<sup>6</sup>

The Agency issued a report dated June of 2005 (Document EPA 260-R-05-002) titled, "Optional Approaches to U.S. EPA Regional Library Support" (Un.Ex.11) wherein the stated purpose was to inform the senior and mid-level management about the issues involved with changing the current approach to information services in addition to providing Assistant Regional Administrators with five (5) service options to consider after evaluating the costs and value of managing and/or accessing information services against the reality that future requests for services cannot be predicted and that unit costs of services can only be estimated based on a number of factors. The following are the five (5) service options presented to the Assistant Regional Administrators (ARAs):<sup>7</sup>

1. **Current Status:** The Region chooses to make no changes to the current library operation.
2. **Network Node Approach:** The Regional library continues to provide its core services on-site, but purchases and/or sells some services from/to the National Library Network
3. **Liaison Approach:** The Regional library greatly reduces or eliminates its physical collection and the labor needed to maintain it. Many services are purchased from the National Library Network, with a staff person acting as broker for these services.
4. **Virtual Services Approach:** The Region maintains no library presence on-site but there is a mechanism through which Regional staff can purchase services and resources directly from the National Library Network.

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<sup>6</sup> During the months preceding the close of FY2004 and the issuance of this Annual EPA Library Network report, the Agency acted in January of 2004, to reduce the hours of the Region 6 library to two (2) hours in the morning and two (2) hours in the afternoon. Additionally, it reduced the number of librarians from two (2) to one (1). In response to these reductions in staff and services, a number of the one thousand employees assigned to Region 6, some or all of whom are AFGE employees, wrote e-mails protesting these reductions (Un.Ex.4). The record evidence further reflects that during these same months in FY2004, the task force under the direction of Richard Huffine of the OEI's Information Access Division continued to meet and conduct activities aimed at exploring possible changes to be made to the Agency's Library Network (Un.Exs.45 & 46).

<sup>7</sup> It was noted in a subsequent report titled, "EPA Library Network: Challenges for FY2007 and Beyond" issued November 22, 2005 that these five (5) options were predicated on the assumption that the EPA HQ library would continue to support network communications, for instance: \*OLS – the network's electronic cataloging system and \*Desktop Library linkages through the Intranet (Un.Ex.10).

- 5. Deferral of Responsibility:** The Region ceases all affiliation with the National Library Network, forcing staff to procure information services on their own. This approach is not recommended as it will potentially yield higher costs to the Region overall.

In presenting these five (5) options to the ARAs, the Report prepared by Richard Huffine the Project Lead from the OEI, advised that each Region would need to consider the risks and impacts of changing its model of providing library and information services noting in particular the following impacts:

- **Physical Collections:** Reducing or eliminating the physical collections at a given Region will need to be approached intelligently to ensure continued access to the legacy of the Agency's literature. Transferring collections to a consolidated location will require an upfront investment but will yield cost savings in the future.
- **Services to the Public:** Regional libraries play an important role in the Region's duty to provide information to the citizens of the Region. If a Region is choosing the Liaison or Virtual Services approach, inquiries from the public must be redirected to the Region's hotline or another public access unit.
- Several transitional activities will need to be supported by Regions that choose to change their approach to library services, such as, consulting the Regional unions, establishing new operational procedures, and establishing service agreements with the National Library Network.

Additionally, the Report advised that the National Library Network recommends that each Region choose the appropriate approach to meet the needs of EPA staff and to ensure that the Region can continue to assist the general public in understanding the mission of the EPA. Each Region should consider how their selection affects the ability of the Region to support a collection of print resources and determine the appropriate disposition of collections, as necessary, in order to maximize the costs of transfer and processing. The National Library Network will be working with each Region to establish processes for provision of information services electronically, which will enhance the provision of information to EPA staff while minimizing transaction time (Un.Ex.11).

On or about November 22, 2005, the EPA Library Network Workgroup issued their Findings and Recommendations in a Report titled, "EPA Library Network: Challenges for FY2007 and Beyond" in which it noted that although the demand for library services remains high, EPA's libraries have been receiving less funding every year for the past four (4) or five (5) years and, noting that, even though there is no specific line-item budget for EPA libraries, the Agency's budget, especially in the Administrative Support area has consistently experienced reductions. The Report went on to state that the Agency's draft budget for FY2007 that was sent to



the Office of Management and Budget (OMB) contained a \$500,000 [half a million dollars] budget reduction for the EPA Headquarters Library and for Library Network coordination projects, both of which are managed by the EPA's OEI.<sup>8</sup> In addition to this reduction, the Report stated that OEI had also proposed a \$1.5 million dollar reduction in the regional support budget for the Agency's ten (10) Regions and, that this reduction specifically targeted EPA's Regional libraries although further noting that each Region has discretion in how they choose to spend their Regional support monies. However, the Report noted, as of FY2006, the regional support budgets had been restructured in such a way that the Regions had less flexibility than they once had to move monies and, as a result, the ten (10) Regions might have limited options as to how they could absorb their share of the \$1.5 million dollar reduction thus leaving them with the choice of having to reduce the funding for their libraries. Against this background, it was noted that member libraries of the EPA Library Network agreed to study the effects of a potentially large funding reduction on the network's ability to continue providing core services to EPA employees and the general public, as well as, maintaining library collections. One among the findings of this study based on statistical data from usage of core services in FY2005 was that EPA Regional employees depend on their libraries for the following core services: (1) Find the latest information on health risks associated with chemical substances; (2) Locate the latest information on new environmental technologies; (3) Prepare scientific documentation to justify EPA's position on developing new regulations; and (4) Provide documentation for enforcement cases. From this finding, the study asserted that "these [core] services are extremely important, perhaps essential, in helping EPA staff perform the Agency's mission." In an attempt to assess the possible effect the FY2007 budget reductions would have on the EPA's Library Network's ability to provide core services, the study formulated a hypothetical scenario whereby each of the ten (10) Regions would absorbed an equal share of the proposed total reduction of \$1.5 million dollars, that is, each Region's library budget would sustain an actual cut of \$150,000 dollars. Based on this hypothetical, the study noted that six (6) of the ten (10) Regions indicated they might either close their doors, or reduce their staffing, services, and hours. With regard to contractor staffing, the study noted that in FY2005, there were just over 21 such staff persons throughout the ten (10) Regions and that a \$150,000 dollar reduction in their library budget could result in a cut in contractor staff by as much as one-third. Based on such a reduction of contractor staff, the study asserted that given the large number of library service requests the Regional Libraries receive that it was unlikely that all of these requests would be able to be handled by the Library Network's remaining library staff in FY2007.

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<sup>8</sup> The Report noted this reduction of \$500,000 equaled one-hundred percent (100%) of the EPA's Headquarters library's budget meaning that without another source of funding, the HQ's library would close. Additionally, said reduction meant there would be no funding available to maintain the OLS electronic catalogue of EPA library holdings or the Desktop Library for access to commercial journals and databases (see fn. 7, *supra*). It is noted that this reduction in funds left unaffected the other three (3) libraries located at the Washington, D.C. Headquarters location, specifically, the Legislative Library, the Office of the General Counsel Library, and the Chemical Library (see fn. 4, *supra*).

**Based on the foregoing analysis of the impact of such a reduction in their library budget, the study set forth options available to the Regions depending on whether they elected to close their libraries or to keep their libraries open. For those Regions that elected to close their libraries the study set forth the following broad options:**

- 1. Discontinue support of all library core services, thereby eliminating all library resources for their Regional staff;<sup>9</sup>**
- 2. Purchase core services from another library;**
- 3. EPA libraries that sell services may, at their discretion, in addition to “per use” charges to purchasing libraries, pass on other costs to their customers.**

**For those Regions that elected to keep their libraries open, the study set forth the following broad options:**

- 1. Close their physical libraries and disperse their physical collections, but retain library contractor staff to provide core services for their Regional staff;**
- 2. Retain both library staff and their physical collection; and provide core services for their Regional staff only (and perhaps non-EPA users within their region);**
- 3. Maintain their library and sell services to EPA offices that no longer have a library.<sup>10</sup>**

**Based on their findings, the workgroup that conducted this study made the following recommendations:**

- 1. \* \* \* Any Region that closes its library should plan to set aside funds to pay another EPA library in the network to provide these services.**
- 2. Some EPA libraries that remain open in FY2007 should offer to provide core library services, for an agreed upon fee, to those EPA Regions and Headquarters offices that no longer have their own libraries.**

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<sup>9</sup> The study asserted this was not a good option for any EPA Regional office as the statistical data clearly showed that EPA’s professional staff rely on library core services to accomplish their work. Failing to provide access to library core services could, the study noted, adversely affect Regional staff persons’ ability to function. As a result, the study workgroup stated that it did not consider this option any further (Un.Ex.10).

<sup>10</sup> The study noted that in addition to these three (3) options, Region 4 was then exploring other possibilities, including developing partnerships with educational institutions and other Federal agencies that have a similar mission. The study mused that such a unique arrangement may be mutually beneficial to the agencies involved in that they could share the costs of providing services.

3. **If the EPA Headquarters library, and several Regional libraries, all close by September 30, 2006, the Agency will be faced with a huge challenge to responsibly disperse its collections. The Agency should do whatever it takes to ensure that these collections will continue to be available to both EPA and non-EPA users on an ongoing basis. This might require an investment of funds to hire contractors that can responsibly pack, label, ship and re-catalogue the holdings for each library that closes.**
4. **The Office of Environmental Information (OEI) should fund the continued maintenance of the library network's OLS catalogue for FY2007, and perhaps for a few years after that. This would give the Library Network sufficient time to figure out how to absorb the costs to maintain this electronic catalogue.<sup>11</sup>**

**As anticipated by the EPA's Library Network Workgroup in its November 22, 2005 Findings and Recommendations report (Un.Ex.10), the President's 2007 Budget Request submitted to Congress included a proposed two million dollar (\$2,000,000) reduction in library services at the Agency. Also, as indicated in said report, this reduction envisioned impacting the Headquarters library and the ten (10) Regional**

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<sup>11</sup> The Arbitrator notes that prior to November 22, 2005, the date the Library Network Workgroup released its study Findings and Recommendations, the Workgroup had produced a draft of its study which it released to the Regions for the purpose of soliciting their input which was then recorded in a document titled, "Consolidated Regional Comments on Libraries" as of July 25, 2005, four (4) months prior to the release date of its final study (This document was also part of Union Exhibit 10). As examples of comments from just two (2) Regions, the following is noted, to wit: Region 5 – R5 has already made substantial changes to its library in response to FY'05 budget cuts. For FY'06, the Region is planning to participate in the collaborative Library network, but has only just begun to discuss at what capacity – probably basic or virtual services; Region 8 – R8 is still evaluating the details of both the OEI Library report and the concept of establishing a Library network among the 10 regions. We have had a number of discussions with OEI, and as a general proposition, support continuing to gather information and develop the concept. Nevertheless, we have a number of questions and concerns that we hope can be answered and addressed before we can fully commit to the proposition. The R8 Technical Library inseparably serves both EPA staff and the general public. The location and nature of our new building will require that we continue this approach. For this reason, R8 is committed to maintaining a physical library with qualified staff, access to a robust collection, research capability, and rapid access to electronic information services and resources. We would need to be assured that participation in the network would allow us to maintain current, if not enhanced levels of these services. Given . . . the optional approaches for EPA regional libraries, R8 would likely participate in a "network node" approach. We could consider maintaining a Center of Excellence [CoE] for regional priority subject matters . . . . Of course we would want to be assured that the Library network as a composite, including HQ libraries, would provide sufficient access, services and information in the remaining needed scientific and programmatic areas and subject matters. Our participation and the approach that we would select would depend on appropriate levels of funding, support, and clarification on how the "market-based" exchange would operate. We would need to be convinced that anticipated efficiencies and cost savings can actually be realized, and allow us to maintain, if not enhance, current service levels. We believe that the costs associated with the current operation of the R8 library are in actuality closer to one half of those reflected in the report. Nevertheless, we expect that given our future physical infrastructure, public access requirements, and needed research capability, we would require funding at or near our current levels. In light of the size of the disinvestments in library support being contemplated as part of the FY'07 prioritization exercise, we have significant question about how minimal levels of service can be maintained, whether the cost savings and efficiencies in the proposed network would make up for any reduction or even allow the proposed system to operate (Un.Ex.10).

libraries only, leaving the budgets of the remaining fifteen (15) libraries in the EPA Library Network unaffected.<sup>12</sup> This proposed FY2007 budget reduction in EPA library funding resulted in a number of protests by various interested parties. For example, an organization known as Public Employees for Environmental Responsibility (PEER) issued a News Release dated February 10, 2006 (Un.Ex.32) under the headline, BUSH AXING LIBRARIES WHILE PUSHING FOR MORE RESEARCH based on internal Agency documents, claimed that the slated reduction of two million dollars of a total library budget of 2.5 million dollars was slated to shut down its network of libraries that serve its own scientists as well as the public and, in addition, the EPA would pull the plug on its electronic catalogue which tracks tens of thousands of unique documents and research studies that are available nowhere else. This News Release further claimed that the EPA currently operated a network of 27 libraries operating out of its D.C. Headquarters and ten (10) regional offices across the country and that the size of the budget cut in library funds would force the Headquarters library and most of the regional libraries to shut their doors and cease operations.<sup>13</sup> This News Release ended with a quote from PEER Executive Director Jeff Ruch who stated, "Access to information is one of the best tools we have for protecting the environment and that the cuts were the epitome of penny wise and pound foolish. Closing the EPA libraries actually threatens to subtract from the sum total of human knowledge." As another example protesting the proposed reduction in library funds for the EPA, a joint letter by four (4) national library associations dated February 24, 2006 (Un.Ex.23) was sent to Congressman, Charles H. Taylor, then Chairman and Congressman Norman D. Hicks, then Ranking Member respectively of the Subcommittee on Interior, Environment, and Related Agencies of the House Committee on Appropriations.<sup>14</sup> The letter stated that the four (4) library associations opposed the proposed \$2.5 million dollar cut in the EPA FY2007 budget as it would likely result in the closure of the Headquarters Library as well as many of its 27 regional and laboratory libraries (see fn 13, *supra*). Moreover, the cuts would put the EPA libraries' collections and services at risk and would seriously harm the public's ability to access the Agency's valuable resources. Other contentions expressed in their collective opposition were as follows: \*In eliminating many of its libraries, EPA's leadership is making it more difficult for the Agency's policymakers and the public

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<sup>12</sup> The fact that the other fifteen (15) libraries in the EPA Network would not be affected by the budget reduction was confirmed in the EPA's June 1, 2006 Draft Report, *EPA FY 2007 Library Plan: National Framework* (Agency Ex.8).

<sup>13</sup> Aside from its inflammatory tone and inaccurate speculation, it is noted that at this point in time, the number of libraries comprising the EPA's Library Network was 26, not 27 (see Un.Ex.16).

<sup>14</sup> These four (4) library associations were: American Association of Law Libraries; American Library Association; Association of Research Libraries; and Special Libraries Association. The letter informed the two Congressmen that together, their four (4) associations represented over 139,000 libraries throughout the United States and the millions of library patrons who use their facilities and services. Additionally, the letter informed that the four (4) library associations work collaboratively on a host of important policy issues that support the Nation's libraries and promote access to information for creative, research, and educational uses. The letter further apprised that the associations' members know first hand how important the EPA library collections and services are to the American public. Copies of this joint letter were also sent to Stephen L. Johnson, the Administrator of the EPA and Linda Travers, EPA Acting Assistant Administrator and Chief Information Officer.

to leverage the extensive knowledge found in high quality, accurate information to make important decisions on our Nation's environment, potentially compromising the public's health; \*The four (4) associations lamented that the findings, recommendations, and action plans set forth in three (3) reports, to wit, *Business Case for Information Services: EPA's Regional libraries and Centers* (January 2004, Un.Ex.12); *Transforming EPA Libraries: Creating a national capacity for information management and retrieval* (June 2004); and *EPA Library Network: Challenges for FY 2007 and Beyond* (November 2005, Un.Ex.10), had been all but ignored by the Agency as they provided new models for information services to reduce duplication, cut costs and improve the national capability of the EPA; and, \*The Associations warned that if the cuts in library funding were implemented, they would severely weaken or eliminate public access to the EPA's scientific and technical information resources as well as the expertise of the information professionals who know how to identify and analyze them. In conclusion, the Associations urged the Subcommittee to restore the \$2.5 million dollars needed for the EPA libraries to continue to operate at the same level in FY2007 and to require the EPA to develop an innovative information management strategy for the 21<sup>st</sup> Century that provides for continued public access to the collections and services of EPA Libraries.<sup>15</sup>

The record evidence reflects however, that the four (4) Library Associations' contention that the Agency had all but ignored its previous three (3) studies cited hereinabove that provided new models for information services to reduce duplication, cut costs and improve the national capability of the EPA was both mistaken and inaccurate. In its Draft Report dated June 1, 2006 titled, *EPA FY 2007 Library Plan: National Framework* (Ag.Ex.8), the Agency noted in its Introduction of this report the following: "To prepare for the budget reduction, EPA established a Library Steering Committee in the fall of 2005 composed of senior managers from EPA's Program Offices and Regions, co-chaired by OEI and Region 4. The goal of this Steering Committee was to develop a new model of providing library services to EPA staff. The Steering Committee reviewed the recommendations from the staff level Regional Library Network Workgroup and it conducted additional analyses."

Subsequent to the establishment of the Steering Committee but prior to the release of its June 1, 2006 Draft Report, Region 5 began making preparations to respond to the anticipated forthcoming budget cuts.<sup>16</sup> In March of 2006, Region 5 Management sent two (2) Memos to "All Region 5 Employees" wherein it apprised that the coming reduction in library funds in the amount of \$150,000 dollars, which constituted approximately ninety percent (90%) of its total library budget would

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<sup>15</sup> The Associations also requested at the end of their joint letter that their statement as set forth in the letter be included as part of the March 2, 2006 hearing record on the EPA's FY2007 appropriations.

<sup>16</sup> It is recalled that in FY 2005, Region 5 effected "substantial changes to its library as a result of budget cuts in that fiscal year (see fn. 11, *supra*).

require closing its Regional Library.<sup>17</sup> In its first March Memo (Ag.Ex.1), the Agency informed the employees that the Region was exploring options to obtain library services from other EPA libraries and assured them they would continue to have on-line access to key journals and publications through the EPA Desktop Library(link) and to expect they would have access to interlibrary loans and reference services through another EPA library. Additionally, staff and the public would continue to have available to them, the On-line Library System(link) (OLS) catalogue of all the holdings in EPA's libraries. This Memo assured employees that Region 5 Management was committed to providing staff with access to the library services they need to carry out the Agency's mission-critical functions.

Management also apprised the employees they were aware of the impact the coming changes would have on them and that they would be meeting with AFGE Local 704 representatives to discuss the changes. The second March Memo bearing the date of March 13, 2006 (Un.Ex.39) essentially provided the same information as the first Memo but with the addition of the following: "We have compiled significant information regarding how our library is presently used. The highest priority uses have been the online library system, interlibrary loans and reference services.

Region 5 employees will continue to have online access to key journals and publications through the EPA Desktop Library(link) and we expect we will have access to interlibrary loans and reference services through another EPA library." In an e-mail Memo dated March 14, 2006 from Region 5 Management to AFGE Local 704 (Ag.Ex.2), Management apprised it planned to enter into an agreement with the Office of Administration and Resources Management (OARM) in Cincinnati to provide Region 5 employees with the following services, to wit: \*Full EPA Desktop Library Access; \*Interlibrary Loans; \*Online Library System; \*Reference Searches; and \*Reception, and that it wished to invite AFGE, Local 704 to join them in pre-decisional discussions to best meet the needs of the Agency's mission and its employees.

Just two (2) days after Region 5 Management invited AFGE Local 704 to join them in pre-decisional discussions regarding the planned closure of its Regional Library, Charles Orzechoskie, President of AFGE Council 238 encompassing all AFGE locals representing EPA bargaining unit members, by letter dated March 16, 2006, and sent to EPA Director of Labor and Employee Relations, Ruben Moreno at Washington, D.C. Headquarters (Jt.Ex.1A), apprised the Union was Demanding to bargain over the closing and major reorganization of the EPA Headquarter's and Regional libraries pursuant to Article 45, the Supplemental Agreements and Other Negotiations ...clause of the 1994 Master Collective Bargaining Agreement (Jt.Ex.1). In this written Demand to Bargain, Orzechoskie referenced the March 13, 2006 Memo to "All Region 5 Employees" sent by Region 5 Assistant Regional Administrator, Tom Skinner alleging that this Memo revealed that no provision has been made to provide core library services to EPA Region 5 scientists once the

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<sup>17</sup> According to another EPA generated document sent by e-mail to the Union dated March 14, 2006 (Ag.Ex.2), Region 5's FY2005 library funding had been \$157,000 dollars. Thus a reduction of 150,000 dollars in Region 5's FY2007 budget amounted to a 95.5% cut in its library funds from its FY2005 budget and the slightly less percentage cut of around 90% from its FY2006 budget.

library closes and that no mention is made as to the responsible dispersal of the EPA Region 5 library collection. Orzechoskie also referenced a Memo dated March 9, 2006 from Region 6 Assistant Administrator for Management, Lynda F. Carroll and sent to Forrest John, President of AFGE Local 1003 apprising that Region 6's library would be closing effective on the close of business September 30, 2006. In noting that the EPA Headquarter's library would be closing, Orzechoskie asserted that no mention has been made as to how said library's collection would be dispersed and no arrangements have been made to ensure that EPA HQ bargaining unit members will continue to have access to core library services. Orzechoskie further noted that a "library steering committee" had been formed and that said committee would be making decisions regarding the closure of EPA Regional libraries across the country but that these decisions were being made without proper consideration of how the EPA scientists would be receiving high-quality core library services. Furthermore, Orzechoskie asserted, these decisions were being made without adequate consideration of ensuring that AFGE Council 238 Bargaining Unit employees will have ongoing access to the technical studies, reports and other documents that EPA has produced in the past. In accord with its Demand to Bargain pursuant to Article 45, Section 2, Orzechoskie set forth the following requests, to wit:

- (1) In order to protect the Union's right to negotiate, AFGE Council 238 requests that the Agency maintain the status quo;
- (2) AFGE Council 238 invokes its right to ask EPA management to cease its discussions of EPA library closures for FY 2007, and reinstate the \$2 million dollar budget cut to the libraries;
- (3) AFGE Council 238 invokes its right to ask EPA management to continue its "library steering committee" discussions, but include AFGE representatives on that steering committee. The committee will continue to explore possible "efficiencies" within the EPA library network. With due consideration of how to provide core library services or ongoing access to EPA's library collections, and AFGE Council 238 and management will work together to develop a Library Network plan for FY 2008;
- (4) While it is not clear to AFGE Council 238 the impacts on the AFGE bargaining unit will be based upon what is being proposed by the EPA at this time, AFGE Council 238 is hereby notifying you of our intent to bargain over procedures and appropriate arrangements. In accordance with Article 45 Section 2, AFGE Council 238 requests that the EPA explain the proposed changes and their impact on the AFGE bargaining unit to the designated Union representative. Once the EPA has explained the proposed change and its impact on the AFGE bargaining unit, AFGE Council 238 will submit its counter-proposal on procedures and appropriate arrangements.

Orzechoskie then ended this Demand to Bargain letter by informing Director, Moreno that the Union's Chief Negotiator for this effort was Maureen Kiely of AFGE Local 3607, EPA Region 8.<sup>18</sup>

By Memo dated March 27, 2006, directed to a number of AFGE Region 5 Bargaining Unit members, John J. O'Grady, President of AFGE Local 704 asked for a volunteer to represent the Local in discussion with Region 5 Management regarding the pending Region 5 library closure (Ag.Ex.5). On the following day, March 28, 2006, O'Grady by Memo sent to Region 5 Labor Relations Specialist, Martin Mills, a Demand to Bargain locally on procedures and appropriate arrangements in accord with Article 45 of the Master Collective Bargaining Agreement (Jt.Ex.1) over the change in working conditions, meaning the forthcoming changes to Region 5's library. As in Orzechoskie's Demand to Bargain impending changes to the ten (10) Regional libraries and the Headquarters' Library as a result of the budgetary cut in library funding for FY 2007 on a national level, O'Grady requested in conjunction with his Demand to Bargain on a local level that Region 5 Management provide an adequate explanation of its decision to close Region 5's library and its impact upon the bargaining unit employees; and that upon receipt of such explanation, he would be prepared to submit a proposal addressing the procedures and appropriate arrangements. O'Grady ended this Demand to Bargain with suggesting convening a meeting between himself, Martin Mills to whom he directed the Demand to Bargain, Jeff Kelley, and Cheryl Allen, a Local 704 bargaining unit member in order to begin the process (Jt.Ex.21).

By letter dated March 30, 2006, AFGE President of Local 3631 Alan Hollis set forth his concerns regarding reduced funding of EPA libraries in a letter directed to Region 3 Administrator, Donald Welsh (Jt.Ex.14). Hollis stated among other things that the EPA libraries are assets that are essential to the performance of EPA's mission and that among these vital assets were: \*Physical and Electronic Collections; and \*Services, which include performing searches, obtaining materials through interlibrary loans, contents mailings and alerts on the availability of new research and guidance, and updating, organizing, and maintaining the physical and electronic collections. Hollis noted these assets were used to: \*support and justify Agency decisions; \*develop new projects; \*keep employees knowledgeable about new and emerging techniques, research, results, regulations, science, etc.; \*assess risks and evaluate cleanup goals and alternatives; \*perform acquisition market research and contractor responsibility determinations; \*recover costs; and \*educate stakeholders. Hollis asserted in closing that, closure of the EPA libraries would cost the Agency time and money, reducing its efficiency and the soundness of its decisions. It would place unnecessary obstacles in the paths of both employees and stakeholders by making information more difficult to find. It would be contrary to

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<sup>18</sup> As a point of interest, in a subsequent reproduction of this "Demand to Bargain" attached to an e-mail sent by Steve Roy to David Mick dated June 19, 2006 (Jt.Ex.8), the Demand letter indicated that Steve Roy of Local 1110, EPA Region 10 would be the Chief Negotiator for this effort, meaning bargaining the library changes on a National level with no mention or reference to Maureen Kiely as the designated Chief Negotiator.



both the Administrator's Action Plan which states, "EPA will continue to use the best available scientific information as the basis of its decision making and, EPA will ...continue to ensure that its workforce has the tools and skills for new areas of scientific inquiry . . . and the President's Management Agenda which has included such goals as; create easy-to-find single points of access to government services for individuals, share information more quickly and conveniently between the federal and state, local, and tribal governments, reduce the expense and difficulty of doing business with the government, provide citizens with readier access to government service, and make government more transparent and accountable.

In an e-mail Memorandum sent May 15, 2006 from Labor/Employee Relations Officer, David Mick to Mike Flynn, Director, Office of Information Analysis & Access, OEI, Mick apprised Flynn that he and Ruben Moreno, Director Labor and Employee Relations, EPA Headquarters spoke with Steve Roy, AFGE Local Union President, Region 10 on May 12, 2006 (Friday) regarding Roy's concern that AFGE was being left out of the discussion, nationally, on the issue of library service changes.<sup>19</sup> Mick related to Flynn that he and Moreno told Roy it was OEI's plan to share the "Framework/Guiding Principles" document for Regional & HQ library service changes with the unions so as to obtain their feedback and that OEI was open to having a teleconference with the unions so as to allow for real-time dialogue on the document once it was made available. Mick apprised that while Roy indicated he was amenable to this plan, he indicated that AFGE would like to have an opportunity to provide input to the "Framework" document prior to a "final" version being sent to the field and that if the Agency was unwilling to do this, AFGE would consider filing an Unfair Labor Practice (ULP) charge. Mick apprised Flynn he told Roy he would raise AFGE's interest with him and would get back to him (Roy) as soon as he received a response. Mick advised Flynn that if he were inclined to allow AFGE to have input to the "Framework" document before it went out to the field, it would make sense to allow the other unions representing EPA bargaining unit employees to have the same opportunity (Jt.Ex.22). In an e-mail response sent May 16, 2006, Flynn apprised Mick that the Agency planned to give the unions an opportunity to review the draft "Framework" document and that he thought it would be ready the following week to send to the unions and to set up a briefing time (Jt.Ex.22).

Prior to the issuance of the "Draft Framework", several Regions proactively instituted certain changes in library services in anticipation of the FY 2007 cut in funds for library services. For example, Region 10 by e-mail Memorandum sent May 17, 2006 to Steve Roy in advance of distributing it to all Region 10 employees apprised that in preparing for the budget cuts in library funding it was instituting new hours for its library and, contract staff would immediately begin reviewing library holdings to weed out redundant and outdated material and, additionally, to undertake to develop a prioritized list of periodical subscriptions for future

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<sup>19</sup> Mick informed Flynn that Roy was the designated spokesperson for all Agency AFGE locals regarding the matter of the proposed changes in library services. In addition to being President of the Region 10 AFGE local, Roy also holds the office of Executive Vice-President of AFGE Council 238.

**purchase. This Memorandum apprised that while a comprehensive path forward was still under development (referring to the work of the senior level Agency-wide Library Steering Committee working on the “Framework” document) Region 10 was committed to ensuring a smooth transition to whatever new model of library services was ultimately chosen. Additionally, Region 10 acknowledged the importance of library services to the employees and apprised it would continue to discuss upcoming changes and proposals with the union. In closing, Region 10 requested that employees provide their ideas and comments to the region’s Library Project Officer (Jt.Ex.17). As yet another example of a proactive response to the FY 2007 budget cut in library funding, in a Memorandum sent to Roy and Alan Hollis, President, Region 3 AFGE local, among others, in advance to its distribution to all Region 3 employees, the Memo informed that although historically, Region 3 had maintained two fully-functioning libraries, to wit, the Ft. Meade Environmental Science Center (ESC) and the library at its Philadelphia office, given the current FY 2006 budget reductions and the resignation of the ESC contract library staff, the responsibility for providing library services such as research, literature searches and inter-library loans was assumed by the Philadelphia library. However, Region 3 apprised that the collection of reports and journals at the ESC was being kept onsite for staff use. Region 3 further apprised that notwithstanding contract staff reduction at the Philadelphia library site, the Regional Center for Environmental Information (RCEI or the Regional Library), library services for all offices was being maintained by realigning priorities to emphasize direct user support such as reference/research and document delivery, including inter-library loans (Jt.Ex.18).**

**By Memorandum dated June 2, 2006 from David Mick to a number of recipients one of whom was Steve Roy, Mick informed that OEI in collaboration with the Library Steering Committee had assembled the draft “Framework” document entitled, “EPA FY 2007 Library Plan: National Framework” and that the document’s design was to convey the new paradigm the Agency planned to deploy so as to perpetuate high quality delivery of library services to employees and the general public. Mick further apprised that implementation of the “Framework” would vary by Region and at the Headquarters level explaining that, that was the reason why “impact and implementation” bargaining of actual library service changes would take place separately in the Regions and at Headquarters. Mick stated however, that before final decisions were made with respect to composition of the “Framework” document and, thus, prior to it being sent out for further action in the Regions and Headquarters, it was OEI’s desire to have input from the Unions representing the Agency’s bargaining unit employees.<sup>20</sup> Mick apprised that for the benefit of the Unions, OEI planned to brief and field questions on the issue of pending library service changes at the National Partnership Council (NPC) meeting scheduled for June 13, 2006 in Washington, D.C. Mick then requested that the recipients of the draft “Framework” document provide feedback to him on the document by the close of business June 16, 2006 (Ag.Ex.5).**

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<sup>20</sup> Apparently, the recipients other than Roy to whom this Memorandum was directed were representatives of Unions other than AFGE that represented other segments of EPA’s labor force.

**In the Introduction section of the draft “Framework” document, the Agency noted in pertinent part the following:**

**Over the past three years, EPA has been looking at ways to modernize and improve the way it provides library services to its employees and the public. The trend in recent years has shown a shift in the way people request and receive their library services from EPA. With more materials available online and electronically, EPA has found that its employees and the public are finding the materials they need from EPA’s Web site and they are requesting more information electronically. In addition, with tighter security at its facilities, the public’s physical visits to the EPA libraries have been declining. EPA has also realized that it could gain efficiencies in having its regional libraries work more as a cohesive network with shared functions as opposed to their current operations. These trends all suggested to EPA that it needs to use information technology to improve its delivery of library services, and it needs to streamline the number of physical libraries to gain efficiencies.**

**\* \* \* \***

**The following is a description of the new model EPA plans to implement to ensure that EPA employees continue to receive quality library services and that the public continues to have access to EPA information. EPA plans to begin transitioning to the new model in the Summer of 2006. In FY 2007 EPA plans to implement a phased approach to disperse and/or dispose of library collections in those libraries that will close access to their physical collections.**

**In its Conclusion section, the Agency stated the following:**

**EPA is committed to providing its employees the library services they need to do their jobs and the public access to the information needed to make informed decisions. The implementation of this plan will take time and resources, and EPA is committed to ensuring an efficient transition into this new model of providing library services.**

**(Ag.Ex.8)**

**Presumably, while still in the course of soliciting comments on the draft “Framework” document from Union representatives, via an e-mail attached Announcement dated June 13, 2006 (Un.Ex.43), the Agency informed employees of certain changes pertaining to Region 2’s library, to wit: that the Region would close its library reading room and regional staff would have limited access to the physical collection and that public access to the library would be discontinued. Further, Region 2 would not add any additional titles or resources to the physical collection and its website would be removed from both the Internet and Intranet. Employees**

were informed that the Region had no plans to disperse the physical collection which included material acquired from the Edison library that closed at the end of FY '04 and, were assured that library services would continue to be maintained via a research librarian physically located in the regional office. In and around this same time period, Region 6 apprised its employees that it would close its library which was responded to by a number of e-mail responses from the region's employees that were bundled together into one document dated June 16, 2006 which collectively urged that the library not be closed (Un.Ex.3).

By an e-mail but dated June 19, 2006 Mick sent to Roy (Jt.Ex.10 and Un.Ex.34), Mick stated it was his understanding that Roy had an interest in negotiating over library service changes and inquired as to whether Roy was seeking negotiations on the "Framework" document (Ag.Ex.8) or did he want to bargain on behalf of an AFGE Local(s) in response to a proposed regional library change. Mick then requested of Roy that whatever his bargaining interests were, that he identify his interests in conjunction with Article 45, Section 2 of the Master Collective Bargaining Agreement (Jt.Ex.1). In an e-mail response sent later in the same day, Roy informed both Mick and Mike Flynn that it was the Union's desire to move forward with commencing negotiations and asked when they would both be available to initiate negotiations (Jt.Ex.10 and Un.Ex.34).

By letter dated June 29, 2006, Presidents of sixteen (16) EPA Union Locals affiliated with three (3) National Unions and an Independent Union, together representing at least ten thousand (10,000) EPA employees (composed of scientists, engineers, environmental protection specialists and support staff) directed to Senator Conrad Burns and Senator Byron Dorgan, Chair and Ranking Member respectively of the Interior and Related Agencies Subcommittee of the United States Senate Appropriations Committee (with copies to 13 other Senators), wherein they stated the purpose of their joint letter was to protest the proposed \$2 million dollar reduction to the EPA operations and administration budget which EPA Management intended to use to close as many of the Agency's technical libraries as possible (Un.Ex.22).<sup>21</sup> The letter went on to state the importance and significance of the libraries relative to the performance of their members' jobs and to providing the general public with vital information. The authors stated that for these reasons, it was urging Congress to reinstate the \$2 million dollar budget reduction and mandate that EPA Management use these funds to keep open the Agency's existing technical libraries noting that, as of the date of their joint letter, the EPA had

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<sup>21</sup> These National Unions were: American Federation of Government Employees (AFGE) the signatories representing 9 Locals and the Council 238; National Treasury Employee Union (NTEU) the signatories representing 4 of its Chapters; National Association of Government Employees (NAGE) the signatories representing 2 of its Locals; and the Union, ESC (Un.Ex.22). It appears that the timing of this letter was occasioned by the fact that on this date of June 29, 2006, the Senate Appropriations Committee passed an amended version to House Resolution (H.R.) 5386 which contained the EPA's funding and which was passed by the House on May 18, 2006 (Un.Ex.31). However, the record evidence reflects that the then 109<sup>th</sup> Congress adjourned without having completed FY 2007 appropriations for EPA and most other federal agencies and, as a result, funding to keep the federal government operating through February 15, 2007 was accomplished by way of a continuing resolution [H.J.Res 102 (P.L. 109-383)] (Un.Ex.18).

already significantly reduced library services and no longer made available services to the public in four (4) EPA Regions (Regions 1, 2, 5, and 6) which altogether service nineteen (19) states. The signatories of the letter averred that the proposed \$2 million dollar budget cut for EPA libraries was initiated by EPA Management, and approved by the Office of Management and Budget (OMB) and the President, before being sent to Congress asserting that said budget cut was just one of many Bush Administration initiatives to reduce the effectiveness of the Agency, and to demoralize its employees. Further, in this same vein, the signatories stated their belief that the sudden, draconian manner in which the EPA libraries were being closed with little regard to protection of its unique collection of past technical reports and documents, constituted one more example of the Bush Administration's efforts to suppress information on environmental and public health-related topics while cloaking these actions under the guise of "fiscal responsibility". The signatories also stated they had tried to resolve the library issue internally by sending a Union "Demand to Bargain" (see in this proceeding AFGE's "Demand to Bargain" on a National level, Jt.Ex.1-A and on a Local Level, Jt.Ex.21), but that EPA Senior Management had rebuffed their Demand on grounds that the topic was "premature" to negotiate because no formal FY 2007 library plan had yet been adopted.<sup>22</sup>

Although Council 238 forwarded to the Agency its "Demand to Bargain" on a National level dated March 16, 2006 (Jt.Ex.1-A), it was not until July 18, 2006 that the Agency formally responded to the Demand in writing in an e-mail Memorandum sent by Mick to Roy (Jt.Ex.8). In pertinent part, this Memorandum stated the following:

- Management had acted within its rights to form a library steering committee populated solely by non-bargaining unit employees and that on behalf of this committee, OEI had actively sought consultative feedback from the Unions. As such, OEI has endeavored to maintain an interactive dialog with the Unions regarding library service changes as evidenced by: (a) providing an initial briefing on past labor/management teleconference; (b) presentation at the recent National Partnership Council meeting; and (c) submitting the draft "Framework" document for Union review and comment. OEI still remains open to discussion with the Unions on the "Framework" document.
- The Headquarters' library has not yet been closed nor have plans been finalized concerning its closure. Once such details have been determined, they will be shared with the Unions representing Headquarters' bargaining unit employees for appropriate "impact and implementation" bargaining.
- In regard to Council 238's demand that the Agency maintain a status quo posture with respect to library service changes, the Agency reiterates that it

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<sup>22</sup> It is recalled that at this point in time, the Agency had, in draft form, circulated its proposed plan titled, "EPA FY 2007 Library Plan: National Framework (see Ag.Ex.8), among which purpose was to solicit input from the Unions.

will, at the Regional level and at HQ (for the HQ library), bargain “impact and implementation” issues attendant to library service changes once local library service change plans are developed. These plans will be shared with the Unions once they are completed by Management.

- With respect to Council 238’s request that the Agency “. . . cease its discussions of EPA library closures for FY 2007, and to reinstate the \$2 million dollar budget cut to the libraries”, the Agency’s response is that it does not view such a demand as appropriate for impact and implementation bargaining. In fact, this particular Union proposal would preclude the Agency from exercising its rights in taking any action whatsoever on the matter of library service changes.

In closing, Mick apprised Roy OEI had a strong commitment to providing employees access to necessary library services and that Management remained receptive to informal consultation with the Union (versus formal negotiations) on substantive library service changes.

By an undated Memorandum (apparently transmitted August 11, 2006) Mike Flynn thanked Paul Scoggins, President of AFGE Local 1003 and Tammy L. Jones-Lepp, President of NAGE Local R12-135 for their comments pertaining to the “Framework” document. Additionally, Flynn apprised Scoggins and Jones-Lepp that coordination of EPA’s Library Network would continue with the Office of Administration and Resource Management’s (OARM) two (2) Environmental Research Center libraries, the Research Triangle Park (RTP) located at North Carolina and the other located at Cincinnati as the co-leads of the Network. The co-leads, Flynn explained, will conduct conference calls used by the Network libraries’ staff and managers for information sharing, coordination of cross-library efforts, and handle other issues and that OEI would continue to fund the Library Network listserv, as well (Un.Ex.41).

On or about August 15, 2006, the Agency released in final version its library plan titled, “*EPA FY 2007 Library Plan: National Framework for the Headquarters and Regional Libraries*” (Jt.Ex.5). A comparative analysis of the June 1, 2006 draft “Framework” (Ag.Ex.8) and the Final version reveals almost no substantive changes in the plan, notwithstanding some input in terms of comments by bargaining unit employees and some Union representatives regarding the draft version. The record evidence reflects that on August 16, 2006, Roy on behalf of the Union, filed a formal grievance addressing the Agency’s unwillingness to bargain over the closure of libraries and change in library services. However, Roy indicated that if the Agency would be willing to negotiate the issue of library closures and changes in library services, the Union would be more than happy to work with the Agency (Un.Ex.34). Subsequent to the release of the draft version of the “Framework” but prior to the release of the Final version, the Agency conducted a two-week pilot program relative to instituting library changes going forward that occurred in the period June 26 – July 7, 2006 which it characterized as successful, that occasioned the

decision by Region 5 to close its library as of August 28, 2006.<sup>23</sup> In an e-mail Memorandum dated August 23, 2006 apprising of Region 5's library closure, employees were notified that library services would be provided by the EPA Environmental Research Center library at Cincinnati and through the online Desktop Library (Un.Ex.44). By e-mail Memorandum dated August 24, 2006, Mick notified a number of EPA Management staff that the Headquarters Library would close for general access effective October 1, 2006 and that he had been designated the labor relations point of contact on this matter (Jt.Ex.11). Apparently in reaction to this information, Steve Shapiro, President of AFGE Local 3331 (Washington, D.C.) sent an e-mail response to Charles Orzechoskie, President of AFGE Council 238 apprising that Local 3331 would take whatever action AFGE Council 238 would wish them to take (Jt.Ex.11). Earlier on that same day, August 24<sup>th</sup>, Orzechoskie sent an e-mail to Mick in response to the news that Headquarters would be closing its Library for general access as of October 1, 2006 wherein Orzechoskie wrote the following:

In view of the message that you sent . . . indicating that the Headquarters Library is closing October 1, 2006, it seems that your response to Steve Roy on July 18, 2006 (Jt.Ex.8) is no longer appropriate. In fact, to quote that letter, *"Once such details have been determined, they will be shared with the Unions representing Headquarters bargaining unit employees for appropriate 'impact and implementation' bargaining."* Council 238 is a consolidated Union representing Headquarters Bargaining Unit employees, so when do you intend to begin "impact and implementation" bargaining? (Jt.Ex.7).

By letter dated September 19, 2006 signed by Senator Bart Gordon, Ranking Member of the Committee on Science, Senator Henry A. Waxman, Ranking Member of the Committee on Government Reform, and Senator John D. Dingell, Ranking Member of the Committee on Energy and Commerce and sent to David M. Walker, Comptroller General of the United States, the three Senators requested that the Government Accountability Office (GAO) examine the Administration's plan, incorporated in the President's fiscal year 2007 budget proposal to cut funding for the EPA's library system by over 30 percent. The Senators expressed "grave concerns" about the effects of this plan on EPA's ability to protect the environment and questioning whether the plan would actually save the government money. The Senators apprised that EPA professional staff assert that the proposed cuts to EPA's library system will harm the Agency's ability to carry out its mission and will be especially damaging to EPA's ability to enforce environmental laws. They [EPA

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<sup>23</sup> It is recalled that initially, Region 5 had indicated that closure of its library would occur as of September 30, 2006, which is noted as the last day of FY 2006. In a Memorandum dated June 19, 2006, addressing the subject, "Region 5 Library Update", employees were apprised of *How the pilot will work*, thusly: In the past, when staff needed library services, they had the option of working with a librarian face-to-face, over the phone or via e-mail. During the pilot, staff can choose whether they prefer to work with the librarians on the phone, via e-mail, or through a new intranet page . . . . During the pilot, we will be gathering usage statistics and following up with staff to learn about their experiences. \* \* \* The pilot will run from June 26 until July 7. If all goes well, we expect to permanently transition over to the Cincinnati library soon after (Jt.Ex.19).

staff] also fear that, due to inadequate planning and lack of funding for digitizing documents, access to many documents will be temporarily or permanently lost. Additionally, these cuts could deprive the public of access to critical environmental information in many parts of the country. The Senators stated that while the OEI plan is vague on specifics, a key element is its “phased approach to the closure of physical libraries,” which suggests that EPA will close a number of its existing libraries. The Senators noted that EPA had already identified three libraries to close and had begun implementing the plan by dispersing collections and reducing services, even though Congress had not yet approved EPA’s FY 2007 appropriations. Additionally, the Senators apprised the plan aims to continue to provide access to documents electronically, but does not discuss the number of documents that would need to be digitized, the timeframe, or the amount and source of funding that would be necessary to carry this out. The Senators stated that it appears that EPA plans to shut libraries first and digitize documents later and that it is unclear from the budget proposal or the plan what funds will be allocated to ensuring that paper and microfiche documents will be digitized and made available electronically. The Senators related that they fully supported the goal of modernizing the management and delivery of information services within the government and to the public noting that, information and communication technologies provide opportunities for the government to utilize and distribute information more efficiently both internally and externally. Further, they related that modernization should occur but within a framework that ensures continuity in the delivery of service during the modernization process and that, the result should be enhanced and expanded access to information, not vague promises of future improvements to information services, while real access to information is eliminated without Congressional action. Based on the foregoing, the Senators requested that GAO examine the plan for restructuring the EPA library network, its justification, and its implementation and that in its examination, it focus on seven (7) areas of inquiry with each area comprised of multiple questions to be answered.<sup>24</sup>

The record evidence reflects that by Notice placed in the Federal Register on September 20, 2006 (Vol. 71, No. 182 [54986]), the Agency made public notification of its decision to close the doors of its Headquarters Library to walk-in patrons and visitors effective October 1, 2006 and to inform the public as to how they could access EPA documents held in the Headquarters Repository Library collection and in electronic format (Jt.Ex.19 and Un.Ex.47).

By letter dated October 13, 2006 and transmitted by e-mail attachment, AFGE Local 704 Union President, John J. O’Grady corresponded with Jonna Hamilton, a member of Illinois Senator Richard J. Durbin’s staff wherein he informed Hamilton of the impacts he was able to discern regarding closing of the EPA libraries

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<sup>24</sup> The following is an example of just one of the seven areas and the questions pertaining thereto identified in the letter as point 3, to wit: What criteria are being used to decide which materials in the EPA collection will be disposed of or dispersed to other locations? Are these criteria appropriate and being implemented in a manner that ensures documents are not lost or inaccessible for an extended period of time? (Un.Ex.21).



**(Un.Ex.33). Under the heading, IMPACTS TO AGENCY EMPLOYEES AND GENERAL PUBLIC, O'Grady set forth the following points:**

- **Loss of quick and direct access by EPA Environmental Engineers, Environmental Scientists, Environmental Health Scientists, Toxicologists, Ecologist, etc., to Agency studies, reports, reference materials.**
- **Loss of access by the general public to Agency studies, reports, reference materials.**
- **Loss of the use of Regional libraries as a repository for information for Superfund Sites, etc.**
- **Loss of specialized reference materials for programs such as the Great Lakes National Program Office.**
- **Libraries at EPA Headquarters, Regions 5,6,&7 have been closed and materials are no longer available to staff, until digitized.**

**Under the heading, IMPACTS TO ENFORCEMENT AND PERMITTING PROGRAMS BY LACK OF ACCESS TO INFORMATION, O'Grady set forth the following points:**

- **Loss of support for enforcement within the Regions may cause an overwhelming demand on the small National Enforcement Investigation Center (NEIC) library in Denver, CO (also referenced in evidentiary documents in this arbitral proceeding as, the Environmental Forensics Library – Un.Ex.16), by requiring the NEIC library to provide not only unique material, but also items that the regional libraries currently provide. There is no budget available to expand NEIC's library capacity should this increased demand for NEIC library services occur.**
- **Please note that NEIC is the only environmental forensic center accredited for environmental data measurement activities. The Center has an unique role in conducting complex criminal and civil enforcement investigations and applied research and development to support science for enforcement.**
- **Documents may be distributed without adequate documentation and cataloging and may become virtually lost within the system.**
- **The loss of institutional memory as well as the loss of expertise from professional librarians in the regions will hamper enforcement program.**

**O'Grady ended the letter by citing actual comments by employees not identified by name regarding their personal view as to the impact the closing of Region 5's library had on them with respect to performing their job.**

**The record evidence reflects that between October 16, 2006 and October 27, 2006 Roy and Mick exchanged e-mail communications regarding the Agency's counter-proposal to AFGE Council 238's March, 2006 Demand to Bargain over the change in Library Operations and Services (Jt.Ex.1A). According to these e-mail exchanges (Un.Exs.35&37), Mick had indicated the Agency's counter-proposal would be**

provided to the Union prior to October 16, 2006 but, on that date, Mick informed Roy his work on the counter-proposal was still unfinished. In not having received the Agency's counter-proposal by October 26, 2006, Roy inquired of Mick as to when he could expect to receive it. In that same e-mail of October 26<sup>th</sup>, Roy specified nine (9) dates in November, 2006 the Union's negotiating team was available to meet to commence negotiations with the Agency over the issue of the change in Library Operations and Services. By e-mail dated October 27<sup>th</sup>, Mick informed Roy he was still working on developing the counter-proposal to the Union's demand to bargain regarding library service changes and hoped to get it to the Union the following week, adding that it was his belief that the counter-proposal would serve to remedy the Union's grievance on this matter with respect to its relief request for the Agency to bargain over national-level library change bargaining demands. Concurrent with the exchange of these e-mail communications, other e-mails were exchanged between Roy and Mick between October 17, 2006 and November 22, 2006 pertaining to progressing the Union's grievance over the change in library operations to arbitration (Un.Ex.36 and Jt.Ex.9). In an e-mail dated October 17, 2006, Roy notified Mick that, on behalf of the Union, he was invoking arbitration on the grievance issue of the change in library operations pursuant to Article 44 of the Master Collective Bargaining Agreement (MCBA, Jt.Ex.1). In a subsequent e-mail dated October 25, 2006, Roy informed Mick that Chicago had been selected by the Union as its preference venue for holding the arbitration because of its central location in the country thereby making it convenient for the parties. In response, by e-mail dated November 9, 2006, Mick informed Roy he had some concerns with the Union's approach regarding arbitration of the subject grievance, to wit: in noting that the MCBA is silent with respect to identification of venue for arbitration, he stated he found unacceptable, the Union's attempt to unilaterally decide the venue for holding the arbitration, expressing his belief that the appropriate venue would be Washington, D.C; Mick also stated he took issue with the fact that the list of arbitrators requested by the Union from the Federal Mediation and Conciliation Service (FMCS) contained only arbitrators who share in common the fact that their primary or secondary business address is located in Chicago, Illinois, the Union's location of preference. In this same e-mail, Mick indicated that he would soon be providing a counter-proposal to the Union's March 16, 2006 Demand to Bargain on what the Union deems to constitute national library issues and, additionally, he would provide a counter-proposal to the Union's proposed ground rules. Mick closed by expressing he remained hopeful that the parties could resolve the grievance matter in bargaining the issue thereby precluding the need to arbitrate the issue. However, not hearing anything further from Mick after November 9<sup>th</sup>, Roy sent an e-mail to Mick dated November 22, 2006 (Jt.Ex.9), wherein he set forth a chronology of their e-mail exchanges beginning with October 17, 2006, summarizing their colloquy when it occurred and noting a number of instances where Mick opened his (Roy's) e-mails but made no response. Following this summary, Roy stated the following:

For months, Council 238 had been regularly communicating with you and attempting to engage you and the Agency in the negotiation process and

**arbitration process concerning the changes to the library operations and library services. You have not been responsive in a timely manner for either the negotiations or arbitration processes. You have a blackberry, a cell phone and other means to communicate with Council 238, but have consciously chosen not [to] communicate with us. Mr. Mick you need to take personal responsibility for your failure to communicate effectively and in a timely manner with Council 238 on these important issues.**

**Pursuant to Article 44, Section 2, please select one name from the arbitrator's list or strike three names. Please forward onto me your selection for our consideration the one name or the three names you wish to strike. I also encourage you to call me to discuss this important matter.**

**By Memorandum dated October 31, 2006 from Julie Hagensen, Region 10 Director, Office of Management Programs and directed to all Region 10 personnel (Jt.Ex.16), Hagensen provided an update from her last Memorandum of May 17, 2006 (Jt.Ex.17), regarding changes in library services. Hagensen informed Region 10 personnel that Region 10 had carefully tailored a new library contract that began October 19, 2006 and then followed with the details of that contract. In closing, Hagensen acknowledged the importance of library services to its employees and its obligation to provide EPA information to the Region 10 public. Hagensen stated that Region 10 management would continue to re-evaluate and look for methods of delivering information efficiently and economically, apprising that the long term goal for the EPA was digitization of all unique resources to expand access at the desktop.**

**In a letter dated November 3, 2006 signed by eighteen (18) Senators and sent to [4] senior members of the Senate Appropriations Committee, the signatories requested the Committee direct the EPA to restore and maintain public access and onsite library collections and services at EPA's Headquarters, regional, laboratory, and specialized program libraries while the Agency solicits and considers public input on its plan to drastically cut its library budget and services.<sup>25</sup> The signatory Senators expressed their concern that EPA was already dismantling its unique library system without including the public or Members of Congress in the decision-**

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<sup>25</sup> The eighteen (18) Senators were: Barbara Boxer; Tom Harkin; Maria Cantwell; James Jeffords; Frank R. Lautenberg; Richard Durbin; Jack Reed; Barack Obama; Ken Salazar; Joseph I. Lieberman; Jeff Bingaman; Russell D. Feingold; Mark Dayton; Max Baucus; John Kerry; Edward M. Kennedy; Paul S. Sarbanes; and Hillary R. Clinton. It is recalled elsewhere in this Background Section that Senator Durbin had been the recipient of correspondence by AFGE Local 704 President, John J. O'Grady in which O'Grady identified a number of impacts to Agency employees and the General Public as well as impacts to enforcement and permitting programs by lack of access to information as a result of the closing of EPA libraries. The recipients of the letter, the four (4) senior members of the Appropriations Committee were: Thad Cochran; Conrad Burns; Robert C. Byrd; and Byron Dorgan (Un.Exs.20&31). It is recalled that four (4) months prior to the sending of this letter, Senators Burns and Dorgan were the recipients of the June 29, 2006 letter sent to them by the presidents of the sixteen (16) EPA local unions voicing their collective protest pertaining to the proposed \$2 million dollar budget reduction to the EPA operations and administration budget claiming that, EPA management intended to close as many of the Agency's technical libraries as possible (Un.Ex.22).

making process noting that EPA had already eliminated or reduced library service to the public in seven (7) EPA regions covering 31 states and was planning to close its Headquarters' library and maintain it only as a repository.<sup>26</sup> In support of their collective concern the Senators, among setting forth other information, cited a document generated by the EPA's Office of Enforcement and Compliance Assurance (OECA) pertaining to the Agency's library restructuring that expressed concern about the Agency's failure to adequately assess costs and funding needs, maintain critical information, and ensure data accessibility. The Senators noted that OECA noted that the libraries have information important to specific regions, states and locales, and unique data on industrial processes and analytical methods and indicated its fears that dispersal of this material without proper tracking and access could undercut rulemaking and the ability to "substantiate and support findings, determinations, and guidance." In closing, the Senators requested that the Subcommittee on Interior and Related Agencies of the Senate Appropriations Committee direct EPA in the FY 2007 Interior and Related Agencies Appropriations Bill to restore and maintain public access and onsite library collections and services at EPA's Headquarters, Regional, Laboratory, and Specialized Program Libraries to the status they held as of January 1, 2006. Additionally, the Senators requested that the Appropriations Committee direct EPA to solicit and consider public and Congressional input, in an open process, prior to making any decision to close a library, cut services, or dramatically restructure the Agency's library system (Un.Exs.20 & 31).

By letter dated November 30, 2006, sent by Senators Bart Gordon, John Dingell, Henry A. Waxman, and James L. Oberstar to EPA Administrator, Stephen Johnson, the Senators expressed their serious concerns over the current implementation of the Agency's plan to reorganize the EPA library system stating it was their understanding that EPA was in the process of closing libraries and dispersing and destroying materials and, that the General Services Administration (GSA) was auctioning off library equipment. In noting these actions were being undertaken in accordance with the budget request the President submitted for FY 2007, the Senators averred that Congress had not approved either the President's 2007 budget request or the library closure. The Senators then requested that the Agency maintain the status quo of the libraries and their materials while this issue

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<sup>26</sup> The record evidence as set forth hereinabove reflects that the letter was written one (1) month after the fact of the EPA closing both its Headquarters' library to walk-in patrons and visitors and its Chemical Library also located in Washington, D.C. effective October 1, 2006 (Jt.Ex.19 and Un.Ex.47). Other libraries that had already been closed as of the date of this letter (November 3, 2006) were: Regions 5, 6, and 7 libraries; the Ft. Meade Library in Region 3; and the New Jersey Library in Region 2 (Un.Ex.31). However, the reference in this letter to the closure of the Region 2 library located in Edison, New Jersey in connection with the closures and reduced services of libraries in reaction to the FY 2007 budget reduction in funding for libraries was misleading as the Edison, New Jersey Library had closed in September of 2004 (see Un.Ex.16). Factually, the record evidence reflects that as of the date of this letter, the EPA had effected changes in six (6), not seven (7) regions as stated, specifically, the three (3) regional closures of libraries in Regions 5, 6, and 7 and reduction in services in three (3) other regional libraries specifically, Regions 1, 9, and 10. It is noted that Region 2 instituted a new schedule of hours for its library but that this change was not made known to employees until December 1, 2006 and did not take effect until December 11, 2006.

was under investigation and review by Congress.<sup>27</sup> The Senators further requested that the EPA brief their respective staffs and provide a written plan to Congress that included the schedule and procedures that the Agency intended to use to govern the disposition of documents, the consolidation of library services, and the transfer of paper and microfiche documents to electronic forms that will be publicly available. Additionally, the Senators requested that Johnson ensure that Agency staff compile and maintain records of the location and content of all library material including materials that have already been dispersed, to ensure they could be retrieved and used by Agency personnel and the public. In closing, the Senators opined that it was imperative that the valuable government information maintained by EPA libraries be preserved and, to that end, the Senators further requested of Johnson that he confirm in writing by no later than Monday, December 4, 2006, that the destruction or disposition of all library holdings immediately ceased upon the Agency's receipt of their letter and that all records of library holdings and dispersed materials are being maintained (Un.Ex.19).

Notwithstanding the several requests advanced to EPA Administrator Johnson by the four Senators in their joint letter of November 30, 2006, but primarily the request to maintain the status quo, nevertheless, the record evidence reflects that changes in library services continued to proceed. By Memorandum from Region 2 EPA Management dated December 1, 2006, employees were informed they would continue to have access to the Library but there would be a new schedule of hours instituted effective December 11, 2006 wherein on Tuesday, Wednesday, and Thursday the library would be open for four (4) hours [10am to 2pm] and would be closed altogether on Monday and Friday. The Memorandum further advised that the Agency had embarked on a project to digitize all EPA specific documents that are in all the EPA libraries and that information would be made available on the internet to EPA employees and the public (Un.Ex.38). In a news release dated December 7, 2006, three (3) days beyond the deadline date set by the four Senators for EPA Administrator Johnson to respond to their several requests, the public interest group, Public Employees for Environmental Responsibility (PEER), reported that, in defiance of Congressional requests to immediately halt closures of library collections, EPA was purging records from its library websites, making them unavailable to both agency scientists and outside researchers. PEER further reported that at the same time, EPA was taking steps to prevent the re-opening of its shuttered libraries, including the hurried auctioning off of expensive bookcases, cabinets, microfiche readers and other equipment for less than a penny on the dollar. As an example of this latter reportage, PEER noted that in EPA's Region 5's

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<sup>27</sup> It is recalled that three of these same four Senators, namely, Gordon, Waxman, and Dingell, had jointly signed and sent a letter dated September 19, 2006 to David M. Walker, Comptroller General of the United States, requesting that the GAO examine the Administration's plan (according to them that was incorporated in the President's fiscal year 2007 budget proposal) to cut funding for the Agency's library system by over 30 percent (Un.Ex.21). In actuality and more precisely, according to information compiled by the Library of Congress Congressional Research Service, the monetary sum enacted by the Congress for FY 2006 was \$7 million dollars for the EPA libraries whereas, the request before Congress for FY 2007 was \$4.5 million dollars. This decrease in appropriations of \$2.5 million dollars thus represented a cut in funding for EPA libraries of near 36 percent (Un.Ex.18).

library which had already been shuttered and which formerly hosted one of the largest regional libraries, EPA ordered that all furniture and furnishings (including small items such as staplers and pencil sharpeners) be sold immediately and citing, as fact, that despite an acquisition cost of \$40,000 for this furniture and equipment, a person purchased the entire lot for \$350 which the person estimated could be resold for \$80,000.<sup>28</sup> PEER characterized these monetary transactions thusly; “while the Pentagon had its \$600 toilet seat and \$434 hammer, EPA has its 29cent book case and file cabinets for a nickel.” PEER asserted that one big irony was the EPA’s claim it needed to close libraries to save money but that in the process the Agency was spending millions on a public relations campaign to improve the image of its research program as well as \$2.7 million dollars (a sum greater than the \$2 million dollars the Agency estimated would be saved closing the libraries) to digitize all employee personnel files. PEER opined that, “no one believes that EPA is closing libraries and crating up irreplaceable collections for fiscal reasons but instead, the real agenda appears to be controlling access by its own specialists and outside researchers to key technical information (Un.Ex.30).

Although the EPA continued to proceed with instituting changes in its library operations beyond the December 4, 2006 deadline date various Members of Congress had set for the Agency to respond to its request that it halt implementing said changes and institute a status quo position, nevertheless, sufficient pressure was brought to bear not only by Congress’ direct intervention, but also by the ongoing investigation the GAO initiated by a request from Congress to review, examine, and report on the Agency’s library reorganization plan, and by both the various Unions representing affected EPA bargaining unit members and the various library associations throughout the country protesting the Agency’s actions relative to changes in its library operations and services, that it prompted EPA Administrator, Stephen L. Johnson to notify the Chairmen of the four (4) House Committees; Energy and Commerce, Oversight and Government Reform, Transportation and Infrastructure, and Science and Technology, by letter dated January 12, 2007 that he had ordered a moratorium prohibiting the Agency from making further changes to its library services for 90 days (Un.Ex.16).

In a news release dated January 31, 2007, PEER reported that the brave new world of electronic libraries at the EPA is turning into a nightmare according to librarian complaints. PEER reported that with nearly one third of its library network now closed, internal and external researchers are frustrated by being forced to rely on balky, incomplete digital inventories. According to PEER, the EPA’s drive to close its physical libraries rests upon the premise that the same materials will be available electronically through a system called the National Environmental Publications Internet Site (NEPIS) but that even experienced librarians are unable to find materials on this new system citing several e-mail messages posted by Librarians on the Agency’s library intranet site over the prior three (3) week period. PEER, in

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<sup>28</sup> The Arbitrator notes that on the date of this subject arbitration, September 25, 2007, he toured the floor area that once housed the Region 5 Library and that in fact, while there remained some materials and equipment piled up in a very small space, the area was almost totally barren.

citing copyright and other problems, reported that EPA admitted that large numbers of research materials boxed-up from closed libraries will not be included in NEPIS and, in addition, large portions of crated collections will remain in storage for the foreseeable future. PEER Associate Director Carol Goldberg was quoted as saying, "EPA is now experiencing the worst of both worlds: its physical collections are compromised and its online index does not work. It is almost as if EPA's leadership decided to sabotage its own scientific research program." PEER ended this news release by reporting that EPA has reportedly pledged to delay any further library closures pending congressional review, noting that the Senate Committee on Environment & Public Works would be conducting the first legislative hearings on EPA library closures on February 6, 2007 (Un.Ex.29).

On date of February 5, 2007, one (1) day prior to the scheduled convening of the Senate oversight Committee hearing, Council 238 filed an Unfair Labor Practice (ULP) complaint with the Federal Labor Relations Authority (FLRA) wherein, the Union claimed the Agency failed to respond to its request to select an arbitrator to hear the grievance it filed with the FLRA on August 16, 2006 protesting the Agency's failure to bargain over changes in library operations and services envisioned in its library reorganization (Un.Exs.25 & 26).<sup>29</sup>

The record evidence reflects that, in fact, the U.S. Senate Environment and Public Works Committee convened an oversight hearing on February 6, 2006 into, among other concerns, the matter of the EPA library closures and changes as of that date EPA had instituted with regard to access to its holdings by both staff and the general public and the curtailing of library hours and reduction in library staff pertaining to libraries that remained open (Un.Ex.18).<sup>30</sup> One of the witnesses testifying on February 6<sup>th</sup> was Leslie Burger, President of the American Library Association (ALA) and Director, Princeton Public Library. As part of her testimony, Burger stated two (2) primary concerns based upon the fact the EPA had already begun closing libraries and restricting public access to the many libraries

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<sup>29</sup> It is recalled that after filing the August 16, 2006 grievance, the Union continued to seek negotiations with the Agency over changes that had already been made and those announced changes in the offing to be instituted in FY 2007 and, as a result of the Agency's not meeting with the Union anytime within two (2) months following the filing of the subject grievance, the Union invoked arbitration on October 17, 2006. Thereafter, the Union sought to enter into a joint effort with the EPA to select an arbitrator but to no avail.

<sup>30</sup> It is clear from a reading of Senator Barbara Boxer's (Chair of the Committee on Environment and Public Works) opening statement, that this hearing was convened to explore several areas of concern in addition to the Agency's closure of libraries as part of its Library Reorganization plan. In Senator Boxer's opening statement, she referenced the following topics of interest to the Committee, to wit: \*Weakening the Community's Right to Know relative to rules for toxic chemicals; \*Eliminating Perchlorate Testing; \*Cutting Scientists Out of the Process of Setting Air Quality Standards; \*Possible Revocation of the Lead Air Quality Standard urged by the lead acid battery industry; and \*Increasing Toxic Air Pollution via proposed weakening of its rules for controls on toxic air pollution. In her concluding remarks, Senator Boxer stated the following: "The pattern of these year-end actions is striking - - the public interest is sacrificed and environmental protection compromised. Who gains from these rollbacks? Just look at who asked for them, like Big Oil and the battery industry. EPA's actions and proposed actions make it clear who EPA is protecting. The purpose of these oversight hearings is to remind EPA who they are truly accountable to - - the American people" (Un.Ex.28).

that were still open despite the fact that Congress had yet to pass a FY 2007 budget. The two primary concerns Burger addressed in her testimony were:

- In the course of shutting down these libraries, valuable, unique environmental information would be lost or discarded; and
- Because there are fewer libraries and professional library staff, scientists and the public will have limited access to this information. We have a deep concern with limitations these closings would place on the public's access to EPA library holdings and the public's "right to know." In an age of global warming and heightened public awareness about the environment, it seems ironic that the Administration would choose this time to limit access to years of research about the environment.

At the end of her testimony, Burger stated, "[t]he future, it seems, calls for a hybrid, where not every single item or service is online, nor is everything confined to a physical structure. And the backbone of it all is a profession of skilled, knowledgeable, and, most importantly, helpful information specialists: librarians. In another reference to librarians, Burger averred that without trained librarians, users are having a very difficult time accessing what does remain of the EPA library system.

In closing, Burger made the following requests of the Committee on behalf of the American Library Association, to wit:

- Halt all library closures;<sup>31</sup>
- Discuss a plan with stakeholders on how best to meet user needs and plan for the future;
- Base any actions upon these users' needs;
- Stop dispersing and dumping of any of their library materials immediately;
- Stabilize and inventory the collections that have been put in storage;
- Develop and implement a government-wide process to assist agencies designing effective digitization programs; and
- Reestablish library professionals – inherently governmental library professionals.

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<sup>31</sup> Writer and photographer, Christopher Moraff in an article he authored for the publication, *In These Times* dated February 1, 2007 quoted EPA Spokesperson, Jessica Emond as saying that a Washington, D. C. based blog run by Cox Newspapers mischaracterized EPA Administrator Stephen Johnson's January 12, 2007 letter to various Senators and Congressmen when it reported that the Agency had halted library closings since it was never the Agency's plan to close any additional libraries beyond those it had already closed by the start of FY 2007 (U.Ex.28). It is recalled that on day one of FY 2007, the Agency had closed a total of five (5) libraries, to wit: the Washington, D.C. Headquarters' Library; the Chemical Library also located in Washington, D.C.; and the three (3) Regional Libraries, Regions 5, 6, and 7 (Un.Ex.16).



Another witness appearing before the Committee was EPA Administrator, Stephen L. Johnson. According to a PEER news release dated February 8, 2007 (Un.Ex.28), Johnson testified that only five (5) of the 26-library network had been closed which PEER reported was factually incorrect as PEER noted that the most recent closure had been the Regional Library in Atlanta (Region 4) serving eight (8) southeastern states where virtually all services had been transferred to its Cincinnati facility<sup>32</sup> PEER reported that when confronted by Committee Chair, Senator Barbara Boxer, regarding the Atlanta library closure, Johnson stated he knew nothing about the functional shuttering of the Atlanta facility. As to this difference between PEER's reporting and Johnson's testimony regarding Region 4's library status, the record evidence does not support PEER's reporting of the facts. The record evidence reveals that at the time Johnson testified before the Committee, the status of the Region 4 library as reported by the Congressional Research Service (CRS) was that it was open (Un.Ex.18). And, as of June, 2007, in an update of its Report for Congress on the *Restructuring EPA's Libraries*, the CRS reported the status of Region 4's library was open (Un.Ex.16 – see also fn 31, *supra*).

In addition to witness testimony, the Committee conducting the oversight hearing also took into consideration written submissions from interested persons and groups. One such submission was a letter signed by 85 environmental law professors wherein, they asserted, they had an ongoing interest in the effective implementation of federal environment laws and, as such, they urged the Committee to undertake a thorough and vigorous investigation of the Administration's decision to close EPA libraries around the United States. At the end of this letter the signatories opined as follows; “[b]y closing and limiting the hours of EPA’s libraries - - the largest source of environmental information in the world - - the Administration has struck a damaging blow against EPA and its crucial mission of protecting human health and the environment. We hope you will exercise your influence and leadership to reverse these misguided steps.” (Un.Ex.18). Another written submission for the Committee's review and consideration was the Congressional Research Service Report for Congress dated January 3, 2007 titled, *Restructuring EPA's Libraries: Background and Issues for Congress*, referenced hereinabove. The Report noted that EPA began to restructure its libraries in FY 2007 as part of its transition from walk-in services to electronic dissemination of its collections. As a result, EPA closed five (5) of its libraries on October 1, 2006, including its headquarters library in Washington, D.C. and had reduced access to four (4) others. The report included a table listing all 26 libraries in the EPA network and their status as of the beginning of FY 2007. The five (5) closed libraries were identified as follows: 1. Headquarters Library; 2. Region 5 -Chicago; 3. Region 6 – Dallas; 4. Region 7 – Kansas City; and 5. the Chemical Library in Washington, D.C. The four (4) libraries with reduced access were identified as: 1. Region 1 – Boston; 2. Region 2 – New York; 3. Region 9 – San Francisco; and

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<sup>32</sup> The Cincinnati facility is one of the two (2) EPA Environmental Research Centers under the jurisdiction of the Agency's Office of Administration and Resource Management (OARM).

#### 4. Region 10 – Seattle.<sup>33</sup>

**By Memorandum dated February 27, 2007, from OEI Deputy Assistant Administrator, Linda A. Travers to EPA Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators, and Assistant Regional Administrators, Travers apprised the Agency was extending, until further notice, the initial 90 day moratorium commitment made by EPA Administrator Johnson to Congress to refrain from further implementing changes to the Agency's library network. However, notwithstanding this moratorium extension, Travers stated, as a reminder, that Headquarters, Regional, and Laboratory library staff should continue to evaluate**

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<sup>33</sup> Except for the closure of the Washington, D.C. Chemical Library, the remaining four (4) closed libraries and all four (4) of the libraries that had their access reduced (mainly by reduced hours of operation) all fell under the jurisdiction of the EPA's Office of Environmental Information (OEI). The Chemical Library fell under the jurisdiction of the EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) (Un.Ex.18). In another table, specifically Table 2, the Report identified six (6) other EPA offices that had jurisdiction over fourteen (14) library facilities, to wit: the Office of Research and Development (ORD) with jurisdiction over eight (8) libraries; the Office of Administration and Resource Management (OARM) with jurisdiction over two (2) libraries; the Office of the Administrator (OA) with jurisdiction over one (1) library; the Office of General Counsel (OGC) with jurisdiction over one (1) library; the Office of Air and Radiation with jurisdiction over one (1) library; and the Office of Enforcement and Compliance Assurance (OECA) with jurisdiction over one (1) library. The remaining three (3) libraries which remained in open status fell under the jurisdiction of OEI which altogether had jurisdiction over a total of eleven (11) of the 26 libraries, specifically, the Headquarters Library and the ten (10) Regional libraries. Interestingly, the OEI absorbed \$2 million dollars of the anticipated budget reduction of \$2.5 million dollars and the OARM absorbed another \$1 million dollars with \$500,000 of that \$1 million dollar reduction allocated to ORD which represented a half million dollar increase in its budget over FY 2006 from \$1.6 million dollars to \$2.1 million dollars. Table 2 reflected no budget for the library maintained by the Office of the Administrator for any of the Fiscal Years listed (FY 2002 through FY 2007) and showed no change in the budgeted amounts for the remaining three (3) EPA offices with jurisdiction over library facilities (each with jurisdiction over one library facility) from what was budgeted in FY 2006, to wit: OECA, OGC, and OPPTS. It is interesting to note that even though EPA closed the Chemical Library located in Washington, D.C., the one library under the jurisdiction of the OPPTS, nevertheless the library budget for OPPTS remained at \$200,000 dollars in FY 2007 the same as it had been for FY 2006 (Un.Ex.18). However, according to the publication, *Inside EPA*, the issue dated July 6, 2007, Congress never passed the FY 2007 EPA funding bill that included the \$2 million dollar budget reduction for the OEI (Un.Ex.26). However, this report by *Inside EPA* is disputed by the information set forth in the updated June 15, 2007 CRS Report to Congress on the *Restructuring EPA's Libraries*, which reported that the funding enacted by Congress for EPA libraries in FY 2007 had been \$6.5 million dollars, which represented an overall reduction in funding from FY 2006 of nearly \$1.2 million dollars (Un.Ex.16). A comparison of this updated CRS Report with its January, 2007 Report (Un.Ex.18) reveals significant revisions in the funding numbers for EPA libraries enacted by Congress dating back to FY 2005. In the January Report, funding enacted by Congress for FY 2005 was reported to be \$6.8 million dollars whereas, in the June Report, this funding amount enacted by Congress was reported to be slightly over \$8 million dollars. For FY 2006 the funding amount reported in the January Report was reported to be \$7 million dollars whereas, in the June Report it was reported to be \$7.7 million dollars. In the January Report, CRS reported the funding request for FY 2007 was \$4.5 million dollars whereas, in its June Report, the funding amount reported as having been enacted by Congress for FY 2007 was \$6.5 million dollars. Thus, instead of the reduction in library funding anticipated by EPA for FY 2007 from that enacted by Congress in FY 2006, the actual funding reduction that occurred was \$1.2 million dollars but was actually \$2 million dollars more than what was requested for FY 2007 (the amount requested in FY 2007 was \$4.5 million dollars whereas, the amount enacted by Congress was \$6.5 million dollars (Un.Exs.16 and 18).

collections for digitization and to determine the appropriate disposition of materials using the criteria for reviewing its library collection set forth in the Agency's FY 2007 Library Plan and apprising that any materials identified for disposition should be held in their library until further notice. Additionally, Travers reiterated the importance of not recycling any library materials until further notice and also, not to make any changes in public access to library materials such as, reductions in hours, reductions in services, and reduction or the elimination of internet-based resources until further notice. Travers also informed recipients of this Memorandum of certain "outreach" efforts the Agency had theretofore engaged in, to wit: \*attending the mid-Winter meeting of the American Library Association on January 19-21, 2007 at which an EPA team, consisting of staff from OEI and OARM-RTP made numerous presentations to foster a better understanding on the part of attendees as to what the Agency had already done and what it planned to do with regard to restructuring of its libraries; \* that the team also met with the Union of Concerned Scientists (UCS) for a similar dialogue about the Agency's overall library modernization strategies; \* informed that the week before (meaning sometime the week of February 20, 2007), she participated in a second briefing on EPA's library services and staff subsequently conducted a tour of EPA's Headquarters' libraries for Congressional staff; and \*that the OARM Cincinnati team completed the first phase of document digitization on schedule. Travers indicated that she and other EPA administrators would be coming to EPA offices of the recipients of the Memorandum in the "next few days" as part of a data call to respond to GAO inquiries of their ongoing investigation. Travers also apprised that the Agency was planning to convene a meeting in March of 2007 with the Assistant Regional Administrators, the Communications Directors for those libraries where they manage the library, and the Federal Library managers for the purpose of further refining the long-term strategic vision for the entire EPA library network (Un.Ex.48).

By Memorandum dated April 6, 2007, EPA Deputy Administrator, Marcus Peacock apprised various Agency Management officials that because it was essential that common business processes be put in place to ensure that the Library Network continue to meet the needs of EPA staff and the public in order to ensure consistency in how the Agency manages its physical and electronic library tools and services, he was asking the OEI to do the following:

- Continue its leadership of the Library Network as its National Library Program Manager;
- Engage with internal and external stakeholders to ensure the Agency addresses any issues or concerns related to this effort;
- Recommend changes to the delivery of library services and management of EPA's Library Network; and
- Establish Agency-wide policies and procedures to effectively lead and consistently manage the Library Network (Jt.Ex.4).

On April 16, 2007, the OEI issued an *Interim Policy – EPA Library Network* that solidified the role of OEI as set forth in Peacock's April 6, 2007 Memorandum, to wit, that the Assistant Administrator for Environmental Information has the overall responsibility for the governance of the EPA Library Network and its related procedures and standards. It was noted that supporting procedures, standards and/or guidance documents were currently under development and would be issued with the final policy (Jt.Ex.6).

By letter dated April 26, 2007, Congressmen Bart Gordon, Henry Waxman, John Dingell, and James Oberstar requested an update from EPA Administrator Johnson on the management of the EPA library system and that this request be met by briefing Committee staff no later than May 4, 2007. The Congressmen then set forth a list of five (5) specific questions they wanted the Agency to address in its briefing (Un.Ex.17).

According to a PEER news release dated May 2, 2007, and under the headline, "EPA Quietly Resumes Dismantling Library System" ( Un.Ex.27), PEER reported that despite promises to consult with Congress before proceeding with dismantlement of its library system, the EPA via new "interim" policies issued April 10, 2007 ordered the following actions contrary to the warning by the Agency's own enforcement branch about the risks of hampering environmental prosecutions:<sup>34</sup>

- Direct EPA libraries to "disperse or dispose of" their physical collections and lay out procedures for offering EPA holdings to outside libraries and for recycling journals and other technical documents;
- Place all EPA libraries, including those serving agency laboratories, under a single political appointee, Molly O'Neill, the Chief Information Officer; and
- Discourage establishment of divisional or branch "mini-libraries" to prevent the physical accumulation of technical materials except at pre-designated "repositories".

In this news release, PEER Associate Director Carol Goldberg asserted among other things that, "EPA is determined to leap before it looks as it barrels ahead to shut libraries", noting that nearly one-third of EPA's 27-library network has been closed or had services reduced.<sup>35</sup> Goldberg further claimed that the end users of the EPA

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<sup>34</sup> In addressing the EPA's plan to rely solely upon centrally maintained digitized documents PEER reported that the Agency's Office of Enforcement and Compliance (OECA) by memo dated April 9, 2007 referenced three (3) primary concerns it had about the negative effects on ongoing pollution prosecutions, to wit: (1) information access, especially to original documents; (2) timeliness of services, worrying that the centralized system EPA is espousing may not be able to meet tight court imposed deadlines; and (3) cost and funding, pointing out that uncertainties surround how much EPA's centralized all-digital system will cost and how it will be funded.

<sup>35</sup> In point of fact, the record evidence does not support PEER's claim that EPA shut anymore libraries or reduced hours or services at anymore libraries than it had already done so by the very start of the fiscal year 2007, specifically by October 1, 2006. In another misleading statement by Goldberg, she referred to the number of libraries in the Agency's Library Network as totaling to 27 when that number had been reduced to 26 with the closure of Region 2's Edison, New Jersey library which had occurred in FY 2004 (Un.Ex.16)

libraries – the Agency’s own specialists as well as the academic community and the public – had been excluded from all decisions about the future of EPA’s incomparable library network.<sup>36</sup>

In a July 6, 2007 issue of *Inside EPA*, an online publication, it was reported that on June 25, 2007, EPA joined the Union in the mutual selection of an arbitrator to hear the matter of the Union’s grievance (of August 16, 2006) alleging the Agency refused to bargain over the changes it made and intended to be made to its Library Network. This issue also reported that on the following day, June 26, 2007 the FLRA issued a notice of hearing to be held on August 14, 2007 in Chicago before an Administrative Law Judge on the Union’s complaint that the Agency “failed and refused to participate in selection of an arbitrator to hear the library grievance, thereby committing an unfair labor practice.”<sup>37</sup> In explanation as to the reason why the Agency had joined the Union in selecting an arbitrator just one (1) day prior to the FLRA’s ruling to hold a hearing on the Union’s ULP charge, it was reported that an EPA spokeswoman stated it was “in the interest of resolving the ULP charge.” It was also reported from an unidentified source that the Union’s motivation for filing the ULP was to “bring the Agency back to the bargaining table” to get an agreement for the EPA to reopen closed libraries, as well as to commit to not close any more libraries in its network (Un.Ex.26). However, even after Administrative Law Judge, Richard Pearson ordered the Union to file a motion for summary judgment (see fn.34, *supra*), it was reported in the August 27, 2007 issue of *Inside EPA* (Un.Ex.24) that the Union is still pursuing the unfair labor practice charge notwithstanding that the Agency finally entered into the process of selecting an arbitrator in the hopes that an FLRA ruling in favor of the Union “would lend credence to our claims” in the upcoming arbitration talks that EPA did not consult with the Union prior to closing libraries and did not adequately consider or address the impact that closures would have on employees. Further, it was reported, the Union was hoping for a favorable FLRA ruling ahead of the arbitration, scheduled to be held September 25, 2007 in Chicago explaining that the Union pushed for Chicago as the venue for the arbitration because EPA had already closed the Region 5 library and it could bring in Region 5 witnesses to testify about the impacts on employees relative to the library closure.

At the arbitration convened, as scheduled, on September 25, 2007, the Union presented, among its five (5) witnesses, two (2) Region 5 employees, Civil Investigator, Margaret Herring and Warren W. Layne, Chemist to testify as to adverse impacts closure of the Region 5 library had on the performance of their

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<sup>36</sup> This claim appears dubious in light of other record evidence referenced elsewhere hereinabove of outreach efforts undertaken by the Agency as a result of Congressional scrutiny by hearings conducted and the ongoing investigation by GAO, initiated by a request from the Congress.

<sup>37</sup> In a subsequent issue of *Inside EPA*, issue date, Monday, August 27, 2007, it was reported that Administrative Law Judge Richard Pearson ruled he would indefinitely postpone the August 14<sup>th</sup> hearing as he issued a decision on August 7, 2007 wherein, he stated, a hearing in this case does not appear to be necessary since he had enough information to reach a decision. Pearson then ordered the Union to file a motion for summary judgment by August 17, 2007 and gave EPA until August 31, 2007 to file any cross-motions or a motion to pursue a hearing (Un.Ex.24).

work. Herring testified that in performing her duty of identifying parties that are liable for hazardous waste sites, that prior to the closing of Region 5 library, she was able to access business news and Dunn and Bradstreet reports she requested of the librarians and that she was able to secure inter-library loans facilitated by the librarians upon request. Herring attested that, even though, to date, she has not had occasion to obtain an inter-library loan since the closure of the Regional library, a period now of one (1) year, she has educated herself in the procedure of securing an inter-library loan if the need arises by utilizing the services provided by the Environmental Research Center located at Cincinnati, Ohio which services both Regions 4 and 5, Atlanta (Southeast) and Chicago (Midwest) respectively. Herring asserted that for her purposes, the online services available can only be used by her to a limited extent. As to her use of maps, while the Cincinnati librarian informed her of the Agency's ability to digitize text, she did not inquire of the librarian as to whether maps could be digitized. Herring noted that there is a form available online to fill out to reference what information is being sought and requested. Witness Warren Layne, an expert in the field of nanotechnology and a regional sampling coordinator of which one of the functions is to review chain of custody, testified he was a mass user of the regional library utilizing its services, on average, three (3) to four (4) times a week. According to Layne, when the regional library was open and operating, he found the services of the librarian to be invaluable and noting that the library had information on designated national sites and quality assurance plans. Since the closure of the regional library, Layne conceded he could obtain information from books and journals online and secure inter-library loans as well, but noted that obtaining inter-library loans takes time. Layne asserted however, that prime sources of journals are no longer available and that now a monetary payment is required to access certain journals. And even though he can order a needed book through utilizing the inter-library loan procedure, in noting that such a procedure is bureaucratic in nature involving time for approval, Layne attested that on one occasion, he actually personally paid fifty dollars (\$50.00) for a book he wanted in the course of performing his duties. Under cross-examination, Layne averred that the crisis he believed resulted from the closure of the Region 5 library was the impact it had on the public and not the impact it had on his work.<sup>38</sup>

With respect specifically to what took place in advance of the Agency closing Region 5 library, initially slated to be the first of the EPA library closures, the record evidence reflects that Region 5 Labor Relations Specialist Martin Mills, by e-mail attachment dated March 14, 2006 sent to AFGE, Local 704 President John J. O'Grady, a Region 5 specific paper concerning the Library services and from Headquarters, an OEI Library Service Delivery Change Fact Sheet as a means of providing Local 704 with current information concerning library services (See

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<sup>38</sup> As to this testimony regarding the impact closure of the Region 5 library had on the public and the testimony proffered in part by Union witness Paul Scoggins, President AFGE Local 1003 (Region 6 – Dallas) that when the libraries in question were open and functioning the services they provided were accessible to the public, the Arbitrator ruled that the grievance before him (Jt.Ex.24) was limited to any alleged adverse impacts on AFGE bargaining unit employees and had no relevance to impacts such closures may have had on the public and public access.

**Ag.Ex.2).** Two (2) weeks later, by e-mail to a number of AFGE bargaining unit members in Region 5, including Union representative, Cheryl Allen, dated March 27, 2006, O'Grady apprised he needed a volunteer to meet with Jeff Kelley, Chief, Public Information and Education Section, Office of Public Affairs for discussion of the pending Region 5 library closure (Ag.Ex.3). Jeff Kelley testified that he, Mills, and Cheryl Allen did, in fact meet to discuss details of how the closure would be handled and the various issues the closure presented. Kelley asserted that with respect to the issue of the Region 5 library closure, he only had discussions with O'Grady and Allen and never spoke with any Union official from Council 238. With respect to this latter point, Kelley maintained that O'Grady never indicated to him that the appropriate level of authority on the Union side to consider the matter of the Region 5 library closure would be at the Council 238 level.<sup>39</sup>

Union witness Paul Scoggins, President of AFGE Local 1003, EPA Region 6, Dallas, an environmental engineer testified that in the performance of his job duties as a toxicologist, he engages in research and, as such, prior to the closing of Region 6's library, he found it very beneficial to be able to access the services of the library and to consult with the librarian. He also noted that when needed, the library would facilitate obtaining inter-library loans. Scoggins attested that in the early stages of EPA's planning to effect changes to its Library Network he compiled the comments of a number of Region 6 employees concerning changes in Region 6's library operations implemented as far back as November of 2003 (See Un.Ex.4 and fn.5, *supra*). Additionally, Scoggins testified that in reaction to the then impending closure of the Region 6 library, he compiled a number of comments from bargaining unit employees protesting the closure, which comments were forwarded to Library Manager Patricia D. Birkett and Manager Frank M. Truesdale both in Baton Rouge, Louisiana (See Un.Ex.3). Scoggins related that desk-top services are available to access information, that he has attempted to utilize the desk-top but has found it difficult to locate useful information due to the fact there is no librarian to assist him, that obtaining the information is a completely self-help effort. Scoggins related that without the assistance of a librarian, he finds the effort to obtain needed information tedious, and, as a result, he has sought instruction as to how he, in this self-help environment can obtain the information on in-door air quality issues he needs.

Mike Flynn, Director, Office of Information Analysis and Access (OEI) testified that, at the time the Agency developed the Draft of its *EPA FY 2007 Library Plan: National Framework*, OEI, by Memorandum dated June 2, 2006, sought input from the Unions representing the Agency's bargaining unit employees prior to the Agency making final decisions with respect to composition of the Framework

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<sup>39</sup> The record evidence makes clear however, that O'Grady, Kelly, and Mills were all aware at the time they were in discussion with regard to the matter of the Region 5 library closure, that Council 238 had filed its demand to bargain nationally with the Agency over the closing and major reorganization of the EPA Headquarters' and Regional libraries (See Jt.Ex.1A), as Mills referred to this development in his e-mail to O'Grady and Kelley dated March 27, 2006, stating among other things that it was not known how this action by Council 238 would impact the discussions pertaining to the closure of the Region 5 library (See Un.Ex.47).

document and, thus, prior to it being sent out for further action in the Regions and Headquarters (see Ag.Ex.5). According to Flynn, he received only two (2) responses from the Unions, one from a NAGE local in Nevada (Local R12-135) and one from AFGE Local 1003, Region 6, Dallas (see Un.Ex.41). Flynn maintained he did not receive any feedback from AFGE Council 238.<sup>40</sup> However, Flynn related that in consideration of the feedback that was received from these two (2) Union sources as well as feedback from all others that responded, the Draft Framework document did undergo some revision (see Ag.Ex.8 and Jt.Ex.5). In other testimony, Flynn noted that OEI administers desk-top services for all EPA employees across the country. Flynn further noted that Region 5 library resources were sent to the repositories at the two (2) Environmental Research Centers, one at Cincinnati, Ohio and the other at Research Triangle Park in North Carolina.

As the Parties were unable to reach a mutually acceptable resolution of the subject grievance issue in its handling of the grievance at the various steps in the contractual grievance procedure, the matter comes now before this Arbitrator for a final and binding determination.

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<sup>40</sup> It is noted that this Memorandum requesting feedback from the Unions nearly three (3) months after Council 238 had filed its demand to bargain nationally over the proposed changes in the Agency's Library Network (by letter dated March 16, 2006 from Charles Orzechoskie to Ruben Moreno Jt.Ex.1A), also informed recipients of the Memo that implementation of the Framework would vary by Region and at the Headquarters level which explained the reason why "impact and implementation" bargaining would take place separately in the Regions and at Headquarters (Ag.Ex.5). It is interesting to note with respect to this latter point, that less than two (2) weeks after Council 238 filed notice to bargain with EPA on a national level, Local 704 President O'Grady filed written notice to bargain on a local level over proposed changes to the Region 5 library (by letter to Martin Mills dated March 28, 2006, Jt.Ex.21). However, it is also noted with interest that, notwithstanding the Agency's explanation regarding the rationale for conducting bargaining on a region-by-region basis, the Agency, at the same time was corresponding with Roy, the designated representative of AFGE Council 238 regarding the Union's proposal to bargain impact and implementation issues pertaining to the Agency's library reorganization plan on a national level, albeit that the Agency acted to forestall the commencement of such national level bargaining which had yet to occur by the time this arbitral proceeding convened, September 25, 2007, an elapsed period of time of eighteen (18) months from the time the Union filed its written demand to the Agency to enter into such impact and implementation bargaining.



## **CONTENTIONS**

### **UNION'S POSITION**

In its post-hearing brief, incorporated in pertinent part herein as Appendix A, the Union submits the Agency violated applicable sections of Article 45 of the Master Collective Bargaining Agreement (Jt.Ex.1) by not permitting the convening of impact and implementation bargaining over the changes attendant to the Agency's reorganization of its Library Network, as such changes affected adversely, the working conditions of bargaining unit employees. The Union asserts the Agency has not complied with any form of negotiations in response to its demand to bargain as the Agency never responded to suggested ground rules nor, did the Agency make itself available for any meetings. Additionally, the Agency refused to enter into the selection of an arbitrator until forced to by a FLRA administrative law judge's ruling for the purpose of adjudicating this subject grievance; instead, electing to question the composition of the FMCS arbitration panel and the venue of the arbitration. The Union argues that by refusing to enter into national level negotiations, the Agency specifically violated Section 5 of Article 45 by not recognizing the Union's designated representative for bargaining matters at the national level, Council 238 President, Charles Orzechoskie. Moreover, the Union claims that the Agency's refusal to negotiate and bargain, in good faith, issues of impact and implementation attendant to the reorganization of its Library Network resulted in the Agency having violated a number of provisions set forth in the FLRA Statute.

Based on the foregoing argument asserted, the Union requests the Arbitrator to order the remedy specified in the subject grievance (Jt.Ex.24).

### **EMPLOYER'S POSITION**

In its post-hearing brief incorporated in pertinent part herein as Appendix B, the Agency advances the position that the decision to reorganize its Library Network was an exercise of a management right, and that, as the reconfiguration of library services represented a change in the means and technology by which employees would accomplish their assigned work as opposed to adversely impacting their working conditions, the substantive decisions that were made with respect to said reconfiguration represent, at best, permissive topics of bargaining in accord with 5 USC 7106(b)(1). The Agency asserts that at no point did it ever communicate to the Union it was electing or had elected to bargain over the substance of its decisions with respect to the libraries. The Agency asserts the Union claim it violated the Master Collective Bargaining Agreement (Jt.Ex.1) by failing to negotiate appropriate arrangements is invalid, as nowhere in the list of bargaining demands as set forth in Joint Exhibit 1A had the Union identified any of its proposals as

**constituting appropriate arrangements which, by a FLRA case ruling, it is obligated to do. The Agency further submits that the Union's claim it violated 5 USC 7117 (a)(1) by failing to bargain in good faith and/or appropriate arrangements for employees affected by the exercise of any authority under 5 USC 7106 (a) is unsubstantiated as the Union failed in its burden at arbitration to show how it engaged in bad faith bargaining over the issue of library service reconfiguration.**

**In concluding argument, the Agency asserts the Union failed to produce any evidence that supports its grievance and, as such, it respectfully requests that the subject grievance be denied in its entirety.**

## OPINION

The record evidence well documents that the initiative undertaken by the EPA to potentially fashion changes to its Library Network occurred as early as FY 2003 and that this initiative was prompted by two (2) very significant factors, to wit: (1) the recognition that appropriations in its budgets for maintaining its total library resources were in decline and expected in future fiscal years to be decreasing in amount, making it ever more tenuous to hold to the status quo; and (2) that developments in technology opened the possibility of meeting this decline in budgetary appropriations by transitioning its library resources from maintaining duplicative physical library resources, in part, to online electronic form by digitizing a percentage of these duplicative print material holdings and, implementing other accompanying changes such as, for example, establishing depositories to maintain print materials, reducing the number of its contractor librarians, shifting library holdings from one physical library facility to other physical library facilities, providing a Library Network procedure for servicing requests for interlibrary loans, and establishing a procedure for remote librarian assistance whenever needed by professional staff relative to their assigned research projects. In other words, the initiative to implement potential changes to its Library Network, which, in large part came to fruition in FY 2007, (noting that in FY 2004, Region 2 – the New York Region, closed its Edison, New Jersey library facility and Region 6 – the Dallas Region, reduced the number of library hours as well as the number of librarians from 2 to 1 which evoked protests from a number of employees, some of whom likely were AFGE bargaining unit employees and, in addition, Region 5 – the Chicago Region, noted in comments submitted to the Library Network Workgroup prior to July of 2005, that it had already instituted “substantial changes to its library” in response to FY 2005 budget cuts – see fn 11, p. 27), was not, in most respects, precipitously undertaken by the Agency, as said initiative commenced some three (3) years prior to implementing the majority of actual changes, which implementation by the Agency galvanized the filing of the instant grievance nor, were the changes proposed, under all the given circumstances over those three (3) prior years, made without considerable contemplation by those Agency staff charged with the responsibility of studying and making recommendations with respect to instituting potential changes. Having made this latter point however, the record evidence makes clear that even though the Agency proceeded with a good degree of caution and with a great deal of thought as to what changes should be implemented and how to implement such changes consonant with its contractual obligation, in part, pursuant to Section 2 of Article 5 of the Master Collective Bargaining Agreement (MCBA, Jt.Ex.1), specifically “to promote and improve Agency efficiency,” nevertheless, responsibility for undertaking the task of studying potential changes to the Library Network and then formulating an Agency-wide plan to implement recommended changes was insular in nature to the extreme, that is, confined strictly to managers within the Agency with virtually no input by other constituencies such as general public users of the EPA library network, other federal and public library systems, and, in particular and most importantly the several Unions representing the Agency’s bargaining unit employees (for purposes

of this arbitration confined to employees covered by the AFGE), who would be most impacted by the implementation of any of the proposed changes.

As noted in the preceding Background Section of this *Opinion and Award*, the first evidence of the Agency's acknowledged awareness, in writing, of the impact the coming changes in its Library Network would have on its employees, was memorialized by Region 5 Management in two (2) March, 2006 Memoranda directed to all Region 5 employees wherein, among other information contained in the Memoranda, it apprised that as a result of the forthcoming FY 2007 reduction in the Region's library funds, it was going to close its Regional library and indicated Management's intention to meet with AFGE Local 704 representatives to discuss the changes. This intention on the part of Region 5 Management was reinforced in an e-mail Memorandum dated March 14, 2006 wherein, Management "invited" AFGE Local 704 to join them in "pre-decisional" discussions to best meet the needs of the Agency's mission and its employees. As further noted in the preceding Background Section, nine (9) months prior to the issuance of the two (2) referenced Memoranda and the March 14, 2006 e-mail invitation to Local 704 to join in "pre-decisional" discussions, in a June, 2005 EPA Document titled, *Optional Approaches to U.S. EPA Regional Library Support*, the Agency was apprised that attendant to any of the options selected by the Regions in effecting changes to their respective libraries, one of the transitional activities that would be required would be consultation with the Regional Unions. Thus, the record evidence establishes with great clarity and without contravention that from the very beginning of its initiative in FY 2003, to consider making changes to its Library Network and continuing up until midway through FY 2006 when the Agency began laying the groundwork to effect the changes that had already been determined by it to implement, Management had precluded the Union, both on a national and local level, from assuming any role in the planning and decision-making stages relative to the reorganization of its Library Network and, consideration of the possible potential impacts such a reorganization would have on its bargaining unit employees.

The most significant aspect of the awareness on the part of Management at both the national level, as evidenced by its June, 2005 report, *Optional Approaches to U.S. EPA Regional Library Support* (Un.Ex.11) acknowledging the requirement to engage in consultation with the Regional Unions and, at the local level, as evidenced by Region 5 Management's seeking to have the Union join it in "pre-decisional" discussions, that there was a legitimate role for the Union to assume at some point in the process of reorganizing its Library Network, is the recognition by the Agency of the contractual obligation incumbent upon it pursuant to Article 45, Sections 1A and/or 1B of the MCBA (Jt.Ex.1), should the Union opt to invoke either or both of these Agreement provisions. The record evidence reflects that, in fact, upon becoming aware of the Agency's decision not only to close Region 5 library but also to close Region 6 library and the Headquarters' library, Council 238 did, in fact, by written notification to Ruben Moreno, the Agency's Director of Labor and Employee Relations dated March 16, 2006, invoke a demand to bargain the issue on a national level pertaining to the impending changes the Agency intended to effect in

its Library Network pursuant to Sections 1A and 1B of Article 45 (Jt.Ex.1A). The record evidence further reflects that the Union's Region 5 local union, Local 704 also invoked Sections 1A and 1B of Article 45, to bargain on a local level on procedures and appropriate arrangements over the change in working conditions as a result of the closure of the Region 5 library by e-mail notification to Region 5's Labor Relations Specialist dated March 28, 2006 (Jt.Ex.21). Thereafter, from the dates of filing both the demand to bargain the issue of the impending changes to its Library Network on both a national and local level up to August 16, 2006, the date Council 238 filed the subject grievance (Jt.Ex.24), the record evidence reveals that the Agency stonewalled the Union with regard to permitting commencement of negotiations let alone allowing the Union a real and viable consultative role in the library reorganization process even though the record evidence as summarized in the preceding Background Section of this *Opinion and Award* is rife with instances of an intention by the Agency to engage the Union in bargaining the impact and implementation issues arising from the reorganization of its Library Network. These instances of the Agency's intention to engage the Union in impact and implementation bargaining pursuant to Article 45 Section 1B are as follows:

#### **FIRST INSTANCE**

In a June 2, 2006 Memorandum to a number of recipients which included Steve Roy, the appointed AFGE representative designated to negotiate impact and implementation issues with the Agency on a National level, David Mick, the Agency's counterpart to Roy on a National level apprised among other things that implementation of the "Framework" would vary by Region and the Headquarters' level explaining that, that was the reason why "impact and implementation" bargaining of actual library service changes would take place separately in the Regions and at Headquarters (emphasis by the Arbitrator). Mike Flynn, OEI Director of the Office of Information Analysis and Access referenced this Memorandum in his testimony asserting the purpose of this Memorandum was to seek input from the Unions representing the Agency's bargaining unit employees prior to the Agency making final decisions with respect to composition of the Framework document and, thus, prior to it being sent out for further action in the Regions and Headquarters. Flynn further asserted he received only two (2) responses from the Unions, one of which was from AFGE Local 1003, located in Region 6, Dallas but received no response from AFGE Council 238. Flynn maintained that the input he did receive did result in some revision of the Draft Framework leading to development of the Final version. However, the Arbitrator is persuaded that this effort by the Agency to seek input from the Union at this late stage in the library reorganization plan fell far short of what the Union was seeking and had been seeking for nearly three (3) months at that time and, that was, to engage in bargaining the impact and implementation issues pertaining to the impending forthcoming changes in the Agency's Library Network. The Arbitrator notes that even if the Agency was adhering to Section 7113 of the FLRA Statute by permitting the Union to present its views and recommendations regarding the impending changes to its Library Network and considering those views or

recommendations before taking final action, nevertheless, the Agency failed to comply with other provisions of Section 7113, in particular the provision set forth in sub-section (2)(B) which obligated the Agency to provide the Union a written statement of the reasons for taking the final action, here the implementation of the plan set forth in the Final Draft which the Union had explicitly requested in its written demand to bargain on a national level; specifically, the Union stated in Point (4) of its demand, that in accordance with Article 45, Section 2, it was requesting that the Agency explain the proposed changes and their impact on the bargaining unit to the designated Union representative (Jt.Ex.1A). The record evidence makes clear that while bargaining unit employees generally understood the Agency was planning to effect a reorganization of its Library Network as a direct result of the anticipated significantly large reduction in budgeted funds for maintaining its Library Network, and perhaps in a general sense the options that each region might pursue in reacting to the budget cut, nevertheless, the Agency at no point in time provided the Union with in-depth reasons addressing the specific changes it was prepared to implement on a regional and Headquarters basis in response to the reduction in library funds. For example, the Agency only informed the Union it was closing the Region 5 Library but did not provide an explanation as to the reason or reasons why this regional library as opposed to closing a library in one of the other regions or, more specifically, the reasons underlying the decisions pertaining to the disposition of its library holdings in the process of dismantling the physical site.

The Arbitrator is persuaded that through-out the entire library reorganization process the seeds of which were sown as early as FY 2003, nearly all the input contributed by both the Union and some of its bargaining unit employees to the Agency's library reorganization plan was in reaction to notification of changes at the time they were being instituted as opposed to thoughtful responses pertaining to the long-term implications of how the changes would impact their overall working conditions but, more specifically, the manner in which they would be performing their job. Two (2) prime examples drawn from the record evidence support this finding, to wit: first, during early June of 2006 while still in the phase of the Agency's solicitation of comments, (albeit it a seemingly tepid solicitation) from the Union and its bargaining unit employees regarding the draft "Framework" document, the Agency issued an e-mail announcement dated June 13, 2006 informing Region 2 employees that the Region would be closing its library reading room and regional staff would have limited access to the physical collection and that public access to the library would be discontinued. Additionally, the Region would not be adding any additional titles or resources to the physical collection and its website would be removed from both the Internet and Intranet. There is nothing in the record evidence to show that the Agency engaged the AFGE Local Union in Region 2 in bargaining the impact and implementation of these changes; second, in and around this same time period, Region 6 apprised its employees it would be closing its library which, in reaction, was responded to by a number of employees by e-mail collectively urging that the library not be closed. The very fact of this reaction underlies the fact that the Agency did not engage the AFGE Local Union in Region 6 in bargaining the impact and implementation of this change.

## SECOND INSTANCE

In conjunction with the above First Instance, Mick followed up his June 2, 2006 Memorandum two and a half weeks (2 ½) later with an e-mail correspondence to Roy dated June 19, 2006 wherein, he stated, it was his understanding that Roy had an interest in negotiating over library service changes and inquired as to whether Roy was seeking negotiations on the “Framework” document or seeking to bargain on behalf of AFGE locals in response to a proposed regional library change (emphasis by the Arbitrator). The Arbitrator finds this inquiry by Mick somewhat puzzling at best since it was abundantly clear in Council 238’s written demand to bargain submitted by Council President Orzechoskie to EPA Director of Labor and Employee Relations Ruben Moreno approximately two and a half (2 ½) months before, that the Union was invoking its contractual right pursuant to Article 45 of the Master Collective Bargaining Agreement (Jt.Ex.1), to bargain on a national level, the closing and major reorganization of the EPA Headquarters’ and Regional libraries. The only aspect of this demand that perhaps was unclear since its submission on March 16, 2006 was that Orzechoskie had indicated that Union official, Maureen Kiely of AFGE Local 3607 from the Agency’s Region 8 had been designated as the Chief Negotiator for the issues identified in the Demand to Bargain but that sometime after March 16, 2006, Steve Roy replaced Kiely as the Union’s designated Chief Negotiator. However, the very fact that Mick knew to correspond with Roy regarding his “interest” in negotiations indicates that the Union’s change in its designated Chief Negotiator posed no problem for the Agency.

In any event, in another acknowledgement by the Agency that the Union possessed the contractual right under the provisions of Article 45 of the Agreement (Jt.Ex.1) to bargain over impact and implementation issues, Mick requested of Roy in this June 19<sup>th</sup> Memorandum, that whatever his bargaining interests were, that he identify his interests in conjunction with Article 45, Section 2 of the Master Collective Bargaining Agreement (emphasis by the Arbitrator). In response, by a reply e-mail on the same date (June 19, 2006), Roy informed both Mick and Mike Flynn that it was the Union’s desire to move forward with commencing negotiations and asked when they both would be available to initiate negotiations. From that point forward, therein ensued the stonewalling on the part of the Agency with regard to forestalling the commencement of impact and implementation bargaining as the record evidence clearly and unambiguously establishes that Mick, for whatever his reasons, engaged in deflecting repeated entreaties by Roy to begin the negotiation process. A cursory review of just the dates involved in the process suffices as proof to support this finding. Although Council 238 filed its Demand to Bargain March 16, 2006, it was not until three (3) months later, June 19, 2006, that Mick sent his inquiry to Roy asking what was the Union’s intention with regard to negotiations. Thereafter, it was not until July 18, 2006, one (1) month later that Mick responded to Council 238’s Demand to Bargain. Significantly, in this response, Mick represented that once the details of the Headquarters’ Library closing were determined those details would be shared with the Union for appropriate impact and implementation bargaining (emphasis by the Arbitrator).

With regard to libraries at the regional level, Mick represented that once local library service change plans were developed and completed, the plans would be shared with the Union for the purpose of bargaining impact and implementation issues attendant to library service changes (emphasis by the Arbitrator). One (1) month later, August 24, 2006, nine (9) days after the Agency released the final version of its library reorganization plan and eight (8) days after the Union filed the subject grievance addressing the Agency's unwillingness to enter into impact and implementation bargaining over the closure of libraries and change in library services at those libraries that remained open, Council 238 became aware by second-hand notice from its Washington, D.C. local, Local 3331, that the D.C. Headquarters' Library would be closed for general access effective October 1, 2006. This information prompted Council 238 President, Orzechoskie to correspond with Mick by e-mail indicating that the representation he made to Roy on July 18, 2006 that, once the details had been determined relative to the closure of the Headquarters' Library they would be shared with the Union for the purpose of bargaining impact and implementation issues was no longer appropriate and asking Mick when he intended to begin impact and implementation bargaining. It was not until October 16, 2006, two (2) months after this query by Orzechoskie that, in an exchange of e-mails between Mick and Roy over an eleven (11) day period, Mick indicated his counter-proposal pertaining to the Union's demand to bargain regarding library service changes which he had promised would be submitted to the Union prior to October 16, 2006 was still unfinished. In a follow-up e-mail on October 27, 2006 Mick informed Roy he was still working on developing the Agency's counter-proposal. One (1) month later, on November 22, 2006 after receiving no counter-proposal from Mick and no response to nine (9) proposed dates in November he had suggested to commence negotiations, Roy informed Mick the Union was progressing the subject grievance addressing the Agency's unwillingness to enter into impact and implementation bargaining to arbitration.

The above referenced dates beginning with March 16, 2006, the date Council 238 filed its Demand to Bargain and ending with November 22, 2006, the date the Union progressed the subject grievance to arbitration which eventually resulted in this arbitral proceeding, clearly shows that the Agency forestalled impact and implementation bargaining for eight (8) months. Thus, even though the Agency led the Union to believe it intended to engage in such bargaining, the Agency never made good on this intention even up to the present time of this arbitration hearing, an elapsed time and further delay of yet another nine (9) months.

### **THIRD INSTANCE**

The Agency also forestalled engaging the Union on a local level to negotiate issues of impact and implementation as evidenced by events surrounding the closure of EPA Region 5's library. The record evidence reflects that in conjunction with the Demand to Bargain filed by Council 238 which has jurisdiction over all the EPA, AFGE local unions, Local 704 on March 28, 2006 filed a local level Demand to



**Bargain on the impact and implementation issues associated with the anticipated changes to the Region 5 Library. Although uncontested testimony proffered by Management witness Jeff Kelley, Chief Public Information and Education Section, Office of Public Affairs reflects that attendant to Local 704's filing its Demand to Bargain, he participated in discussions along with Region 5 Labor Relations Specialist, Martin Mills and Local 704's designated representative Cheryl Allen pertaining to details of how the closure of the Region 5 Library would be handled and the various issues the closure represented, nevertheless, mere discussions do not rise to the level of negotiations that would entail bargaining of impact and implementation issues and matters. Discussions connote an exchange of information only, whereas, bargaining certainly encompasses discussions but also entails an exchange of proposals and counter-proposals that facilitate a give and take exchange whereby each of the parties involved in the bargaining process has an opportunity to secure some accommodation of its interests through compromise. There is no evidence before the Arbitrator that such bargaining occurred relative to the closure of the Region 5 Library either at the time the details of the closure were developed or, at the time in advance of the actual physical dismantling of the library.**

#### **FOURTH INSTANCE**

**In addition to forestalling and then never entering into impact and implementation bargaining with the Union over the reorganization of its Library Network, the Agency continued in its obstinacy in dealing with the Union by frustrating the grievance / arbitration procedure, which is viewed by many advocates in the labor-management community, as well as neutrals in dispute resolution, as an extension of the collective bargaining process. The incontrovertible evidence reflects that not only did the Agency fail to adequately respond to the subject grievance when first filed by the Union back on August 16, 2006, but it also flouted its contractual obligation to enter into the process of mutually selecting an arbitrator once the Union progressed the grievance to arbitration. Section 2 of Article 43, the Grievance Procedure clause of the Master Collective Bargaining Agreement (Jt.Ex.1) provides for the right of either the Union or the Agency to initiate a grievance and Section 1 of Article 44, the Arbitration clause provides for the right of either the Union or the Agency to progress a grievance to arbitration that is not resolved in the grievance procedure. Section 2 of Article 44 provides for the procedure the Parties are to follow in selecting an arbitrator and it is this procedure that the Agency simply, by its unresponsiveness, refused to participate in until finally forced to do so as a result of the Union filing an Unfair Labor Practice charge against it with the Federal Labor Relations Authority. The Agency's conduct in this regard can be characterized as highly resistant to any effort by the Union to gain entry into any aspect of the process pertaining to its initiative to reorganize its Library Network, notwithstanding the Agency's self proclaimed recognition that in accord with applicable provisions of the Master Collective Bargaining Agreement,**

specifically the applicable provisions of Article 45, the Union had (and still has) a legitimate role to play in this initiative.

As if the Agency's conduct as evidenced by the above enumerated four (4) instances was not bad enough, the fact that, in addition to precluding the Union from entering into impact and implementation bargaining pursuant to its contractual right to do so as provided for in Article 45 of the Master Collective Bargaining Agreement (Jt.Ex.1), pertaining to the reorganization of its Library Network, the Agency compounded the err of its ways by instituting changes attendant to its reorganization initiative unilaterally without the benefit of legitimate Union input. Such unilateral changes were implemented over much of the time period the Union was seeking to enter into impact and implementation bargaining with the Agency up to and including the period of time leading to this arbitral proceeding. As a consequence, substantial changes were effected to seven (7) of the ten (10) Regional libraries and two (2) additional libraries, to wit: the EPA Headquarters' Library and the Chemical Library located in Washington, D.C. The Arbitrator wishes to make very clear that pursuant to applicable provisions of the FLRA Statute, the Agency possessed the right to devise a reorganization plan for its Library Network and to devise that plan without the participation of any Union representatives. In fact, such an undertaking on the part of the Agency is to be commended as the initiative to transition its library resources is consonant with that part of any federal agency's charge to conduct its operations in the most efficient manner.

Furthermore, many of the changes undertaken are consonant with the changes in technology and the different way in which information is accessed today as compared to when the Agency was first established 38 years ago back in 1970, . The Arbitrator notes that even the Senators investigating the Agency's library reorganization plan expressed they fully supported the goal of modernizing the management and delivery of information services within the government and to the public noting that, information and communication technologies provide opportunities for the government to utilize and distribute information more efficiently both internally and externally. However, what the Agency did not have the right to do given the applicable provisions of Article 45 of the Agreement (Jt.Ex.1), was to preclude the Union from participating in bargaining the impact and implementation of the changes contained in the reorganization plan prior to the Agency effecting the changes. The proffered testimony by Union witnesses in addition to the documentation of the introduced and received exhibits into the evidentiary record of these proceedings, provided sufficient evidence to conclude that the changes effected by the Agency associated with the reorganization of its Library Network did, in some profound ways, affect the working conditions of the Union's bargaining unit employees.

Based on the foregoing discussion, the fact circumstances as presented, clearly demonstrates that the Agency acted in bad faith in the manner in which it dealt with the Union as it pertained to the implementation of changes attendant to the reorganization of its Library Network that adversely impacted the working conditions of its bargaining unit members. However, the very real problem now is


to fashion a remedy that makes sense given the present state of affairs. It is not realistic under the present circumstances with so many changes having already been implemented over now a period of nearly two (2) years from the time the Demand to Bargain on a national level was initiated by the Union to honor the remedies requested by the Union in this instant grievance, as it would be impossible for the Agency to comply with reopening the libraries that were physically dismantled and closed and, while it would be difficult, but not impossible to restore the function and hours of operations at the libraries in Regions 1, 2, 3, 4, 9, and 10, doing so would be highly impractical given budgetary constraints. If going forward there are still changes anticipated to be implemented to the Agency's Library Network then the remedy requested of ordering the Agency to enter into good faith impact and implementation bargaining over such changes is a viable one. Additionally, the Arbitrator would also honor the Union's requested remedy that he retain jurisdiction of this subject matter until the conclusion of such negotiations. The Arbitrator would, in addition to this requested remedy, offer his services as mediator if the Parties were amenable to mediation of any related impending issues.

**A W A R D**

Based on the rationale set forth in the preceding Opinion Section, the Arbitrator finds that the Agency did violate applicable provisions of the Master Collective Bargaining Agreement (Jt.Ex.1) when it acted to forestall and preclude engaging the Union in impact and implementation bargaining pertaining to issues attendant to the reorganization of its Library Network. In so finding, the Arbitrator rules to sustain the substance of the grievance but, as indicated in the preceding Opinion Section, ordering the remedies initially sought by the Union is, at this point in time, not viable. As further indicated in the preceding Opinion Section, the Arbitrator orders the following:

- Should there exist at the present time, or arise in the future, issues attendant to the reorganization of the Agency's Library Network that directly affect and may potentially have an adverse impact on the working conditions of bargaining unit employees, the Agency is ordered to engage the Union in impact and implementation bargaining in a timely manner.
- The Arbitrator retains jurisdiction of this matter until such time as any related impending issues encompassed by this grievance are resolved. Should any related issues remain unresolved and those issues be remanded to the Arbitrator, the Arbitrator shall either render a final and binding decision or, at the mutual requests of the Parties, attempt a mediated settlement of the issue or issues.

**SUBSTANCE OF GRIEVANCE SUSTAINED**

  
George Edward Larney  
Arbitrator

Chicago, Illinois  
February 15, 2008

**CONTENTIONS**

**UNION'S POSITION**

**In its post-hearing brief incorporated in pertinent part herein as Appendix A, the Union submits that by the Agency's unilateral implementation of changes to its Library Network, specifically the physical closure of Headquarters' and Regional libraries as well as a technical library and the reduction of services in a number of the remaining physical libraries, the Agency instituted a change in the working conditions of its bargaining unit members, and given such a change, the Agency was obligated under the 1994 Master Collective Bargaining Agreement (Jt.Ex.1) to bargain not only the change in working conditions but also the impact of such change in working conditions as experienced by its bargaining unit members.**

## APPENDIX A

### Arguments

#### Issue 1

When the Agency began to close EPA Regional and Headquarters libraries prior to negotiating with AFGE, it committed a breach of contract since this was clearly a change in working conditions. Between August 2006 and December 2006 EPA closed its regional libraries in Chicago, Dallas, Kansas City, and EPA Headquarters along with the Fort Mead, Maryland technical library. In addition, EPA reduced the level of services at other EPA regional libraries (such as reduced hours of operation) in Regions 1, 2, 3, 4, 9 and 10.

Article 45- Section 8. states in all preparations, negotiations and other activities arising under this Agreement, the parties will be aware of their obligation to the public to conduct such activities in the most efficient and cost effective manner. EPA's actions on this matter have demonstrated the Agency's inability to conduct themselves consistent with the MCBA. EPA's actions fail to embody the spirit and intent of this section when one considers the FLRA's time to investigate and prosecute AFGE's ULP. Also the time and effort spent conducting this arbitration does not reflect "the most efficient and cost effective manner."

Witness testimony and (Jt. Exh. 16, Jt. Exh. 17, Jt. Exh. 18, Un. Exh. 3, and Un. Exh. 4) clearly showed that there was a change in working conditions.

a. Some bargaining unit employees no longer had physical access to their historically available EPA library and their research must be done on-line.

b. Even if most documents are eventually reproduced and digitized, which has yet to happen, there are resulting adverse impacts such as access to the documents, availability of unique documents, and the timeliness of receiving the documents.

- c. There is no longer a librarian to assist bargaining unit members to efficiently search the internet, search the EPA collection and quickly respond to employee requests for information.
- d. Some copyrighted materials can not be legally digitized and provisions on how to access those library materials are not clear.
- e. Witness testimony also indicated that there are delays in obtaining "loaner" copies which will adversely impact employees on tight timelines.
- f. Some bargaining unit employees may need additional training in conducting computer research (there is no indication when and if this training is being provided.)
- g. Maps, photo's, charts and other unique information cannot be easily digitized and therefore might be lost or inaccessible to employees.
- h. Locations within EPA who maintain physical libraries may give their employees an advantage over bargaining unit employees located where no physical library exists.

## Issue 2

The Union believes that we had the right to demand negotiations concerning the proposal to close EPA libraries, under Article 45, Section 1. However, in the alternative if the Agency attempts successfully to claim that the library closings did not constitute a change in the substance of an otherwise negotiable personnel policy, practice or working condition, then the Union believes that Article 45 Section 1B applies, because as indicated above the decision to close libraries created an adverse impact on bargaining unit employees.

The Statute that sets the basic parameters of the of the relationship is 5 USC 7114(a)(4):

“Any Agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective agreement. In addition, the agency and the exclusive representative may determine techniques, consistent with the provisions of Section 7119 of this title, to assist in any negotiation.”

Within that basic duty of the parties to meet and negotiate, there are some subsidiary duties and rights, established at 5 USC 7114:

The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation-



- (1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
- (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
- (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays; ...
- (5) if agreement is reached, to execute on the request of any party to the negotiations a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

Clearly the Agency has not complied with any form of negotiations, in response to AFGE demand to bargain. In fact, the Agency's actions appear to have deliberately led to unnecessary delays by, never making themselves available to meet with the Union, refusing to select an arbitrator, questioning venue, and not responding to the Union's suggested ground rules. Any efforts which have moved this issue closer to resolution has been made by the Union calling upon our legal rights to have third party intervention in these negotiations. It is the Union's belief, that it wasn't until we filed a ULP against the Agency with regard to the Agency not selecting an arbitrator and the FLRA issued a complaint against the Agency, that this arbitration has taken place.

The above duties are upon the Agency and the Union's exclusive representative as set forth in the MCBA Article 45 Section 5:

Section 5. The parties agree to recognize each other's duly authorized representatives. At each location, the parties shall designate an authorized agent. At the Agency and national levels, the parties shall designate an authorized representative. All dealings between the parties will take place between the appropriate authorized representatives unless an authorized representative designates another individual to act in his or her place. Understandings reached by unauthorized individuals will have no force and effect unless approved by the authorized representative of the parties. The parties will advise each other of their respective authorized representatives at the local levels at least annually. The parties will notify each other of their authorized Agency or national level representative in writing and such authorization will remain in effect until revoked.

In accordance with Article 45, Section 5, the designated authorized Union representative

is John Gage, President AFGE, who in turn designated Charles Orzechoskie as his authorized representative (Un. Exh. 2). For this matter the Agency indicated that Dave Mick would be negotiating on the Union's demand to bargain on the library matter.

By refusing to bargain with AFGE on the libraries, we believe that the Agency further violated Article 45, Section 5 by not recognizing the Union's duly recognized representative. At a minimum, the Agency should have met with the Union's authorized representative and explained to the Union why the Agency thought that if there were to be negotiations, they should take place locally. While the Union totally disagrees with that position, if that was the agency's position, it should have formally been presented at the table. Negotiations do not encumber issues being decided unilaterally by the Agency. What the Agency did was paramount to failing to recognize the authorized representative.

At the arbitration hearing, we heard Mr. Mick raise the issue of arbitration venue. The MCBA is silent on this matter as acknowledged by Mr. Mick. Therefore, when Mr. Mick made suggestions regarding the venue on future arbitrations it was not clear to the Union if the sentence in Article 45, Section 5 might not apply, which states that "understandings reached by unauthorized individuals will have no force and effect unless approved by the authorized representative of the parties." Mr. Arron Helm has been designated as the Agency's representative for the MCBA negotiations. The Union believed that, until Mr. Helm intervened or an Agency authorization clarification took place, that Mr. Mick's proposal on venue was premature. The Union has received no written authorization designating Mr. Mick to negotiate the MCBA.

### Issue 3

AFGE Council 238 consists of 11 AFGE Locals from across the county at different EPA facilities. As such, AFGE Council 238 is a consolidated bargaining unit authorized to negotiate on national issues impacting all AFGE EPA Locals and their interests. This authority arises from 5 U.S.C Section 7113, national consultation rights. AFGE has been accorded exclusive recognition from the FLRA under the Statute, which as stated above (Un. Exh. 2) has been delegated to Charles Orzechoskie, President AFGE Council 238. EPA's refusal to acknowledge AFGE's authority has placed the Agency in violation of this section. EPA has failed to comply with section 7113 in its entirety.

Clearly the library closure and change in library operating hours is a national issue. The planning documents admitted into evidence for example (Jt. Exh. 5, Un. Exh. 10, Un. Exh. 11, Un. Exh. 12, Un. Exh. 13,) demonstrate that the library closure and change of operations is a national issue, requiring national level negotiations. These documents are produced in consultation with the Regions and Labs from EPA Headquarters ("The EPA National Library Network"). To this date EPA Headquarters conducts monthly conference calls with all of the EPA Federal Library Managers and every other month EPA Headquarters conducts EPA National Library Network conference calls with EPA managers and library contractors. In addition, EPA headquarters hired this past summer an EPA Library Network Federal Library Manager (Deborah Balsamo) located at EPA

Headquarters to coordinate library services, provide oversight, and conduct library contract monitoring.

Even Stephen Griffin, Labor Relations Officer for EPA Region 1 (Boston) has acknowledged that the library issue was an issue that required national negotiations (Jt. Exh. 25) by notifying Mr. Orzechoskie, but EPA Headquarters continued to ignore their duty to negotiate on a national level. Mr. Griffin made his official notice after AFGE made its demand to bargain on March 16, 2006. Please note that Stephen Griffin is not the designated Agency representative for this matter, Mr. Mick is the designated Agency representative.

The MCBA clearly specifies those areas that are appropriate for local negotiation (Jt. Exh. 1, such as Articles 12 and 14). Since the library issue is not specified for local negotiations it falls under national negotiations, especially when one considers the range and scope of such a decision to close libraries that are a public resource.

Jt. Exh. 6 dated April 16, 2007 (EPA Information Policy) is a national policy, issued by EPA National Headquarters Office dealing with EPA wide policy on libraries. This document alone gives AFGE a basis for demanding National bargaining on libraries.

AFGE has established a past practice and negotiated with EPA a number of national agreements such the "Performance Appraisal and Recognition System", "National Reasonable Accommodation Procedures", "Flexiplace", "electronic Official Personnel File" procedures, as well as the MCBA.

5 U.S.C section 7116(a)(5) states that it is an unfair labor practice for an agency - - to refuse to consult or negotiate in good faith with a labor organization as required by this chapter. Since EPA has refused to negotiate with the AFGE, it has violated this section of the law. (Jt. Exh. 20)

5 U.S.C. section 7117(a)(2) states that the Agency has duty to bargain in good faith and 5 U.S.C. sections 7117(d)(1) and 7117(d)(2) states that the Agency has a duty to consult at the national level. Since EPA has refused to negotiate with AFGE it has not complied with these three sections. (Jt. Exh. 20)

5.U.S.C. Section 7106(b)(3) does not preclude the parties from negotiating "appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials." The closure of libraries and reduced libraries services is clearly a change in working conditions requiring negotiations by the parties. (Jt. Exh. 20). The Union and the Agency have an obligation to bargain over the substance, impact and implementation over any future agency decisions as it relates to conditions of employment of unit employees.

When testimony was taken concerning the closing of the Chicago library, it was clear that as a result of the Chicago (EPA Region 5) closing of their library, some of the services which were provided by Region 5's library to Region 5 bargaining unit employees, will

now be available from EPA's Cincinnati office. EPA's witnesses stated that everything available to Region 5 employees will still be available through the Cincinnati office. However, since Region 5, Chicago Local 704, has no jurisdiction in the operation of Cincinnati, it would be impossible for AFGE Local 704 to negotiate the adverse impacts on their bargaining unit members, by the closing of their Regional library. Therefore, the AFGE entity which has been authorized to deal with issues crossing EPA Regional boundaries is AFGE Council 238, so recognized by the FLRA and designated by AFGE President John Gage. However, the Agency is trying to avoid negotiating with Council 238, and the result of this arbitration should include a directive that EPA negotiates with AFGE Council 238 consistent with the Statute and MCBA.

### **Reported Case Authorities**

For reported FLRA decisions in which an agency fails to negotiate with a union that is the certified collective bargaining exclusive representative of a national consolidated unit. See *Department of Health and Human Services and AFGE* [v16 p674] 16:0674(99) CA; *Food and Drug Admin., Northeast and Mid-Atlantic Regions*, 53 FLRA 1269, 1274 (1998); and *Dept. of Defense Dependents schools*, 12 FLRA 52, 53 (1983).

For a reported FLRA decision concerning the negotiation of changes in conditions of employment that affect more than one facility or originate above the facility level. See [ v49 p923 ] 49:923(89)NG *NFFE, Council of VA Locals*, 49 FLRA 923, Proposal 2 [N].

### **Conclusion**

There could hardly be a clearer case of violations of law and the MCBA. The EPA unilaterally closed EPA Regional and Headquarters libraries and reduced library access and services in other Regions before negotiating with AFGE. EPA chose not to negotiate with the Union on a matter of national importance and therefore violated the Statute and the MCBA. The EPA and the Union have entered into a labor agreement spelling out the procedures for negotiation, but it is impossible to negotiate with oneself. The MCBA and the Statute obligates the EPA to negotiate, but EPA will not likely negotiate with the Union until it is compelled to as was the case in selecting an arbitrator.

Finally, there is a compelling public interest in maintaining physical libraries which serve both Unions and the public. There is a compelling interest in having agencies negotiate such matters as library closures with Unions that represent the library users. Congress recognized this public interest which is codified in 5 U.S.C Section 7101. (Jt. Exh. 20).

In summation, the Arbitrator should rule:

- 1) The Agency should be ordered to initiate good faith negotiations with AFGE Council 238 for establishing procedures and appropriate arrangements concerning the changes to EPA library services and operations.
- 2) The Arbitrator should retain jurisdiction until the conclusion of said negotiations.
- 3) The Agency should be ordered to fully restore the function and reopen all of the closed libraries in EPA Headquarters, the EPA Headquarters Office of Prevention, Protection and Toxic Substances Technical library and libraries in Regions 5, 6, and 7 along with the Ft. Meade, Maryland technical library.
- 4) The Agency should be ordered to fully restore the function and hours of operations at those EPA libraries in Regions 1, 2, 3, 4, 9 and 10 where the hours of operations were reduced and services reduced.

## APPENDIX B

### ARGUMENT

#### POINT 1

#### THE AGENCY DID NOT FAIL IN EXECUTING ITS BARGAINING OBLIGATIONS

The Agency's decision to close or otherwise reconfigure its system of libraries represented an exercise of its prerogative and its need to operate the Agency in a manner that best leveraged technological resources with available funding. As the Arbitrator agreed in the hearing, impact on the general public of Agency library closures or reconfiguration of services was not a matter within the scope of the instant arbitration.

As regards the impact on Agency employees, reconfiguration of library services represented a change in the means and technology by which employees, who utilized Agency library resources, would accomplish their assigned work. We would like to point out, then, that the substantive decisions made by the Agency, with respect to library service reconfiguration, represent, at best, permissive topics of bargaining (per 5 USC 7106 (b) (1)). While the Agency endeavored mightily to brief the Unions on its library reconfiguration activities, as brought forth in testimony from Agency witness Mr. Michael Flynn and as articulated in the "EPA FY 2007 Library Plan (Joint Exh. 5) conveyed via email to all Agency union contacts (Agency Exh. 5), at no point did the Agency ever communicate to its unions (including AFGE) that it was electing or had elected to bargain over the substance of its decisions made with respect to the libraries.

The Union claims in its grievance (Joint Exh. 24) that the Agency violated the Parties MCBA (Joint Exh. 1) at Article 45, Section 1A. That particular cite deals with employer-initiated changes "in the substance of otherwise negotiable personnel policy, practice or working condition not part of this agreement." As was mentioned in the immediately preceding paragraph, library service reconfiguration was and remains a permissive topic of bargaining

(negotiable, per 5 USC 7106 (b) (1) only at the Agency's election), the substance of which, the Agency has not elected to negotiate. As such, the Union's claim that Article 45, Section 1A was violated, we argue, is misplaced.

Next, the Union claims in its grievance (Joint Exh. 24) that the Agency violated the Parties MCBA (Joint Exh. 1) by failing to negotiate appropriate arrangements with the union..." The Union did submit a list of bargaining demands regarding the libraries (Joint Exh. 1A). One particular proposal from that list demanded that the Agency "cease discussion of EPA library closures". However, that particular proposal goes to the substance of Agency decision-making on library services - again, a permissive topic of bargaining over which the Agency never elected negotiations. Another proposal from Joint Exh. 1A requests that the Agency, as regards library service reconfiguration, "explain the proposed changes and their impact...". The Agency's responds by asserting that particular request was honored in a variety of different ways: a) as was brought out by the testimony of Agency witness Mr. Michael Flynn, through personal briefings he delivered to the unions; b) through Joint Exh. 5 as conveyed by Agency Exh. 5; c) as was brought out by the testimony of Agency witness Mr. Jeff Kelly through informational briefings he had with representative of AFGE's EPA-Chicago local; and, moreover, d) through engagement of the unions as evidenced in Agency Exh. 6; Agency Exh. 7; Joint Exh. 7 (message from David Mick to Agency headquarters union contacts, dated 8/24/06); and Joint Exh. 25. Nowhere, however, in the list of bargaining demands in Joint Exh. 1A or on any other document entered into the record for this case has the Union identified any of their proposals as constituting appropriate arrangements. For any union proposal to be considered an appropriate arrangement, it must be identified as such. See *AFGE, Local 2663 and Veterans Administration Medical Center, Kansas City, MO, 31 FLRA 988 (1988)*. As such, we posit that the Agency did not violate Article 45, Section 1B from Joint Exh. 1.

Additionally, the Union argued in its grievance (Joint Exh. 24) that the Agency violated 5 USC 7117 (a) (1) by failing to "bargain in good faith and/or appropriate arrangements for employees affected by the exercise of any authority under 5 USC 7106 (a)..." First, we believe the issue of appropriate arrangements has been fully addressed in the immediately preceding paragraph. Second, as regards the Union's reference to 5 USC 7106 (a), the Agency believes, per its above-stated arguments regarding the library reconfiguration issue constituting a 5 USC 7106 (b) (1)-based permissive topic of bargaining, a reference by the Union to 5 USC 7106 (a) as being misplaced and, thus, not applicable to the instant case. On a similar note, the Agency still believes, despite not being sustained on a related objection at hearing, that the Union should not have been allowed to introduce at arbitration alleged statutory violations above and beyond that which were specifically referenced in their grievance and addressed by the Agency herein. Third, the Union failed to show in their grievance and failed to show at arbitration how the Agency engaged in bad faith bargaining on the issue of library service reconfiguration. What the Union has taken issue with is the substance of the Agency's decision-making as regards reconfiguration of library resources. The Agency appropriately engaged the Union on matters attendant to collective bargaining as evidenced by Agency Exh. 1, Agency Exh. 2, Agency Exh. 3, Agency Exh. 6, Agency Exh. 7, Joint Exh. 7, Joint Exh. 8, Joint Exh. 25, and the testimony of Agency witness Jeff Kelly as regards proactive measures taken by EPA-Chicago management to engage the Chicago AFGE local on impact bargaining over closure of the EPA-Chicago library.

Aside from the bargaining demands referenced in Joint Exh. 1A to which the Agency has responded in the preceding paragraphs, the Union has utterly failed to show that notwithstanding: a) its having been briefed on library reconfiguration on multiple occasions by Agency witness Michael Flynn (and, in Chicago, by Agency witness Jeff Kelly); b) its having been updated through the conveyance of information provided at Joint Exh. 5 (via Agency Exh. 5); and c) its having been engaged by the Agency as evidenced through Agency Exh. 1, Agency Exh. 2, Agency Exh. 3, Agency Exh. 6, Agency Exh. 7, Joint Exh. 7, Joint Exh. 8 and Joint Exh. 25, it has never offered up either: a) what it believed to be and identified as appropriate arrangement bargaining proposals; or b) impact and/or implementation bargaining proposals.

It should be noted that in an attempt to "put to rest" the Union's concerns with the library reconfiguration initiative - notwithstanding the Agency's response (Joint Exh.2) to the Union's grievance (Joint Exh. 24), the Agency tried, after several briefings on the libraries provided to the Union after its initial bargaining demand (Joint Exh. 1A), to elicit from the Union any "updated" bargaining interests it may have concerning the libraries (attachment: "Pertinent Documents Index", item #3). No new interests surfaced as the Union responded that its March 16, 2006 bargaining demands (Joint Exh. 1A) was still its focus for bargaining. Oddly enough, in that same message, the Union indicated it was still looking for a response to its bargaining demands (Joint Exh. 1A); however the Agency had previously responded several months earlier (Joint Exh. 8). Of perhaps additional interest to the Arbitrator, it should be noted that in the Agency's response (Joint Exh. 2) to the Union's grievance (Joint Exh. 24), I, on behalf of the Agency indicated to the Union that "to the extent Council 238 would like to submit to me updated national-impact bargaining proposals (or confirm no change in interests from March 16, 2006 list of bargaining demands), we are willing to entertain such proposals for the purpose of national-level collective bargaining." As was stated earlier in this paragraph, no new interests from the Union were ever submitted. Rather, the Union reaffirmed its interest in bargaining on its March 16, 2006 demands (Joint Exh. 1A) to which the Agency had previously responded per Joint Exh. 8.

## POINT 2

### THE UNION'S WITNESSES AND EXHIBITS DID NOT SUPPORT THEIR GRIEVANCE

Testimony provided by the Union's witnesses was in no way dispositive of the Agency having engaged in the transgressions alleged by the Union in their grievance (Joint Exh. 24). A common thread running through the testimony of Union witnesses Margaret Hering, Warren Layne and Paul Scoggins was that they had to cope with adjusting to the new technologies employed for accessing library resources. However, this testimony had absolutely no bearing on contract or statute violations alleged by the Union in their grievance (Joint Exh. 24).

Not only did the Union's witnesses not support their grievance, the Agency still contends that the Union's exhibits should not have been allowed for introduction into evidence as they lacked



probative value. In no way did the Union's exhibits support their grievance. For the most part, the exhibits were either copy of Agency library policy or letters, email messages, etc. from employees, members of Congress and the public, etc. supporting the Union's belief that the libraries should not be closed or otherwise reconfigured. While the Agency does not dispute the Union's right to hold its opinion regarding the libraries, the Union exhibits do not support allegations of Agency mis-deeds whether contractual or otherwise.


### CONCLUSION

The Agency believes that the Union's grievance is without any foundation in the Federal Service Labor-Management Relations Statute, the Parties MCBA (Joint Exh. 1) or Agency policy. We have demonstrated in Point 1 how the Union was not short-changed in the collective bargaining process attendant to the Agency's library reconfiguration initiative. In sum, the Union has failed to produce any evidence that, practically speaking, supports their grievance. Based on these reasons and the above-stated arguments, the Agency respectfully requests that the Union's grievance be denied in its entirety.

Dated: Cincinnati, OH  
November 3, 2007

FOR THE AGENCY:

Respectfully submitted,

A handwritten signature in dark ink, reading "David E. Mick". The signature is fluid and cursive, with the first name "David" and last name "Mick" clearly legible. It is written over a horizontal line.

David E. Mick  
Human Resources Specialist (Labor/Employee Relations)

Attachments