



Antonio Gaines
President

American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

451 7th Street, SW, Suite 3240
Washington, DC 20410

Phone: 678-732-2376
E-mail: Antonio.F.Gaines@hud.gov

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MEMORANDUM FOR: Lori Michalski, Chief Human Capital Officer
Office of the Chief Human Capital Office

FROM: Veronica Bobbitt, Chief Steward and Regional Vice President /s/
Ashaki Robinson, PhD, Regional Vice President /s/

On BEHALF OF: Antonio Gaines, President /s/
AFGE Council 222

SUBJECT: National Grievance Against the Department of Housing and Urban
Development for Repudiating Article 18 of the Collective
Bargaining Agreement by Issuing the “Return to In-Office Work”
Directive and for Failing to Bargain with the Union Concerning its
Unilateral Termination of Telework.

STATEMENT OF GRIEVANCES

Pursuant to the provisions of Article 51, Section 51.01 of the Collective Bargaining Agreement (“CBA”), the AFGE National Council of HUD Locals 222 (“Union”) is filing this National Grievance against the Department of Housing and Urban Development (“HUD” or “Agency”) for repudiating Article 18 of the CBA when it issued a “Return to In-Office Work” (“RTO”) directive and for failing to bargain in good faith with the Union concerning its unilateral termination of telework and remote work arrangements.

Specifically, the Agency violated and continues to violate, Articles 4, 18, and 53 of the CBA, Federal Service Labor-Management Relations Statute (“Statute”), the Telework Enhancement Act of 2010 (“Act”), and all other relevant articles, laws, regulations, and past practices not herein specified.¹ The Union reserves the right to supplement this National Grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

¹ Article 18 is amended by National Supplements 33 and 34.

FACTS

Between January 20 and February 3, 2025, President Trump and the U.S. Office of Personnel Management (“OPM”) issued various memoranda² in connection with the Administration’s plans to terminate telework/remote work arrangements and require all federal civilian service employees to physically report to a government-owned or operated duty station.

On or about January 24, 2025, the Agency’s Chief of Staff, Andrew Hughes, emailed all bargaining unit employees to notify them of HUD’s decision to unilaterally implement changes to their conditions of employment by prohibiting them from teleworking beginning the week of February 24, 2025.³ Mr. Hughes explained that prohibiting telework was required to be in compliance with President Trump’s January 20, 2025, *Return to In-Person Work*, Presidential Memorandum (“PM”). As a result, he mandated that all employees begin reporting to a HUD office full-time unless approved for an exemption.

Later, the same day, the Agency’s Office of the Chief Human Capital Officer, sent another email ordering bargaining unit employees to modify their current Flexiplace Agreement effective February 24, 2025, to reflect their new full-time in-office schedule; and that failure to comply with the instruction may result in disciplinary action.

These communications unilaterally imposed February 24, 2025, return to office deadlines without regard for collective bargaining obligations. Specifically, the Agency did not give the Union the option to bargain. Here, the notices made clear that the Agency would and did implement its return-to-office plan and eliminate all telework.

In taking these unilateral actions the Agency has effectively repudiated Article 18 of the CBA to comply with the PM. This, even though OPM’s January 22, 2025, guidance indicated compliance with the PM is subject to any collective bargaining obligations.⁴

OPM issued additional guidance concerning telework on February 3, 2025, entitled “Guidance on Collective Bargaining Obligations in Connection with *Return to In-Person Work*.”

² Available at <https://www.whitehouse.gov/presidential-actions/2025/01/return-to-in-person-work/> and <https://www.opm.gov/policy-data-oversight/latest-memos/>, respectively (last accessed: February 26, 2025).

³ Hughes email was sent to all employees but for the purpose of this grievance, only the rights of bargaining unit employees are addressed.

⁴ Though not referenced in the Agency’s January 24, 2025, notice, on January 27, 2025, OPM issued a memorandum regarding “Agency Return to Office Implementation.” Therein, OPM reiterated that in implementing the PM, agencies should “describe the steps the agency will take to bring any relevant Collective Bargaining Agreements (CBAs) into compliance with the new PM, consistent with applicable law, to include an examination of the process by which agencies put new CBAs into place in the last four years.”

Amongst other things, OPM now claims telework levels and eligibility are a managerial right and further suggested bargained-for provisions regarding telework may be unenforceable pursuant to 5 U.S.C. § 7106(a).

1. The Agency's Elimination of Telework Violates Article 18.

As an initial matter, the Parties lawfully entered into an agreement concerning telework in Article 18 consistent with the provisions of 5 U.S.C. Chapter 71.⁵

Article 18, Section 18.01(2) provides in relevant part:

In accordance with § 359 of Public Law 106-346, HUD's Flexiplace Policy dated January 10, 2022, provides the telework policy for [HUD]. Under these provisions the Department encourages the implementation of telework to the maximum extent possible. No individual office or program area is authorized to establish a telework policy or modify or amend the HUD Flexiplace Policy dated January 10, 2022, without the written approval of the Chief Human Capital Officer and/or the fulfillment of bargaining obligation with HUD AFGE Council 222. If Management makes any changes to the HUD Flexiplace Policy dated January 10, 2022, either before or upon implementing it as a numbered handbook, those changes shall be subject to notice and bargaining obligations under the CBA.

Article 49, Section 49.02 governs mid-term changes to the CBA and provides:

During the term of this Agreement, Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment. Receipt of the proposed changes by the designated Union representatives, or their designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article.

Article 49, Section 49.03(4) provides that the proposed changes involving Policy or Past Practice shall include:

- (a) Copy or statement of the current policy or past practice;
- (b) The nature, scope, and rationale for the proposed change;
- (c) A copy or statement of the proposed new policy or practice; and
- (d) The proposed implementation date.

The Agency did not issue Article 49 notice to the Union regarding eliminating Flexiplace/Telework. Thus, it violated Article 18 when it eliminated the policy.

2. The Agency's Elimination of Telework Violates Article 53.

⁵ Article 18 is titled Telework; however, the Agency also refers to Telework as Flexiplace.

The Agency's elimination of Telework also violates Article 53 of the CBA. Section 53.01, entitled "Duration of Agreement" provides "this [CBA] shall remain in full force and effect until a new Agreement goes into effect." Moreover, Section 53.05, entitled "Reopening Clause" provides "[d]uring the term of this agreement, either party may propose negotiations to re-open, amend, or modify this Agreement. Such negotiations may only be conducted by mutual agreement of the parties, and in accordance with Article 49 Midterm Bargaining provisions." The Union did not receive any proposals from the Agency, nor has it agreed to modify any of the provisions of Article 18.

3. The Agency's Elimination of Telework Violates the Statute.

The Agency's unilateral decision to repudiate Article 18 is an unfair labor practice, in violation of 5 U.S.C. §§7116(a)(1) and (5) of the Statute. Indeed, it is an unfair labor practice for an agency to repudiate a negotiated agreement. *United States Department of Justice, Federal Bureau of Prisons and AFGC Local 3935*, 68 FLRA 125 (2015). Further, it is an unfair labor practice in violation of 5 U.S.C. § 7116(a)(7) to enforce an order, rule, or regulation that conflicts with the terms of a negotiated agreement in effect prior to the issuance of the order, rule, or regulation. *United States Department of Veterans Affairs and AFGC Local 17*, 72 FLRA 55 (2021). The Agency's enforcement of the PM violates the terms of the CBA. Therefore, in repudiating Article 18, the Agency has committed an unfair labor practice. Because the Agency violated 5 U.S.C. §7116, as set forth above, the Agency also failed to comply with Article 4.

4. The Agency's Elimination of Telework Violates the Telework Enhancement Act of 2010.

The Agency's unilateral decision to eliminate all telework violates the Telework Enhancement Act of 2010 ("Act").⁶ The Act requires federal agencies to establish telework policies that allow for employee participation in telework programs to the maximum extent possible.⁷ Telework in the CBA is defined the same as in the Act, specifically "a work flexibility arrangement under which an employee performs the duties and responsibilities of [the] employee's position...from an approved worksite other than the location from which the employee would otherwise work."⁸ The Act would be rendered meaningless by elimination of routine telework agreements for all employees at HUD. Therefore, the Agency's elimination of all telework violates the Act.

⁶ The Telework Enhancement Act of 2010, 5 U.S.C. §§ 6501-6506 (2010)

⁷ See e.g. 5 U.S.C § 6506 (b)(2)(d)(e) and (5) which requires in relevant part that the agency work with OPM in reporting a goal for increasing participation to the extent practicable or necessary for the next reporting period; determining whether the goal was met; and if not, what steps it would take to meet participation goals.

⁸ Compare 5 U.S.C. § 6501(3) and Article 18.01(1).

5. The Agency's Elimination of Telework Violates Article 4.

Article 4, Section 4.01 of the CBA requires the Agency to comply with applicable federal statutes and regulations in the administration of matters covered by the CBA. As described above, the Agency's elimination of telework violates the Statute and the Act. Because the Agency violates the Statute and the Act, as set forth above, the Agency also fails to comply with Article 4.

Summary of Violations:

By failing to fulfill its obligations, the Agency violated, and continues to violate, the following:

- Article 4, Section 4.01 requiring the Agency to comply with federal law and regulations;
- Article 53, Section 53.01 requiring the Agency to comply with the CBA until a new term agreement is negotiated;
- Article 53, Section 53.05 requiring any negotiations during the term of the agreement be conducted only by mutual consent of the parties;
- Article 18 requiring the Agency to adhere to certain processes and procedures regarding telework;
- 5 U.S.C. §§7116(a)(1), (5), and (7);
- All other relevant articles, laws, regulations, customs, and past practices not herein specified.

Meeting:

The Union is not requesting a meeting with you for resolution pursuant to Section 51.15(2) of the CBA.

Remedies:

1. Return to status quo ante, rescission of the improperly issued notices, and make whole relief for all affected bargaining unit employees;
2. That the Agency fully comply with all terms of the parties' CBA and all laws, rules, regulations, and policies;
3. That the Agency bargain in good faith;
4. A finding that the Agency committed a unfair labor practices by violating 5 U.S.C. §§7116(a)(1), (5), and (7);
5. The Agency shall distribute to all AFGE bargaining unit employees an electronic notice and make conspicuous postings in the bargaining unit employees' places of work that the Agency has committed unfair labor practices, a description of the Agency's violations of the Statute, and a statement that it will cease and desist from committing further violations;
6. Reasonable attorney's fees and costs;
7. Reimbursement of all costs incurred by BUEs directly related to the violations alleged including, but not limited to parking, dependent care, and commute-related costs
8. All other relief deemed appropriate