



September 12, 2018

VIA E-MAIL AND CERTIFIED MAIL

Julie Murphy
Director, Workforce Relations Division
U.S. Department of Health and Human Services
200 Independence Avenue, SW, Room 801
Washington, DC 20201

RE: National Grievance/ULP Regarding Violations of the Statute

Dear Ms. Murphy:

The National Treasury Employees Union (NTEU) hereby files this national grievance pursuant to Article 45, Sections 2.A and 8.C and D of the parties' Consolidated Collective Bargaining Agreement (CBA). By this grievance, NTEU alleges that the Department of Health and Human Services (HHS) has violated 5 U.S.C. § 7116 (a) (1), (5) and (8), by engaging in bad faith bargaining during term bargaining. As discussed more fully below, the agency has attempted to force to impasse permissive subjects of bargaining, has attempted to force to impasse proposals that violate the Work Schedules Act, has stated that it will not modify its final proposals, and has failed to provide information requested by NTEU pursuant to Section 7114(b)(4) of the Statute, for which NTEU has demonstrated a particularized need.

After engaging in only two days of bargaining on July 9 and 30, over the term CBA between HHS and NTEU, and discussing only two (2) of 34 open articles between the parties, HHS filed a request for Panel assistance on August 13, 2018. The parties never discussed 32 of 34 opened articles and NTEU had no opportunity to provide counter proposals on 21 of the agency's 22 proposed articles. During the bargaining sessions, HHS refused to discuss its proposals and refused to answer NTEU's questions about its proposals.

In this case, HHS has proposed numerous provisions that would have NTEU waive explicit statutory rights and are thus outside the scope of bargaining. For example, the agency's proposals concerning Article 2 (Contract Duration and Termination), Article 3 (Mid-term Bargaining), Article 8 (Dues Withholding), Article 45 (Grievances) and Article 46 (Arbitration) all involve permissive subjects of bargaining.¹ HHS engaged in bad faith bargaining and committed an unfair labor practice in violation of 5 U.S.C. Section 7116(a)(1), (5) and (8) by

¹ Having been given no chance to discuss the meaning or intent of the agency's proposals, NTEU is not able, at this time, to identify all HHS proposals implicating permissive topics. There may be more such proposals than are identified herein.

insisting on taking these proposals to impasse.

HHS has proposed to strike Article 35 (Hours of Work) from the parties' collective bargaining agreement, which covers alternative work schedules. Because the agency refused to discuss its proposals with NTEU and unilaterally ended term bargaining after two bargaining sessions, during which there was no discussion of Article 35, it is not clear whether the agency intends to terminate flexible and compressed work schedules or if it proposes to continue such programs without incorporating them into the CBA. The Federal Employee Flexible and Compressed Work Schedules Act (Work Schedules Act) requires that before an agency may terminate an alternate work schedule, it must demonstrate that schedule has an adverse agency impact, and it must bargain over that decision with the exclusive representative. 5 U.S.C. § 6131(b) and (c). Furthermore, it is illegal for an agency to place employees on an AWS schedule without bargaining with the union and including such agreement into the parties' CBA. The agency has refused to bargain over its Article 35 proposals with NTEU and has failed to identify any adverse agency impact. As such, its proposals violate the Act, 5 U.S.C. Section 6120, *et seq.* Insisting on taking these proposals to impasse without first complying with the Work Schedules Act constitutes bad faith bargaining and is an unfair labor practice in violation of Section 7116(a) (1), (5), and (8) of the Statute.

Additionally, in its request for Panel assistance, filed August 13, 2018, HHS stated that it would not modify its final proposals. This indicates a "take it or leave it" bargaining approach with no sincere resolve to reach agreement. It further indicates that the agency will not cooperate with Panel procedures. Accordingly, this constitutes bad faith bargaining in violation of Section 7116(a) (1), (5), (6), and (8) of the Statute.

NTEU filed multiple information requests pursuant to Section 7114(b)(4) of the Statute on July 10, 2018 and August 2, 2018. HHS has failed to provide any response to the August 2, 2018 requests, and failed to provide a complete response to the July 10, 2018 request. On August 10, HHS provided a partial response and declared that it had fully complied with the information request. On August 13, NTEU notified HHS that the information was incomplete because HHS had not provided the requested prior ground rules agreements and the package of MOUs was clearly incomplete because it did not contain several national MOUs that were signed by the union's chief negotiator for HHS matters. On September 5, HHS objected to NTEU's "continued requests" for information as the case was now pending before the FSIP and indicated that it could not find any additional MOUs beyond what had already been provided. HHS has provided no response regarding the seven (7) information requests filed by NTEU on August 20, 2018. The actions of the agency violate 5 U.S.C. Section 7114(b)(4) and constitute bad faith bargaining in violation of 5 U.S.C. Section 7116(a)(1) and (5). These actions also amount to an unfair labor practice in violation of 5 U.S.C. Section 7116(a)(1), (5), and (8).

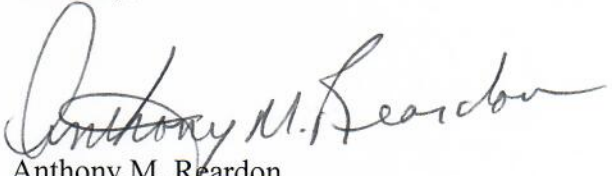
Accordingly, NTEU requests that an Arbitrator impose the following remedies: (1) Order HHS to cease and desist from engaging in bad faith bargaining in violation of 5 U.S.C. Section 7116(a)(1), (5) and (8); (2) Order a status quo ante remedy; (3) Order the agency to rescind its

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last best offers and return to the term bargaining table with NTEU on mutually agreed upon dates; (4) Order HHS to bargain in good faith over each article that is open, including providing complete explanations for its proposals and answering NTEU's questions; (5) Declare that the parties have not reached a bargaining impasse; (6) Order HHS to comply with an 18-week bargaining schedule as set forth in the ground rules order; (7) Direct HHS to promptly respond to all information requests submitted by NTEU, and provide all documentation and material that NTEU has requested concerning the Articles that are open and other conditions of employment; (8) Require the agency to post a notice to all bargaining unit employees, and signed by the Secretary of HHS, admitting that it violated the Statute by engaging in bad faith bargaining; and (9) Grant any other appropriate remedy to which NTEU is entitled under law, rule and regulation.

If you have any questions, please contact Jennifer Harling, NTEU National Negotiator. She can be reached via e-mail at jennifer.harling@nteu.org or at (202) 572-5555. Please copy Anna Gnadt, National Negotiator, on all communication as well. Ms. Gnadt can be reached via e-mail at anna.gnadt@nteu.org or at (202) 572-5513.

Sincerely,



Anthony M. Reardon
National President

cc: Jennifer Harling
Anna Gnadt
Ken Moffett