

RESPONSES NEEDED

March 31, 2020

MEMORANDUM

TO: HHS Chapter Presidents

RE: HHS - Update Regarding Favorable Arbitration Decision – FSIP Order

SUMMARY: Recently, the FLRA dismissed HHS’s exceptions to the favorable arbitration decision NTEU obtained regarding the agency’s illegal implementation of the FSIP-imposed contract terms before a complete successor collective bargaining agreement was in effect. In light of this dismissal, NTEU will be immediately seeking enforcement of this decision.

I am very pleased to report that the FLRA issued an order on March 17, 2020 dismissing the agency’s exceptions to the favorable arbitration decision which I provided in a chapter presidents’ memorandum dated December 27, 2019. In this arbitration decision, you will recall that the arbitrator found that HHS committed an unfair labor practice and a clear and patent breach of the collective bargaining agreement by implementing the terms of the Federal Service Impasses Panel’s (Panel) April 1, 2019 Decision and Order before a complete successor collective bargaining agreement is in effect (decision attached). The arbitrator further agreed with NTEU’s repeated assertions that HHS had no legal authority to implement the Panel order while bargaining is ongoing on those six (6) articles. He found that the 2010 consolidated collective bargaining agreement continues in effect until a new, complete collective bargaining agreement is in place.

As a result of the FLRA’s order dismissing the agency’s Exceptions, the next step for NTEU is to seek enforcement of the award, as well as to obtain each of the make whole remedies NTEU requested in the national grievance. In this regard, the arbitrator’s remedial order calls for the parties to “meet, discuss and negotiate” over the harm the agency caused by prematurely implementing the Panel-ordered articles. In the event the parties are unable to reach an agreement over the remedies within ninety (90) days, there will be another hearing on remedies. While NTEU is hopeful that the parties will be able to resolve the remedial issue, the agency has

yet to indicate any change in its anti-employee and anti-union approach to collective bargaining with NTEU. As a result, we do expect further litigation on this arbitration.

In order to ensure full enforcement of the parties' collective bargaining agreement in this case, please send any information you have on any additional instances where the agency has violated the terms of the 2010/2014 Consolidated National Agreement and instead applied the terms of the April 1, 2019 FSIP Decision, as well as any information regarding the appropriate make whole remedies for the employees in your chapter to Frank Barczykowski via e-mail at frankb@nteu.org, **by April 14, 2020**. All of this information will give the NTEU team leverage in reaching a solution for bargaining unit employees who have been affected by the Agency's unjustified and unwarranted personnel actions. Additionally, if and when this proceeds to hearing, the information will be beneficial to NTEU in preparation for any hearing, if necessary. Thank you for your assistance.

I will keep you apprised of developments concerning our discussions with HHS on the remedies for its violations. If you have questions concerning this award, please contact your National Field Representative.

Anthony M. Reardon
National President

Attachment