American Federation of
Government Employees

Memorandum

Step 3 Grievance on behalf of bargaining unit employees for refusal to bargain over telework schedules

Dated: October 18, 2024

To: Celeste Matthews, Director of Operations, Office of Information & Technology (OIT), Department of Veterans Affairs (VA or Department)

Re: Refusal to bargain in violation of the parties' collective bargaining agreement and federal law

From: Steve Eckerman, Esq., Steward, American Federation of Government Employees (AFGE), Local 17, AFL-CIO

I. Statement of the Grievance

This Step 3 grievance[1] involves violations of various provisions of the Master Agreement, the Federal Service Labor-Management Relations Statute (hereinafter "the Statute"), and the Department's own core values. The violations stem from the Department's refusal to bargain over telework schedules for approximately 30 bargaining unit employees, conducting formal discussions with employees without notice to the Union, and engaging in deceitful and unethical conduct. Before discussing the relevant

[1] The grievance is filed under the provisions of Article 43, Section 7 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2023) ("Master Agreement").

facts of this grievance, it is important to address a prior grievance filed on May 7, 2024, as both grievances are related and inextricably intertwined.

A. Grievance filed on May 7, 2024

The aggrieved employees work for VA's Office of Information and Technology (OIT), servicing laptops under the supervision of Cassandra Heiges, who reports to Celeste Matthews. From 2020 until recently, they had a 50% telework arrangement, alternating weeks at home and in the office, with no reported issues. Indeed, the COVID-19 pandemic demonstrated that some IT work can be effectively performed from home, where employees often experience higher productivity than in the office.

On April 17, 2024, Ms. Heiges contacted Local 17 President Douglas Massey to discuss altering telework schedules for a "refresh project." She proposed temporarily suspending the current arrangement from May 6, 2024, until September 30, 2024, assuring that telework would be reinstated post-project. The Union promptly filed a Demand to Bargain on April 22, 2024, as this was a proposed change to conditions of employment, requesting a cease-and-desist order and a briefing before submitting proposals. The briefing occurred on April 25th. At no point did Ms. Heiges indicate the Department's intention to terminate telework entirely without fulfilling its notice and bargaining obligations. In fact, she appeared receptive to bargaining regarding office attendance.

However, Ms. Heiges was never genuinely interested in bargaining and was misleading both employees and the Union. On May 3, 2024, the Union submitted its proposals. Instead of responding, Ms. Heiges emailed all impacted employees that telework was canceled entirely, requiring them to report to the office on the following Monday under threat of disciplinary action. The Union received no prior notice and was not included in the email; it only learned about the situation from angry, confused, and frustrated employees.

The grievance filed on May 7, 2024, cited numerous violations of the Master Agreement, particularly Article 20 regarding telework, as well as various provisions of the Statute related to the Agency's refusal to bargain in good faith. It also highlighted the Department's blatant disregard for its own I-CARE values, reflecting its deceitful behavior and lack of concern for employees. While Article 20 acknowledges that employees may temporarily need to report to their official duty station for operational needs, the Agency failed to demonstrate, beyond mere assertions, that canceling telework entirely was the sole solution to meet the office's mission during the refresh project.[2]

[22] *See* Master Agreement, Article 20, Section 9.B (Employees may also be required to report to their ODS [official duty station] for valid operational needs to perform agency work which cannot otherwise be

Furthermore, assuming a valid operational need existed, Ms. Heiges violated the agreement by not providing reasonable advance notice and adequate time for employees to report.[3] Informing employees on Friday afternoon of the unilateral cancellation of telework and requiring immediate office attendance the following workday reflects a profound lack of respect for the workforce.

After Ms. Heiges denied the grievance at Step 2, Ms. Matthews upheld that denial at Step 3, prompting the Union to invoke arbitration. In her Step 3 decision, Ms. Matthews argued that the employees had no telework agreement because they were supposedly on *ad hoc* telework during the pandemic, which she claimed ended on May 5, 2023. This assertion is utterly baseless because a telework schedule in place for four years without interruption cannot possibly be classified as *ad hoc*.[4] Consequently, Ms. Matthews' claim that the Agency did not change conditions of employment is not only disingenuous but also patently absurd.

B. Violations since the May 2024 Grievance

Following the May 2024 grievance, employees were hopeful that telework would resume on October 1, 2024 – the projected conclusion date of the refresh project. Unfortunately, management's deceit and lack of respect for employees only continued and escalated after the initial grievance. On August 8, 2024 – shortly before the refresh project was scheduled to conclude with the prior 50% telework arrangement reinstated – management held a town hall without notifying the Union, announcing that telework was over and would only be allowed for emergent situations. Lori Williams, Director of OIT's Mid-Atlantic District, delivered this message because Senior Executive Jeff Van Bemmel, who made the decision, lacked the courage and integrity to address the employees directly. In other words, he preferred to hide behind Lori Williams rather than face the employees – truly a shining example of leadership!

These developments since the May 7th grievance constitute additional contractual and statutory violations. Holding a town hall to discuss conditions of employment without notice to the Union shows a blatant disregard for the rights of bargaining unit employees to have Union representation during any formal discussions concerning personnel policies or practices, as required by the Statute.[5] This statutory provision is designed to give the Union the opportunity to safeguard both its institutional interests and those of the

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performed on another workday, at the ADS, via telephone, or other reasonable alternative methods. In such cases, employees will be provided reasonable advance notice and be provided a reasonable time to report.

[3] *Id*.

[4] *Social Security Administration*, 83 FLRR 1-1286, 13 FLRA 112 (FLRA 1983) (once a past policy or practice has matured into a term or condition of employment, it cannot be unilaterally changed).

[5] 5 U.S.C. § 7114(a)(2)(A).

bargaining unit employees. Such conduct constitutes direct dealing with employees and violates 5 U.S.C. § 7116(a)(1) and (5) of the Statute, as it interferes with the Union's rights under § 7114(a)(1) to act for and represent all employees in the bargaining unit.

The Agency also committed an unfair labor practice by failing to fulfill its bargaining obligation under the Statute.[6] Regarding management-initiated changes, the Union must be provided with notice and an opportunity to bargain over those changes, consistent with the Statute. [7] Terminating and replacing telework agreements under a collective bargaining agreement clearly triggers a bargaining obligation. *See HUD and AFGE, Local 3956, Council 222*, 66 FLRA 106 (2011) (*HUD*). In the *HUD* decision, where the Agency changed telework agreements without fulfilling its bargaining obligations, the FLRA affirmed the arbitrator's directive to (1) issue a *status quo ante* remedy, (2) require the Agency to compensate teleworkers for commuting costs, including mileage if they drove to their official duty station, and (3) mandate that the Agency cover the costs of arbitration as the "losing party."

The Department has not demonstrated any valid operational need for canceling telework, or that allowing some telework would diminish agency operations and performance.[8] The aggrieved employees report that the average system refresh takes 30 to 45 minutes, with only occasional difficult tasks requiring one to two hours. No employee has reported any issues with telework. At an April 2024 town hall meeting, OIT employees were informed that "95% of our tickets are remote" and that the laptop refresh could be handled via overtime. Employees assert that since the laptop refresh project began in May 2024 they could easily have completed all necessary refreshes under their previous telework schedules.

C. Merging the two grievances for a single arbitration

Because both grievances are inextricably intertwined, the Union will move to have them merged for a single arbitration. The Agency's initial decision to temporarily suspend telework for six months for the refresh project represented the first significant change to employees' conditions of employment. This decision resulted in the initial May 2024 grievance because management clearly failed to fulfill its bargaining obligations and committed numerous contractual violations. The second decision, which is the subject of this grievance, involved making that temporary suspension permanent and then conveying that message to employee without including the Union. Furthermore, one

[6] 5 U.S.C. § 7116(a)(1), (5), and (8)
[7] *Department of the Air Force, Scott Air Force Base, Illinois*, 5 FLRA 9, 10-11 (1981).
[8] *See* Telework Enhancement Act. PL 111-292 ("the Act") of 2010, which authorizes federal employees to telework ***to the maximum extent possible*** without diminishing agency operations and performance.

could argue that the initial decision was not genuinely a temporary suspension but rather a ruse – a strategy designed to mislead both employees and the Union – indicating that the Agency intended from the outset to eliminate telework altogether. But of course, it's hard to tell with management's remarkable track record of deceit and utter lack of integrity, in clear contradiction of VA's core values of integrity, commitment, advocacy, respect, and excellence, encapsulated by the acronym "I-CARE." *See* 38 CFR § 0.601.

II. Statement of the Violation

The Union asserts its right to amend this grievance if violations of any other applicable sections of the contract, laws, or regulations are discovered. When an agency unlawfully makes unilateral changes, the typical remedy is for the FLRA to order a make-whole or *status quo ante* remedy. The purpose of such a remedy is to ensure that agencies engage in meaningful bargaining with their unions.[9] By unilaterally canceling telework agreements without fulfilling all notice and bargaining obligations, holding a formal meeting with employees without notifying the Union, and engaging in deceitful behavior, the Department violated – and continues to violate – the following provisions:

- 5 U.S.C. § 7116(a), stating that it shall be an unfair labor practice for an agency to refuse to consult or negotiate in good faith with a labor organization; and which makes it an unfair labor practice to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
- Article 2 of the Master Agreement due to the Department's failure to comply with applicable federal statutes and regulations in the administrative matters covered by the Master Agreement, to include 5 U.S.C. § 7116(a);
- Article 17 of the Master Agreement, stating that managers and supervisors are explicitly tasked with treating employees with the utmost respect and dignity to enhance productivity;
- Article 20 of the Master Agreement, stating that the Department may only require teleworking employees to report to the official duty station (ODS) for valid operational needs;
- Article 49 of the Master Agreement, stating that the Department will not communicate directly with bargaining unit employees regarding conditions of employment without prior notification to the Union and bargaining where appropriate;
- The Telework Enhancement Act. PL 111-292 ("the Act") which authorizes federal employees to telework to the maximum extent possible without diminishing agency operations and performance;
- Any other relevant articles, laws, regulations, customs, and past practices not herein specified.

[9] *See Federal Deposit Insurance Corp. v. FLRA*, 977 F.2d 1493 (D.C. Cir. 1992).

III. Statement of the Remedy

The Union asks that, to remedy the above situation, the Department agree to the following:

- Fulfill all obligations outlined in accordance with the Federal Service Labor Relations Statute, 5 U.S.C. § 7101 et seq., and the Master Agreement;
- Send an email to all bargaining unit employees represented by Local 17 acknowledging the Department's obligations to the Union under the Federal Service Labor Management Relations Statute;
- Compensate teleworkers for additional mileage travel expenses that they incurred from not being able to telework;
- Restore the "one week on, one week off" telework schedules for all aggrieved employees as in effect prior to May 6, 2024;
- Agree to any additional remedies deemed appropriate in addressing this matter.

The time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions regarding this Grievance, please contact the undersigned.

Submitted by,

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Steve Eckerman, Esq.
Steward

AFGE, Local 17