



December 21, 2020

VIA ELECTRONIC MAIL

Blanca Sanchez
Director, National Labor Relations Office
U. S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

RE: National Grievance/ULP Regarding the Agency's Unilateral Implementation of eTelework and Changes to Employees' Telework Agreements

Dear Ms. Sanchez:

The National Treasury Employees Union (NTEU) hereby files this grievance pursuant to Article 45, Section 8.C and 8.D of the parties' 2010/2014 Consolidated Collective Bargaining Agreement (CCBA). By the grievance, NTEU challenges the Department of Health and Human Services's (HHS or the agency) actions in unilaterally implementing an eTelework policy or system in the Food and Drug Administration (FDA) without proper notice and bargaining. The actions violate both the parties' CCBA and the statute.

On or about December 16, 2020, HHS's Office of Human Capital Management sent an email to all FDA employees titled "New Electronic Telework Program (eTelework) System." The email describes the launch of a web-based tool meant "to automate and streamline the processes for the creation, review, approval, renewal, and retention of all FDA telework agreements." In addition, the December 16, 2020 email states that: "FDA will be requiring all employees participating in telework to renew their telework agreements every six (6) months. If an employee's telework agreement is not renewed on or before the agency established expiration dates each year, the telework agreement will automatically expire, and employees must discontinue teleworking until a telework agreement is approved by their supervisor." The email states that the program will be rolled out on January 4, 2021 to all FDA employees.

The terms and conditions under which employees participate in the negotiated telework program are set forth in Article 26 of the CCBA. Accordingly, the unilateral implementation of the eTelework policy or system to FDA employees without proper notice and bargaining violates Article 3, Mid-Term Bargaining, and Article 26, Telework, of the CCBA and constitutes an unfair labor practice under 5 U.S.C. § 7116(a)(1) and (5).

In addition, Article 26, Section 8 states that the agency may terminate an employee's participation in the telework program only for cause. Appendix 3.2 similarly notes the

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circumstances in which participation in the telework program can be suspended or terminated. The existing provisions of Article 26 do not permit the agency to terminate an employee's telework agreement if she/he fails to renew the telework agreement, and no provision of the current agreement requires employees to renew their telework agreement every six months. Under the CCBA and past practice, telework agreements continue indefinitely unless modified in accordance with Article 26. Though HHS's December 16, 2020 email states: "Note: This change does not mandate or implement any new telework requirements on bargaining unit employees or change the 2019 Federal Service Impasses Panel decision," this statement is patently untrue. As HHS is well aware, an arbitrator ruled on December 12, 2019, that HHS's actions in immediately implementing the April 1, 2019 Decision and Order of the Federal Service Impasses Panel were premature and constituted an unfair labor practice and a violation of Article 2, Section 2.C of the CCBA.

As to remedies, NTEU requests that HHS: (i) cease and desist from implementing the eTelework policy or system in violation of Articles 3 and 26; (ii) cease and desist from violating 5 U.S.C. § 7116(a)(1) and (5); (iii) make whole all adversely affected bargaining unit employees; (iv) post a notice to all employees on all HHS bulletin boards for a period of sixty (60) days, signed by the Secretary of HHS, that HHS has violated the statute; and (v) grant any other remedies that are deemed appropriate under law, rule and regulation.

Please contact
reached via email at

NTEU National Negotiator, about this matter. She can be

Sincerely,



Anthony M. Reardon
National President

cc: