73 FLRA No. 39

UNITED STATES
DEPARTMENT OF EDUCATION
WASHINGTON, D.C.
(Respondent/Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO
(Charging Party/Union)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL 252, AFL-CIO
(Charging Party/Union)

WA-CA-18-0173, WA-CA-18-0305, WA-CA-18-0333,
WA-CA-18-0338
WA-CA-18-0341, WA-CA-19-0118, SF-CA-19-0157,
WA-CA-19-0213
CH-CA-19-0295, WA-CA-20-0025, WA-CA-20-0153,
WA-CA-20-0154
WA-CA-20-0219, WA-CA-20-0365

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DECISION AND ORDER

August 25, 2022

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Before the Authority: Ernest DuBester, Chairman, and Colleen Duffy Kiko and Susan Tsui Grundmann, Members

I. Statement of the Case

The General Counsel (GC) of the Federal Labor Relations Authority (FLRA) issued a consolidated complaint involving fourteen underlying unfair-labor-practice (ULP) charges brought by AFGE, AFL-CIO and AFGE, Council 252, AFL-CIO (collectively, the Union). The Agency failed to answer the complaint. In the attached recommended decision, the FLRA's Chief Administrative Law Judge David L. Welch (the Judge) found that the Agency's failure to answer the complaint constituted an admission to the complaint's allegations and that the Agency violated the Federal Service Labor-Management Relations Statute (Statute) as alleged. The Judge ordered remedies for each ULP.

Both the Agency and the Union filed exceptions to some of the Judge's remedial determinations. Because the parties have failed to establish that any of those determinations are deficient, we find that the Judge did not err.

II. Background and Judge's Decision

The background of the consolidated complaint is set out more fully in the attached decision. Only the facts relevant to the parties' exceptions are set forth here.

After the parties' 2013 collective-bargaining agreement expired in December 2017, the parties operated under a past-practices document that included mandatory subjects of bargaining from the 2013 agreement. In March 2018, the Agency unilaterally imposed a successor agreement (the 2018 agreement) without completing negotiations. In response, the Union filed a ULP charge in Case No. WA-CA-18-0173, alleging that the Agency violated § 7116(a)(1) and (5) of the Statute (the imposition ULP). In the two years that followed, the Union filed thirteen related charges, including the charge in Case No. WA-CA-19-0118, which alleged that the Agency violated § 7116(a)(1) and (5) of the Statute by failing to bargain over the implementation of an office reorganization (the reorganization ULP).

In July 2021, the GC issued a consolidated complaint that included all fourteen charges.[1] After the deadline to answer the complaint had passed, the Agency filed a motion requesting an extension of time to answer. The Judge denied the motion.

Both the GC and the Union then filed separate motions for summary judgment that requested remedies for each charge. For the imposition ULP, the GC requested a status-quo-ante remedy, and the Union requested that the Judge order the Agency to (1) reinstate dues allotments for employees whose allotments the Agency terminated under the provisions of the 2018 agreement; (2) reimburse the Union for the dues it would have received if the Agency had not terminated the allotments; (3) make whole any employees harmed by the imposition of the 2018 agreement; and (4) return office space and equipment provided for in the 2013 agreement. For the reorganization ULP, the GC requested post-implementation bargaining, and the Union requested a status-quo-ante remedy.

[1] The FLRA was without a GC or Acting GC, the official authorized to issue ULP complaints, from November 2017 to March 2021.

The Agency responded to the GC's motion, but did not object to any of the requested remedies. The Agency did not respond to the Union's motion. The Judge applied § 2423.20(b) of the Authority's Regulations[2] and found that the Agency's failure to answer the complaint "constitute[d] an admission of each of the allegations of the complaint."[3] Therefore, he found that summary judgment was appropriate because there were "no disputed factual issues."[4]

Regarding the imposition ULP, the Judge held that the Agency's implementation of the 2018 agreement "without completing negotiations with the Union" violated § 7116(a)(1) and (5) of the Statute.[5] The Judge granted the GC's request to order a status-quo-ante remedy, including an order that the Agency: "(a) rescind the [2018 agreement]; (b) reinstitute all mandatory subjects of bargaining contained in either the prior collective-bargaining agreement, signed in 2013, . . . or those contained in the parties' [past-practices document]; [and] (c) bargain over a successor collective-bargaining agreement."[6] The Judge also ordered a make-whole remedy for employees but noted that any "questions regarding whether employees actually suffered losses as a result of the [Agency's] violation [could] be resolved in compliance proceedings."[7]

As for the reorganization ULP, the Judge found that the Agency violated § 7116(a)(1) and (5) of the Statute when it "began implementing [an office] reorganization . . . without providing the Union with an opportunity to negotiate over the procedures and appropriate arrangements of the change."[8] In considering the remedy, the Judge weighed the factors set forth in *Federal Correctional Institution* (*FCI*), which the Authority uses to determine whether status quo ante is an appropriate remedy for a failure to engage in impact-and-implementation bargaining.[9] He found that all but the first factor – notice of the change – "weigh[ed] in favor of status[-]quo[-]ante relief."[10] Thus, the Judge ordered the Agency to rescind the office reorganization, reinstitute the prior office organization, and bargain "to the extent required by the Statute over . . . the reorganization."[11]

On November 23, 2021, the Agency filed an exception contesting the remedy for the reorganization ULP, and the GC and the Union filed oppositions on December 13, 2021. Also on November 23, 2021, the Union filed exceptions to the remedy for the imposition ULP.

III. Preliminary Matter: Section 2429.5 of the Authority's Regulations bars the Agency's exception.

Under § 2429.5 of the Regulations, the Authority will not consider any evidence, arguments, or issues "that could have been, but were not, presented in the proceedings before the . . . Administrative Law Judge."[12] The Authority applies § 2429.5 to bar remedy challenges if one of the parties requested the remedy before the Judge and the other party did not object.[13]

Here, the Agency argues that the Judge misapplied the *FCI* factors in determining whether a status-quo-ante remedy was appropriate for the reorganization ULP.[14] However, the Union requested this remedy in its motion for summary judgment,[15] and the Agency failed to contest it – or argue for a particular

[2] 5 C.F.R. § 2423.20(b) ("Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.").
[3] Judge's Decision (Decision) at 9.
[4] *Id.*
[5] *Id.* at 17-18.
[6] *Id.* at 21.
[7] *Id.* at 22.
[8] *Id.* at 18.
[9] 8 FLRA 604, 605-06 (1982).
[10] Decision at 25. As to the other factors, the Judge held that the Union submitted a timely bargaining request; the Agency willfully refused to bargain; the change had a substantial effect on employees; and no "evidence of record indicat[ed] that a return to the status quo would disrupt the Agency's operations." *Id.*
[11] *Id.* at 28. Despite requesting a bargaining remedy in its motion for summary judgment, the GC later stated that the ordered status-quo-ante remedy was "appropriate, based on the findings of fact by the [Judge]." GC's Opp'n Br. at 3.
[12] 5 C.F.R. § 2429.5.
[13] *NFFE, Loc. 2189*, 68 FLRA 374, 376 (2015) (Member Pizzella concurring).
[14] Agency's Exceptions Br. at 2.
[15] Union's Exceptions, Ex. IX, Union's Mot. for Summ. J. at 22.

application of *FCI*.[16] Because the Agency did not object to the Union's requested remedy before the Judge, we dismiss the Agency's exception to that remedy.

IV. Analysis and Conclusion: The Union fails to establish that the awarded status-quo-ante remedy for the imposition ULP is deficient.

The Union argues that the Judge erred by failing to order the Agency to: reinstate unlawfully terminated dues allotments; reimburse the Union for dues it would have received but for the imposition ULP; and return to the Union the office space and equipment provided for in the parties' 2013 agreement.[17]

Among other things, the Judge's status-quo-ante remedy for the imposition ULP ordered the Agency to (1) "reinstitute all mandatory subjects of bargaining contained in either the prior collective-bargaining agreement . . . or those contained in the parties' [past-practices document],"[18] and (2) make affected employees whole.[19] The Union's exceptions effectively seek to clarify the particular actions that are covered by this status-quo-ante order.[20] But the question of whether the Judge's remedial order requires the Agency to take specific actions is more appropriate for compliance proceedings, which are available to resolve disputes involving the implementation and scope of remedies.[21] Presently, neither the GC nor the Agency has taken a position as to whether the status-quo-ante remedy requires the Agency to reinstate dues allotments; reimburse the Union; or return office space and equipment to the Union.[22]

Accordingly, the Union fails to establish that the status-quo-ante remedy is deficient, and we deny the Union's exceptions.

V. Order

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Statute, the Agency shall:

1. Cease and desist from:

   (a) Implementing changes in bargaining-unit employees' conditions of employment without first providing the Union notice and an opportunity to bargain to the extent required by the Statute.

   (b) Conducting formal discussions without first providing the Union notice and opportunity to attend and participate in the meetings.

   (c) Failing to timely process all Standard Form (SF)-1187 dues withholdings submitted by bargaining-unit employees.

   (d) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Statute.

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[16] Member Kiko finds the Agency's failure to defend its actions inexcusable. First, the Agency missed the deadline to answer the complaint, and requested an extension of time *after* the answer was past due. *See* Decision at 6; 5 C.F.R. § 2429.23(a) (requiring requests for extension of time to be "received by the appropriate official not later than five . . . days *before* the established time limit for filing" (emphasis added)). Then, the Agency neglected to address any of the remedies requested in the motions for summary judgment – and, in fact, failed to respond to the Union's summary-judgment motion at all.

The Agency's carelessness has deprived the Authority of any explanation for the Agency's actions. Consequently, a variety of changes arising from apparently legitimate mission requirements – including alterations to the telework policy and performance standards – have been rescinded. *See* Decision at 28. And, by failing to address specifically requested remedies, the Agency lost the opportunity to mitigate the damage that it had already caused itself. *E.g.*, Decision at 25 (noting that the record contained no evidence to establish that a status-quo-ante remedy "would disrupt the [Agency]'s operations"). The Agency has squandered valuable time and resources by abdicating its defense.

[17] Union's Exceptions Br. at 1-2.

[18] Decision at 21.

[19] *Id.* at 22 (citing *U.S. DOD, Ohio Nat'l Guard*, 71 FLRA 829, 873 (2020) ("When a ULP causes employees or unions to suffer monetary losses, the Authority requires the offending party to pay backpay, restore leave, or otherwise reimburse them.")).

[20] *See* Union's Exceptions Br. at 12-13 (arguing that "a status[-]quo[-]ante remedy also allows for" an order requiring the Agency to reinstate unlawfully terminated dues allotments); *id.* at 14-15 (asserting that the return of office space and equipment is warranted as part of a status-quo-ante remedy because the Agency provided space and equipment under the 2013 agreement); *see also U.S. Dep't of HHS, SSA*, 50 FLRA 296, 299 n.3 (1995) (noting that "a status[-]quo[-]ante remedy necessarily includes make-whole relief").

[21] *See Dep't of the Air Force, Scott Air Force Base, Ill.*, 51 FLRA 675, 694 (1995) (disputes as to scope of remedial order resolved in compliance proceedings); *Dep't of VA, Ralph H. Johnson Med. Ctr., Charleston, S.C.*, 60 FLRA 446, 446 (2004) (stating that "compliance proceedings are available as necessary to resolve disputes involving the [r]espondent's ability to implement" a status-quo-ante remedy).

[22] *See* 5 C.F.R. § 2423.41(e) (noting that it is the respondent's responsibility to report to the appropriate FLRA Regional Director "what compliance actions [it] ha[s] . . . taken," and the Regional Director will determine whether the respondent has complied).

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Rescind the following items: (1) the 2018 collective-bargaining agreement; (2) the October 1, 2018 telework policy; (3) the Office of Civil Rights voluntary-overtime policy; (4) the reorganization to the Office of Chief Information Officer implemented on or around January 6, 2019; and (5) the performance standards for the Office of Civil Rights implemented on or around February 21, 2019.

(b) Make employees whole for losses resulting from the Respondent's unlawful implementation of the 2018 collective-bargaining agreement.

(c) Reinstitute the following items: (1) all mandatory subjects of bargaining contained in the 2013 collective-bargaining agreement; and/or (2) the December 18, 2017 Past Practices Document; (3) the telework policy in existence prior to October 1, 2018; (4) the organization of the Office of Chief Information Officer in existence prior to the reorganization implemented on or around January 6, 2019; and (5) the performance standards for the Office of Civil Rights in existence prior to the ones implemented on or around February 21, 2019.

(d) Bargain to the extent required by the Statute over: (1) a successor collective-bargaining agreement; (2) a telework policy; (3) a voluntary overtime policy; (4) the reorganization to the Office of the Chief Information Officer; (5) new performance standards in the Office of Civil Rights; and (6) the relocations of the Dallas and Chicago Regional Offices.

(e) Remit to the Union dues of any and all bargaining-unit employees who signed and submitted SF-1187 forms for dues withholding from September 12, 2019 to present, and for whom dues were not previously remitted to the Union.

(f) Post at the Department of Education, where bargaining-unit employees are located, copies of the attached nine Notices on forms to be provided by the Federal Labor Relations Authority. The Notices shall be signed by the Acting Assistant Secretary, Office of Finance and Operations, and shall be posted and maintained for sixty (60) consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. A copy of the Notices will also be electronically mailed to all Agency employees, including supervisors and management officials. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(g) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Washington Regional Office, Federal Labor Relations Authority, in writing within 30 days from the date of this Order as to what steps have been taken to comply.

Case No. WA-CA-18-0173

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, D.C., violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO, over term bargaining for successor collective-bargaining agreements.

WE WILL rescind the collective-bargaining agreement unilaterally implemented on or about March 12, 2018, and reinstitute all mandatory subjects of bargaining contained in the parties' prior 2013 agreement and/or the Past Practices Document, dated December 18, 2017.

WE WILL bargain, to the extent required by the Statute, a successor collective-bargaining agreement.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-18-0305

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, D.C. (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO, over changes to conditions of employment.

WE WILL rescind the unilaterally implemented telework policy implemented on or about October 1, 2018, and reinstitute the Agency's prior telework policy.

WE WILL bargain to the extent required by the Statute over any future changes to the Agency's telework policy.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case Nos. WA-CA-18-0333, WA-CA-20-0153, and WA-CA-20-0154

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education Washington, D.C. (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with the requirements of § 7114(a)(2)(A) of the Statute, and provide the American Federation of Government Employees, AFL-CIO (the Union) with notice and opportunity to attend all formal discussions held by the Agency.

WE WILL allow Union representatives to participate in formal discussions, including those held in-person, by phone, and/or video teleconferences, by making statements and comments on behalf of the Union.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-18-0338

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, D.C., violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO (the Union) over changes to conditions of employment.

WE WILL rescind the unilaterally imposed voluntary-overtime policy in the Office of Civil Rights implemented on or about September 5, 2018.

WE WILL bargain, to the extent required by the Statute, over any future changes to Office of Civil Rights voluntary-overtime policy.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-18-0341

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, D.C., violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT engage in conduct that interferes with, restrains, or coerces employees in the exercise of their protected activity by refusing to recognize properly delegated union representatives.

WE WILL comply with all notices from the American Federation of Government Employees, AFL-CIO (the Union) delegating authority to specific Union officials and individuals.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated:_____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-19-0118

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, D.C. (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO, over changes to conditions of employment.

WE WILL rescind the reorganization to the Office of Chief Information Officer that the Agency unilaterally implemented on or about January 6, 2019, and reinstitute the organization that existed prior to the change.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. SF-CA-19-0157

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, D.C., violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL approve or disapprove requests for official time based on the parties' 2013 collective-bargaining agreement and/or the December 2017 Past Practices Document, until such time as the parties reach a new agreement, including agreement on types and amount of official time.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case Nos. WA-CA-19-0213, CH-CA-19-0295, WA-CA-20-0219, and WA-CA-20-0365

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, D.C. (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO (the Union) over changes to conditions of employment.

WE WILL rescind the unilaterally implemented performance standards for the Office of Civil Rights implemented on or around February 21, 2019, and reinstitute the performance standards that existed prior to the change.

WE WILL bargain to the extent required by the Statute when the Union requests to bargain over matters not covered by the parties' collective-bargaining agreement.

WE WILL bargain with the Union over procedures and appropriate arrangements of the Agency's relocation of the Dallas and Chicago Regional Offices.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-20-0025

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, D.C. (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL not fail to timely honor the written dues-withholding authorizations of bargaining-unit employees, or fail to remit their union dues to the American Federation of Government Employees, AFL-CIO (AFGE), as required by the provisions of § 7115(a) of the Statute.

WE WILL pay to AFGE the union dues of all bargaining-unit employees who properly submitted Standard Form 1187s from September 12, 2019 to present, and which the Agency failed to timely process.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Office of Administrative Law Judges

U.S. DEPARTMENT OF EDUCATION,
WASHINGTON, DC

RESPONDENT

AND

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO

CHARGING PARTY

AND

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
COUNCIL 252, AFL-CIO

CHARGING PARTY

Case Nos. WA-CA-18-0173, WA-CA-18-0305, WA-CA-18-0333, WA-CA-18-0338, WA-CA-18-0341, WA-CA-19-0118, SF-CA-19-0157, WA-CA-19-0213, CH-CA-19-0295, WA-CA-20-0025, WA-CA-20-0153, WA-CA-20-0154, WA-CA-20-0219, WA-CA-20-0365

Douglas J. Guerrin
For the General Counsel

Kenneth Giacolone
For the Respondent

Denise Duarte Alves
For the Charging Parties

Before: David L. Welch
Chief Administrative Law Judge

DECISION ON MOTIONS FOR SUMMARY JUDGMENT

On July 27, 2021, the Regional Director of the Washington Region of the Federal Labor Relations Authority (the FLRA or Authority) issued a Consolidated Complaint and Notice of Hearing (Complaint) alleging that the U.S. Department of Education, Washington, D.C. (Respondent or Agency), violated provisions of the Federal Service Labor-Management Relations Statute (the Statute).

The Complaint in Case No. WA-CA-18-0173 alleges in substance that the Respondent refused to negotiate and implemented a proposed-successor collective-bargaining agreement (the CBA) in violation of § 7116(a)(1) and (5) of the Statute.

The Complaint in Case Nos. WA-CA-18-0305, WA-CA-18-0338, WA-CA-19-0118, WA-CA-19-0213, CH-CA-19-0295, and WA-CA-20-0365 allege in substance that the Respondent implemented changes to conditions of employment without providing the American Federation of Government Employees, AFL-CIO (Union or AFGE) notice and opportunity to bargain over procedures and appropriate arrangements in violation of § 7116(a)(1) and (5) of the Statute.

The Complaint in Case Nos. WA-CA-18-0333, WA-CA-18-0341, and SF-CA-19-0157, alleges in substance that the Respondent interfered with, restrained and coerced employees in the exercise of rights guaranteed under § 7102 of the Statute, in violation of § 7116(a)(1) of the Statute.

The Complaint in Case No. WA-CA-20-0025 alleges in substance that the Respondent failed and refused to comply with its obligations under § 7115(a) of the Statute to honor dues withholding authorizations and make appropriate allotments to the exclusive representative in violation of § 7116(a)(1) and (8) of the Statute.

The Complaint in Case Nos. WA-CA-20-0153 and WA-CA-20-0154 alleges in substance that the Respondent failed and refused to comply with § 7114(a)(2)(A) of the Statute by conducting formal discussions with bargaining unit employees without affording the Union the opportunity to be represented at the meetings in violation of § 7116(a)(1) and (8) of the Statute.

The Complaint in Case No. WA-CA-20-0219 alleges in substance that the Respondent refused to negotiate with the Union over a mandatory subject of bargaining in violation of § 7116(a)(1) and (5) of the Statute.

The Complaint indicated that a hearing on the allegations would be held on November 2, 2021, and advised the Respondent that an Answer to the Complaint was due no later than August 23, 2021. The Complaint further advised that "absent a showing of good cause," "[a] failure to file an answer or respond to any allegation will . . . constitute an admission." The Complaint was served by U.S. mail on the Respondent's designated representatives, Kenneth Giacolone and Samantha Cutler, Labor and Employee Relations Specialists, U.S. Department of Education, Office of Human Resources, Workforce Relations Division, 400 Maryland Avenue SW, Washington, DC 20202. The Respondent did not file an Answer to the Complaint on or before August 23, 2021, as directed by the Complaint.

On August 30, 2021, seven days after the Answer was due, the Respondent filed a Motion for Extension of Time to File Answer (Extension Motion). After due consideration, the Motion for Extension of Time was denied on September 24, 2021.

On September 9, 2021, Counsel for the Acting General Counsel (GC) filed a Motion for Summary Judgment and a Memorandum in Support (GC MSJ), based upon the Respondent's failure to file an Answer to the Complaint, contending that by application of 5 C.F.R. § 2423.20(b), the Respondent admitted all of the allegations of the Complaint. Accordingly, the GC contends that there are no factual or legal issues in dispute and summary judgment pursuant to 5 C.F.R. § 2423.27(a) is proper.

On September 14, 2021, the Respondent filed pleadings in response to the GC's Motion for Summary Judgment. The undersigned refers to those pleadings collectively as the Respondent's Opposition. Specifically, the Respondent filed an Agency Response to Motion for Summary Judgment, as well as a Memorandum in Opposition of the General Counsel's Motion for Summary Judgment with an attached position statement that the Respondent filed with the Washington Region in 2018 Case No. WA-CA-18-0173. (The Respondent states it submitted the position statement to provide "the details and background" of that case.)

On September 17, 2021, the Charging Parties moved to strike the Respondent's pleadings in a document titled AFGE and AFGE Council 252 Motion to Strike Agency Response to Motion for Summary Judgment (Motion to Strike). In the Motion to Strike, the Charging Parties argue that: (1) the Respondent's pleadings should not negate the Respondent's failure to file an Answer; (2) the Respondent's claim that there are material facts in dispute should be rejected; (3) the Respondent's claim regarding the volume and complexity of issues in the Complaint is no basis for denying summary judgment; and (4) actions the Respondent took pursuant to Executive Order 14,003, Protecting the Federal Workforce (Jan. 22, 2021), are not a basis for denying summary judgment, particularly in light that Executive Order 14,003 was issued after the violations occurred.

Having been duly advised in the premises and having considered the pleadings of record, the Motion to Strike is granted to the extent the Respondent is attempting to use its actions after charges were filed to show it did not violate the Statute. *See, e.g., U.S. DOJ, Exec. Office for Immigration Review, N.Y.C., N.Y.*, 61 FLRA 460, 467 (2006) ("[P]ost-charge conduct is irrelevant in determining whether or not the Statute has been violated."). Furthermore in all other respects, the Motion to Strike is unsupported and thus denied.

On September 22, 2021, the Charging Parties filed a motion for summary judgment titled AFGE and AFGE Council 252's Motion for Summary Judgment, along with a Memorandum of Law in Support of AFGE and AFGE Council 252 Motion for Summary Judgment (Union Memorandum).

DISCUSSION OF MOTIONS FOR SUMMARY JUDGMENT

Section 2423.20(b) of the Authority's Regulations, 5 C.F.R. § 2423.20(b), provides, in pertinent part:

> (b) *Answer*. Within 20 days after the date of service of the complaint . . .
> the Respondent shall file and serve . . . an answer with the Office of
> Administrative Law Judges. The answer shall admit, deny, or explain each
> allegation of the complaint. . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission. . . .

The Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing answers and other required documents. *See, e.g.*, §§ 2429.21 through 2429.23. Section 2429.23 provides, in pertinent part:

> (a) [T]he Authority or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown . . . . Requests for extensions of time shall be in writing and received by the appropriate official not later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.
>
> (b) [T]he Authority or General Counsel, or their designated representatives, as appropriate, may waive any expired time limit in this subchapter in extraordinary circumstances. Request for a waiver of time limits shall state the position of the other parties and shall be served on the other parties.

In the text of the Complaint in this case, the Regional Director provided the Respondent with detailed instructions concerning the requirements for its Answer, including the date on which the Answer was due, the persons to whom it must be sent, and references to the applicable regulations. The Respondent acknowledges that it failed to submit an Answer by the August 23, 2021

deadline (or at any point thereafter). The issue is whether the Respondent has demonstrated that "extraordinary circumstances" existed in this case so as to excuse the Respondent's failure to file an Answer.

On August 30, 2021, the Respondent filed a Motion for Extension of Time requesting a three-week extension of time in which to file an Answer, which was heretofore denied. The arguments raised in the Respondent's Opposition similarly fail to establish extraordinary circumstances warranting a waiver of the time limit for filing the Respondent's Answer, and also fail to show the Respondent has demonstrated good cause for not filing an Answer.

The Respondent argues that there are ongoing settlement discussions, and that continued litigation would frustrate the Agency's attempt to rebuild its relationship with the Charging Parties. While the Agency's attempt at settlement is laudatory, there is no basis for finding that ongoing settlement discussions constitute "extraordinary circumstances." Such discussions are routine and should be expected in every case; they do not warrant a delay in the submission of an answer. Accordingly, the Respondent's argument fails.

The Respondent also argues that the complexity of the Complaint is "extraordinary" in light of the "cascade" of unfair labor practice charges. But in submitting an answer, the Respondent was not required to delve into the full complexity of the issues raised in the Complaint. Rather, the Respondent was required only to admit, deny, or explain each allegation of the complaint or, if it has no knowledge of an allegation or insufficient information as to its truthfulness, so state. 5 C.F.R. § 2423.20(b). Further, the Authority has declined to find extraordinary circumstances in situations that were far more complex than Respondent's alleged challenges. *See, e.g., U.S. HUD, Ky. State Office, Louisville, Ky.*, 58 FLRA 73, 73 n.2 (2002) (claim that attorney to whom case had been assigned was ill and, thereafter, terminated her employment did not establish extraordinary circumstances); *IRS, Indianapolis Dist.*, 32 FLRA 1235, 1236 (1988) (request for waiver of expired time limit denied where agency counsel failed to show that the fact he was away from his office prevented him from receiving a copy of the decision or from timely filing a motion for reconsideration). For these reasons, the Respondent's claim lacks merit.

Finally, the Respondent argues that there are material facts showing that the Agency did not violate the Statute. But such an argument is only appropriately considered if as a condition precedent there are extraordinary circumstances warranting the waiver of the time limit to file an Answer, or that there was good cause for the Respondent's failure to file an Answer. The lack of extraordinary circumstances precludes consideration of the latter argument.

Having fully considered the parties' arguments, the undersigned concludes there are no extraordinary circumstances warranting a waiver of the time limit for filing an Answer, and that the Respondent has not demonstrated good cause for failing to file its Answer.

In accordance with § 2423.20(b) of the Authority's Regulations, the failure to file an answer to a complaint constitutes an admission of each of the allegations of the complaint. Accordingly, there are no disputed factual issues in this matter, and the undersigned finds that summary judgment is appropriate. Accordingly, the hearing scheduled for November 2, 2021, is vacated.

Based on the existing record, the undersigned makes the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT

1. The Union or the American Federation of Government Employees, Council 252, AFL-CIO (Council 252) filed the charges in the following cases on the dates set below, and copies were served on Respondent:

-Council 252 filed the charge in Case No. WA-CA-18-0173 on March 12, 2018.
-AFGE filed the charge in Case No. WA-CA-18-0305 on July 23, 2018.
-AFGE filed the charge in Case No. WA-CA-18-0333 on September 9, 2018.
-AFGE filed the charge in Case No. WA-CA-18-0338 on September 14, 2018.
-AFGE filed the charge in Case No. WA-CA-18-0341 on September 17, 2018.
-AFGE filed the charge in Case No. WA-CA-19-0118 on February 5, 2019.
-AFGE filed the charge in Case No. SF-CA-19-0157 on April 16, 2019.
-AFGE filed the charge in Case No. WA-CA-19-0213 on April 16, 2019.
-AFGE filed the charge in Case No. CH-CA-19-0295 on July 2, 2019.
-AFGE filed the charge in Case No. WA-CA-20-0025 on October 5, 2019.
-AFGE filed the charge in Case No. WA-CA-20-0153 on February 6, 2020.
-AFGE filed the charge in Case No. WA-CA-20-0154 on February 6, 2020.
-AFGE filed the charge in Case No. WA-CA-20-0219 on April 10, 2020.
-AFGE filed the charge in Case No. WA-CA-20-0365 on August 17, 2020.

2. These cases are consolidated because it is necessary to effectuate the purposes of 5 U.S.C. §§ 7101-7135 and to avoid unnecessary costs or delays pursuant to § 2429.2 of the Rules and Regulations of the FLRA.

3. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.

4. AFGE is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of nationwide consolidated units of employees of the Department of Education, which includes employees of the Respondent (the unit).

5. Council 252 is an agent of AFGE for the purpose of representing the unit of employees employed at the Respondent.

6. The American Federation of Government Employees, Local 3899, AFL-CIO is an agent of AFGE for the purpose of representing the unit of employees employed at the Respondent.

7. At all times material, the following individuals held the position opposite their names and have been supervisors or management officials of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and agents of the Respondent acting upon its behalf:

Randolph Willis	Deputy Assistant Secretary for Enforcement, Office of Civil Rights
Mark Brown	Chief Operating Officer, Federal Student Aid
Jared Smith	Acting Chief, Labor & Employee Relations Branch
Samantha Cutler	Director, Workforce Relations Division
Harold Thompson	Director, Workforce Relations Division, FSA
Cheryl Alix	Chief Negotiator Designee
Jennifer Arguello	Chief Negotiator
Anamaria Loya	Chief Regional Attorney, Region IX
Naghmeh Ordikhani	Acting Team Leader

WA-CA-18-0173

8. On February 8, 2018, the Respondent, through Alix and Arguello, provided the Union with a copy of Respondent's proposed-successor collective bargaining agreement (CBA).

9. On March 1, 2018, the Union submitted its counter proposal to Respondent's proposed-successor CBA.

10. On March 1, 2018, and continuing thereafter, Respondent, through Alix, indicated that the Union had not submitted a counter proposal by the date imposed by Respondent, namely February 28, 2018, and that it was moving forward with its proposed-successor CBA described in paragraph 8.

11. On March 12, 2018, Respondent implemented the successor CBA described in paragraph 8 without completing negotiations with the Union.

12. The subject described in paragraph 8 is a mandatory subject of bargaining under the Statute.

13. Since March 1, 2018, Respondent has refused to negotiate with the Union over the subject described in paragraph 8.

14. By the conduct described in paragraphs 10, 11, and 13, Respondent has been refusing to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.

WA-CA-18-0305

15. On May 22, 2018, Respondent, by Cutler, notified the Union that it intended to implement a new telework program.

16. On June 29, 2018, the Union requested to negotiate over the change described in paragraph 15.

17. On October 1, 2018, the Respondent implemented the change described in paragraph 15.

18. The impact of the change described in paragraph 15 is substantial.

19. Respondent implemented the change in unit employees' conditions of employment described in paragraph 15 without providing the Union an opportunity to negotiate over the procedures and appropriate arrangements of the change.

20. By the conduct described in paragraphs 17 and 19, the Respondent has been refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.

WA-CA-18-0333

21. On August 30, 2018, Respondent, by Smith, denied designated union representative Sharon Harris access to Respondent's headquarters in Washington, D.C., preventing her from attending a formal discussion.

22. By the conduct described in paragraph 21, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed in § 7102 of the Statute and violating § 7116(a)(1) of the Statute.

WA-CA-18-0338

23. On September 5, 2018, Respondent began offering voluntary overtime to unit employees within the Respondent's Office of Civil Rights.

24. The impact of the change described in paragraph 23 is substantial.

25. Respondent implemented the change in unit employees' conditions of employment described in paragraph 23 without providing the Union notice and an opportunity to negotiate over the procedures and appropriate arrangements of the change.

26. By the conduct described in paragraphs 23 and 25, Respondent has been refusing to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.

WA-CA-18-0341

27. On May 25, 2018, AFGE Deputy General Counsel Cathie McQuiston (McQuiston) sent ten letters to the Respondent, delegating authority to union officials in each of the ten Regional Offices.

28. On May 29, 2018, Respondent, by Smith, advised McQuiston that the Respondent would not honor AFGE's delegation of authority to local officials.

29. Since May 29, 2018, Respondent has failed and refused to recognize the Union's delegation of authority.

30. By the conduct described in paragraphs 28 and 29, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7102 of the Statute and violating § 7116(a)(1) of the Statute.

WA-CA-19-0118

31. On October 18, 2018, Respondent, by Smith, notified the Union that it intended to implement a reorganization to the Office of Chief Information Officer.

32. On October 26, 2018, the Union requested to negotiate over the change described in paragraph 31.

33. On November 6, 2018, the Respondent refused to bargain over the change described in paragraph 31.

34. On or about January 6, 2019, the Respondent began implementing the change described in paragraph 31.

35. The impact of the change described in paragraph 31 is substantial.

36. Respondent implemented the change in unit employees' conditions of employment described in paragraph 31 without providing the Union with an opportunity to negotiate over the procedures and appropriate arrangements of the change.

37. By the conduct described in paragraphs 34 and 36, Respondent has been refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.

SF-CA-19-0157

38. On or about November 20, 2018, the Union chief steward requested official time to work on pending representational matters.

39. On or about November 20, 2018, Respondent, by Loya, denied the request for official time described in paragraph 38.

40. On or about December 4, 2018, the Union chief steward requested official time to prepare a grievance.

41. On or about December 4, 2018, Respondent, by Loya, denied the request for official time described in paragraph 40.

42. On or about January 24, 2019, the Union chief steward requested official time to work on a pending EEO matter.

43. On or about January 24, 2019, Respondent, by Ordikhani, denied the request for official time described in paragraph 42.

44. By the conduct described in paragraphs 39, 41, and 43, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7102 of the Statute and violating § 7116(a)(1) of the Statute.

WA-CA-19-0213

45. On February 21, 2019, Respondent, by Willis, advised Office of Civil Rights management of new performance standards implemented for bargaining unit employees.

46. The impact of the change described in paragraph 45 is substantial.

47. Respondent implemented the change in unit employees' conditions of employment described in paragraph 45 without providing the Union with notice and an opportunity to negotiate over the procedures and appropriate arrangements of the change.

48. By the conduct described in paragraphs 45 and 47, Respondent has been refusing to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.

CH-CA-19-0295

49. On May 3, 2019, Respondent, through Smith, notified the Union that it intended to relocate the Chicago Regional Office from its location at 500 West Madison Street to 230 South Dearborn Street, approximately .8 of a mile away, on or about June 7, 2019.

50. On May 6, 2019, the Union requested to negotiate over the change described in paragraph 49.

51. On May 21, 2019, Respondent, through Smith, informed the Union that it would implement the change described in paragraph 49, without negotiating with the Union regarding the procedures and appropriate arrangements of the change.

52. On or about June 7, 2019, Respondent implemented the change described in paragraph 49.

53. The impact of the change described in paragraph 49 is substantial.

54. Respondent implemented the change in unit employees' conditions of employment described in paragraph 49 without providing the Union with an opportunity to negotiate over the procedures and appropriate arrangements of the change.

55. By the conduct described in paragraphs 52 and 54, Respondent has been refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.

WA-CA-20-0025

56. On September 12, 2019, the Union submitted a completed dues-withholding authorization (SF-1187) to Respondent for Nathaniel Thomas, an employee in the bargaining unit described in paragraph 4.

57. From September 12, 2019, until November 10, 2019, Respondent failed and refused to honor the Union's delegation of authority to its Secretary-Treasurer to certify the dues withholding authorization (SF-1187) described in paragraph 56.

58. By the conduct described in paragraph 57, Respondent failed and refused to comply with its obligations under § 7115(a) of the Statute to honor dues withholding authorizations and make appropriate allotments to the exclusive representative.

59. By the conduct described in paragraphs 57 and 58, Respondent has been violating § 7116(a)(1) and (8) of the Statute.

60. By the conduct described in paragraph 57, Respondent has been interfering with, restraining, and coercing employees in the

exercise of the rights guaranteed in § 7102 of the Statute and violating § 7116(a)(1) of the Statute.

WA-CA-20-0153

61. On January 23, 2020, Respondent, by Mark Brown, held a meeting with unit employees.

62. During the meeting described in paragraph 61, Respondent discussed personnel policies, practices or other general conditions of employment.

63. The meeting described in paragraph 61 was formal in nature.

64. Respondent did not afford the Union the opportunity to be represented at the meeting described in paragraph 61.

65. By the conduct described in paragraphs 61 through 64, Respondent has been failing and refusing to comply with § 7114(a)(2)(A) of the Statute.

66. By the conduct described in paragraphs 61 through 65, Respondent has violated § 7116(a)(1) and (8) of the Statute.

WA-CA-20-0154

67. On January 28, 2020, Respondent, by Thompson, held a meeting with unit employees.

68. During the meeting described in paragraph 67, Respondent discussed personnel policies, practices or other general conditions of employment.

69. The meeting described in paragraph 67 was formal in nature.

70. Respondent did not afford the Union the opportunity to be represented at the meeting described in paragraph 67.

71. By the conduct described in paragraphs 67 through 70, Respondent has been failing and refusing to comply with § 7114(a)(2)(A) of the Statute.

72. By the conduct described in paragraphs 67 through 71, the Respondent has violated § 7116(a)(1) and (8) of the Statute.

WA-CA-20-0219

73. On February 11, 2020, the Union requested that Respondent negotiate with the Union over Executive Orders 13,836, 13,837, and 13,839, including procedures for using official time for employees in the bargaining unit described in paragraph 4.

74. The subject described in paragraph 73 is a mandatory subject of bargaining under the Statute.

75. Since February 28, 2020, Respondent has been refusing to negotiate with the Union over the subject described in paragraph 73.

76. By the conduct described in paragraph 75, Respondent has been refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.

WA-CA-20-0365

77. On July 28, 2020, Respondent, through Smith, notified the Union that it intended to relocate the Dallas Regional Office form its location at 1999 Bryan Street to 1201 Elm Street, approximately one mile away, on November 2, 2020.

78. On July 29, 2020, the Union requested to negotiate over the change described in paragraph 77.

79. On August 10, 2020, Respondent, through Smith, informed the Union that it would implement the change described in paragraph 77, without negotiating with the Union regarding the procedures and appropriate arrangements of the change.

80. On January 13, 2021, Respondent implemented the change described in paragraph 77.

81. By the conduct described in paragraph 79, Respondent has been refusing to negotiate in good faith with the Union and violating of [*sic*] § 7116(a)(1) and (5) of the Statute.

CONCLUSIONS OF LAW

By the conduct set forth in Case No. WA-CA-18-0173, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it implemented its proposed-successor CBA without completing negotiations with the

Union. Therefore, the Respondent violated § 7116 (a)(1) and (5) of the Statute.

By the conduct set forth in Case No. WA-CA-18-0305, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it implemented a new telework program without providing the Union an opportunity to negotiate over the procedures and appropriate arrangements of the change. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute.

By the conduct set forth in Case No. WA-CA-18-0333, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it denied designated union representative Sharon Harris access to Respondent's headquarters in Washington, D.C., preventing her from attending a formal discussion. Therefore, the Respondent failed to comply with § 7102 of the Statute and violated § 7116(a)(1) of the Statute.

By the conduct set forth in Case No. WA-CA-18-0338, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it began offering voluntary overtime to unit employees within the Respondent's Office of Civil Rights without providing the Union notice and an opportunity to negotiate over the procedures and appropriate arrangements of the change. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute.

By the conduct set forth in Case No. WA-CA-18-0341, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it advised McQuiston that it would not honor AFGE's delegation of authority to local officials. Therefore, the Respondent failed to comply with § 7102 of the Statute and violated § 7116(a)(1) of the Statute.

By the conduct set forth in Case No. WA-CA-19-0118, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it began implementing a reorganization to the Office of Chief Information Officer without providing the Union with an opportunity to negotiate over the procedures and appropriate arrangements of the change. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute.

By the conduct set forth in Case No. SF-CA-19-0157, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it denied the Union chief steward's official time requests to work on pending representational matters, to prepare a grievance, and to work on a pending EEO matter. Therefore, the Respondent failed to comply with § 7102 of the Statute and violated § 7116(a)(1) of the Statute.

By the conduct set forth in Case No. WA-CA-19-0213, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it implemented new performance standards for bargaining unit employees without providing the Union with notice and an opportunity to negotiate over the procedures and appropriate arrangements of the change. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute.

By the conduct set forth in Case No. CH-CA-19-0295, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it relocated the Chicago Regional Office without providing the Union with an opportunity to negotiate over the procedures and appropriate arrangements of the change. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Act.

By the conduct set forth in Case No. WA-CA-20-0025, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that it failed and refused to honor the Union's delegation of authority to its Secretary-Treasurer to certify the dues withholding authorization (SF-1187). Therefore, the Respondent failed to comply with its obligations under § 7115(a) of the Statute and violated § 7116(a)(1) and (8) of the Statute, and failed to comply with § 7102 of the Statute and violated § 7116(a)(1) of the Statute.

By the conduct set forth in Case No. WA-CA-20-0153, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that the Respondent, by Mark Brown, held a formal meeting with unit employees without affording the Union the opportunity to be represented at the meeting. Therefore, the Respondent failed and refused to comply with § 7114(a)(2)(A) of the Statute and violated § 7116(a)(1) and (8) of the Statute.

By the conduct set forth in Case No. WA-CA-20-0154, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that the Respondent, by Thompson held a formal meeting with unit employees without affording the Union the opportunity to be represented at the meeting. Therefore, the Respondent failed and refused to comply with § 7114(a)(2)(A) of the Statute and violated § 7116(a)(1) and (8) of the Statute.

By the conduct set forth in Case No. WA-CA-20-0219, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that the Respondent refused to negotiate with the Union over Executive Orders 13,836, 13,837, and 13,839, including procedures for using official time for employees in the bargaining unit. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute.

By the conduct set forth in Case No. WA-CA-20-0365, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits the allegations, including that the Respondent relocated the Dallas Regional Office without negotiating with the Union regarding the procedures and appropriate arrangements of the change. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute.

REMEDY

The GC seeks status quo ante relief or post-implementation bargaining in the unilateral change cases. GC MSJ at 10-11. For support, the GC submitted an affidavit of AFGE Deputy General Counsel Cathie McQuiston (McQuiston Aff.).

The Charging Parties seek status quo ante remedies or, alternatively, retroactive bargaining orders. The Charging Parties request that bargaining unit employees be made whole for losses suffered as a result of the Respondent's unlawful conduct. *See* Union Memorandum in Support at 4, 26. For support, the Charging Parties submitted a declaration from McQuiston (McQuiston Declaration) and supporting exhibits.

The Respondent states that it is "open to the [GC's] proposed remedy order . . . as settlement terms," but it does not otherwise address the GC's requested remedies. Respondent's Opposition at 6.

The Authority recognizes that a central objective of its remedial authority is to recreate the conditions and relationships that would have been had there been no unfair labor practice and to restore, as far as possible, the status quo that existed before the unfair labor practices (ULPs). *E.g.*, *U.S. DOD, Ohio Nat'l Guard*, 71 FLRA 829, 873 (2020) (*Ohio National Guard*). When an agency refuses to bargain over the substance of a matter that is within the duty to bargain, the Authority orders a status quo ante remedy, including rescission of the new policy, absent special circumstances. *Id.*

When an agency exercises a management right and is obligated only to bargain over the impact and implementation of a change, the Authority applies the criteria set forth in *Federal Correctional Institution*, 8 FLRA 604 (1982) (*FCI*) to determine whether or not a status quo ante remedy is appropriate. These factors include: (1) whether, and when, an agency notified the union concerning the change; (2) whether, and when, the union requested bargaining over procedures for implementing the change or appropriate arrangements for employees adversely affected by the change; (3) the willfulness of the agency's conduct in failing to bargain; (4) the nature and extent of the impact upon adversely affected employees; and (5) whether, and to what extent, a status quo ante remedy would disrupt the agency's operations. *E.g.*, *Ohio Nat'l Guard*, 71 FLRA at 873. The appropriateness of a status quo ante remedy must be determined on a case-by-case basis, carefully balancing the nature and circumstances of the particular violation against the degree of disruption in government operations that such a remedy would cause. *U.S. Dep't of VA, VA Med. Ctr., Richmond, Va.*, 70 FLRA 119, 124 (2016) (*VA Richmond*). When an agency argues that a status quo ante remedy would disrupt the efficiency and effectiveness of the agency's operations, the Authority requires that the agency's argument be based on record evidence. *Id.* at 124-25.

The Remedy in Case No. WA-CA-18-0173—The CBA

To remedy the Respondent's unlawful implementation of the CBA in Case No. WA-CA-18-0173, the GC requests a status quo ante remedy. Specifically, the GC requests that the Respondent be ordered to: (a) rescind the CBA; (b) reinstitute all mandatory subjects of bargaining contained in either the prior collective-bargaining agreement, signed in 2013, and/or those contained in the parties' Past-Practices Document (PPD), dated December 18, 2017; (c) bargain over a successor collective-bargaining agreement; and (d) post an appropriate notice. GC MSJ at 7-8 & n.13 (citing *FDIC*, 41 FLRA 272, 279 (1994)). The GC asserts that a status quo ante remedy is appropriate under the relevant facts and circumstances in this case, as term negotiations are a mandatory subject of bargaining. *Id.* at 10 (citing *Stein Indus., Inc.*, 365 NLRB No. 31 (2017)).

For their part, the Charging Parties request that the Respondent be ordered to make whole any bargaining

unit employees who were adversely affected by the Respondent's unilateral implementation of the CBA. Union Memorandum in Support at 18, 20.

Having found that the Respondent refused to negotiate with the Union over the Respondent's proposed-successor CBA, a mandatory subject of bargaining, and noting the absence of special circumstances, the GC's above-requested remedies in this case are granted.[1] *See FDIC*, 41 FLRA at 279-80 (rescinding unlawfully implemented changes); *cf. Stein Indus., Inc.*, 365 NLRB No. 31, slip op. at 6-7 (rescinding unlawfully implemented or eliminated terms and conditions of employment, restoring terms and conditions of employment previously in effect); *Ohio National Guard*, 71 FLRA at 830 (rescinding changes to mandatory terms of parties' expired collective-bargaining agreement). Any employee who has suffered losses as a result of the Respondent's unlawful conduct in this case shall be made whole. *See Ohio National Guard*, 71 FLRA at 873 ("When a ULP causes employees or unions to suffer monetary losses, the Authority requires the offending party to pay backpay, restore leave, or otherwise reimburse them."); *see also FDIC*, 41 FLRA at 279 (making affected employees whole); *U.S. Patent & Trademark Office*, 39 FLRA 1477, 1484 (1991) (making whole bargaining unit employees who were adversely affected by agency's change regarding the granting of official time). As the Charging Parties note, questions regarding whether employees actually suffered losses as a result of the Respondent's violation may be resolved in compliance proceedings. *U.S. Dep't of VA, VA Med. Ctr., Martinsburg, W. Va.*, 67 FLRA 400, 402 (2014).

The Remedy in Case No. WA-CA-18-0305—Telework

The GC requests status quo ante relief to remedy the Respondent's failure to provide the Union with an opportunity to negotiate over the procedures and appropriate arrangements of the Respondent's new telework program in Case No. WA-CA-18-0305. Specifically, the GC asks that the Respondent be ordered to: (1) rescind the new telework policy; (2) return to the previous telework policy; (3) bargain with the Union, to the extent required by the Statute, over any new telework policy; and (4) post an appropriate notice. GC MSJ at 8, 10 & nn.27-28 (citing *FDIC*, 41 FLRA at 279; *FCI*, 8 FLRA at 606). Because the change required impact and implementation bargaining, the undersigned applies the *FCI* factors to determine whether status quo ante relief is warranted.

While the Respondent notified the Union of the change months before it was implemented, the remaining *FCI* factors support a return to the status quo. With respect to the second factor, the Union requested bargaining in a timely manner, as the Union's request was sent just weeks after the notice and months before the implementation date. *See* paragraphs 15-17 of the Complaint. Regarding the third factor, the Respondent's covered-by defense was invalid, as it was based on the CBA it had unilaterally implemented. *See* Union Ex. 8 at 18-19; McQuiston Aff. at 3. It is thus clear that the Respondent acted willfully. *See U.S. Dep't of the Army, Lexington-Blue Grass Army Depot, Lexington, Ky.*, 38 FLRA 647, 649 (1990) (*Blue Grass Army Depot*) (finding respondent's refusal to bargain was willful where respondent claimed, erroneously, that it was not obligated to bargain). As to the fourth factor, it is plain that the change had a significant impact upon adversely affected employees. The change limited employees—even those who had worked on a

[1] The undersigned would reach the same conclusion if an *FCI* analysis were required. The first factor weighs against a status quo ante remedy, as the Respondent notified the Union of the planned change. Paragraph 8 of the Complaint. But the remaining factors weigh in favor of a return to the status quo. With respect to the second factor, the Union submitted a timely request to bargain. Specifically, the Union's counter was submitted only a few weeks after receiving notice, a reasonable amount of time to respond when dealing with an entire collective-bargaining agreement, and almost two weeks before implementation. The Union did not wait until the 11th hour to provide its counter, and the Union did not miss deadlines that had been negotiated by the parties. *See Dep't of the Air Force, Air Force Materiel Command, Wright-Patterson AFB, Ohio*, 51 FLRA 1532, 1536 (1996); paragraphs 10-14 of the Complaint. With respect to the third *FCI* factor, it is clear that the Respondent acted willfully: The Respondent disregarded the Union's counter and implemented the CBA without completing negotiations with the Union. *See U.S. Dep't of the Army, Lexington-Blue Grass Army Depot, Lexington, Ky.*, 38 FLRA 647, 649 (1990). Turning to the fourth factor, it is plain that the Respondent's conduct had a significant impact upon adversely affected employees. In addition to making significant changes—the grievance procedure excluded several matters; articles on performance appraisals, misconduct or unacceptable performance, and telework were removed—the Respondent used the unilaterally implemented CBA to avoid bargaining over subsequent changes. McQuiston Declaration at 3. As for the fifth factor, the GC states that rescinding the CBA would have a significant impact on the Respondent's operations. GC MSJ at 11. While it is difficult to imagine how rescinding an entire collective-bargaining agreement would not have a significant impact on an agency's operations, it must be noted that neither the GC nor the Respondent has pointed to record evidence showing the specific impact a status quo ante remedy would have on the Respondent's operations. *See VA Richmond*, 70 FLRA at 124-125. Weighing the *FCI* factors, and balancing the clear harms to employees against the presumptively real (though poorly supported) impact on Agency operations, the undersigned would find a status quo ante remedy to be warranted under *FCI*.

100% telework plan—to teleworking only one day per week. Further, the change prevented teleworking employees from participating in a 4/10 schedule. The change also meant that employees working a 5/4/9 schedule could only telework one day each pay period and could not telework the same week as their regular day off. And the Respondent itself acknowledged that the change "impacts a significant number of employees." Union Ex. 8 at 15-16. *See VA Richmond*, 70 FLRA at 125 (2016) (noting that the respondent's actions extended to the entire bargaining unit). Finally, while the GC states that rescinding the telework policy will have a significant impact on Agency operations, neither the GC nor the Respondent has presented evidence into the record revealing the specific impact a status quo remedy would have on the Respondent's operations. Considering the *FCI* factors, and balancing the specific and significant impact on employees against the vague and unsupported impact on Agency operations, the undersigned concludes that a status quo ante remedy is warranted.

The Remedy in Case No. WA-CA-18-0338—Voluntary Overtime

The GC requests status quo ante relief to remedy the Respondent's unilateral decision to begin offering voluntary overtime to unit employees within its Office of Civil Rights in Case No. WA-CA-18-0338. Specifically, the GC asks that the Respondent be ordered to: (1) rescind the voluntary overtime policy; (2) bargain with the Union to the extent required by the Statute if the Respondent decides to implement a new voluntary overtime policy; and (3) post an appropriate notice. GC MSJ at 8, 10 & nn.27-28 (citing *FDIC*, 41 FLRA at 279; *FCI*, 8 FLRA at 606). Because only impact and implementation bargaining was required, *see* paragraph 25 of the Complaint, the undersigned applies the factors set forth in *FCI*.

Applying the *FCI* factors, it is clear that a status quo ante remedy is warranted. The first and second factors strongly favor a status quo ante remedy: The Respondent failed to notify the Union of the change, and the Union was thus excused from a requirement to request bargaining. Paragraph 25 of the Complaint; *see, .e.g.*, *Ohio National Guard*, 71 FLRA at 873. The third factor indicates the Respondent acted willfully; it implemented the change unilaterally and did so based on the unilaterally implemented CBA. *See* McQuiston Aff. at 3. While the record is limited regarding the impact on employees, there is no question that the impact was substantial. Paragraph 24 of the Complaint. And while the GC asserts that rescinding voluntary overtime would have a significant impact on Agency operations, neither the GC nor the Respondent has presented evidence into the record proving what the impact of a status quo ante remedy would be. Hence, weighing all the *FCI* factors, a status quo ante remedy is warranted.

The Remedies in the Remaining Cases

As for the remaining unilateral change cases, the GC seeks post-implementation bargaining rather than status quo ante relief. GC MSJ at 11. The GC contends the Respondent's statutory violations are significant and the impact on the Respondent's operations required to undo an office reorganization and the two office relocations is too disruptive on the Respondent's operations to warrant a return to the status quo. *Id*. For support, the GC cites *Dep't of VA Med Ctr., Asheville, NC*, 51 FLRA 1572, 1580 (1996) (awarding retroactive bargaining order) (*VA Asheville*).

The Charging Parties argue that status quo ante relief should be granted with respect to the reorganization and the personnel policies. *See* Union Memorandum at 21-23. The Charging Parties request a retroactive bargaining order if status quo ante relief is not found to be appropriate. *Id*. at 24.

With respect to the office relocations at issue in Case Nos. CH-CA-19-0295 and WA-CA-20-0365, it is undisputed that it would be too disruptive on Agency operations to order a return to the status quo. *See NLRB*, 2016 WL 769173, at *32 (Feb. 11, 2016) (non-precedential Administrative Law Judge decision) (noting status quo remedy not sought where parties recognized that agency could not return to previous office location). In lieu of such relief, the undersigned finds that a retroactive bargaining order will enable the parties to approximate the situation that would have existed had the Respondent fulfilled its statutory obligations. *VA Asheville*, 51 FLRA at 1581. Accordingly, the parties should negotiate fully and in good faith on the issues in these cases, and when they have agreed, the presumption should be to implement that agreement retroactively, although the Union must be reasonable in weighing the feasibility and cost of retroactivity, insofar as it affects what the Respondent may otherwise be able to agree to, in the overall agreement. *See NLRB*, 2016 WL 769173, at *33.

With respect to the reorganization to the Office of Chief Information Officer at issue in Case No. WA-CA-19-0118, the GC contends that undoing the reorganization would unduly burden the Respondent's operations, but it does not support that claim with specific evidence, and the Charging Parties dispute the Respondent's claim. *See* GC MSJ at 11; Union Memorandum at 21-22. Applying *FCI*, the undersigned finds that status quo ante relief is warranted. It is true, with respect to the first factor, that the Respondent notified the Union of the change. But the remaining factors weigh in favor of status quo ante relief:

The Union submitted a timely request to bargain; the Respondent refused to bargain (and argued that the matter was covered by the unilaterally implemented CBA) and thus acted willfully; the change had a substantial effect on employees and involved a new chain of command, work stations, and duties (though the Respondent downplayed the significance of the change); and neither the GC nor the Respondent has pointed to evidence of record indicating that a return to the status quo would disrupt the Respondent's operations. *See* paragraphs 31-32 and 35 of the Complaint; Union Ex. 5 at 13-14; McQuiston Declaration at 17. Weighing these factors, the undersigned finds that status quo ante remedy is warranted, even if only under the second, third, and fifth factors.

As for the unilateral change of performance standards for the Office of Civil Rights at issue in Case No. WA-CA-19-0213, the GC does not explain why status quo ante relief would be inappropriate. *See* GC MSJ at 11; McQuiston Aff. at 3. Applying the *FCI* factors, the undersigned finds that status quo ante relief is warranted. Specifically, the Respondent implemented the change without providing notice to the Union; the Respondent acted deliberately and thus willfully, and the change had a substantial effect on employees. *See* paragraphs 45-47 of the Complaint; *Blue Grass Army Depot*, 38 FLRA at 649. Further, neither the GC nor the Respondent has highlighted specific evidence indicating that a status quo ante remedy would disrupt the Respondent's operations. *See* GC MSJ at 11. Accordingly, the undersigned concludes that a status quo ante remedy is appropriate in this case.

To remedy the unilateral changes at issue in Case No. WA-CA-20-0219, the GC asks that the Respondent be ordered to bargain over Executive Orders 13,836, 13,837, and 13,839. GC MSJ at 9. But because the executive orders have been revoked, Protecting the Federal Work Force, Exec. Order No. 14,003, 86 Fed. Reg. 7,231 (Jan. 22, 2021), the requested remedy is denied as moot.

The undersigned concurs with the GC remedies requested in the remaining cases as being appropriate, as they are consistent with those ordered by the Authority in similar cases.

Finally, the Charging Parties request several non-traditional remedies. First, the Charging Parties request that notices be distributed to all Agency employees, not just bargaining unit employees. Second, the Charging Parties request that the Secretary be ordered to read the notice postings aloud in recorded messages, one for each case, and that those messages be emailed to all Agency employees. Third, the Charging Parties request that notices be distributed to all Agency employees in hard copy to the employee's home address. Union Memorandum at 25-26 (citing *U.S. Penitentiary Leavenworth, Kan.*, 55 FLRA 704, 718-19 (1999) (*USP Leavenworth*)).

Assuming that there exist no legal or public policy objections to a proposed, nontraditional remedy, the questions are whether the remedy is reasonably necessary and would be effective to "recreate the conditions and relationships" with which the unfair labor practice interfered, as well as to effectuate the policies of the Statute, including the deterrence of future violative conduct. *E.g.*, *Ohio National Guard*, 71 FLRA at 874. These questions are essentially factual. *Id.* However, nontraditional remedies are not warranted merely because they would further a salutary objective; rather, they are appropriate only when traditional remedies would not adequately redress the wrong incurred by the ULP. Moreover, remedies for ULPs are not to be punitive in nature. *Id.*

A notice delivered to all employees, including supervisors and management officials, is a nontraditional remedy. *U.S. Penitentiary, Florence, Colo.*, 53 FLRA 1393, 1394 (1998). Given the scope and breadth of the violations—including the Respondent's unilateral implementation of an entire collective-bargaining agreement and its use of that agreement to deny the Union's ability to bargain over subsequent changes—the undersigned finds that this aspect of the Charging Parties' requested remedy is necessary and appropriate. Sending notices to all Agency employees would promote compliance and ensure a uniform understanding throughout the Agency, which is necessary in light of the breadth of violations. By widely educating managers and supervisors about the Respondent's obligations under the Statute, this remedy will deter future violations of the Statute. *See Ohio National Guard*, 71 FLRA at 874. Sending notices to all Agency employees would also engender bargaining unit employees confidence that their rights will be protected and would counter the impression, suggested by at least one media report, that the Respondent was able to violate the Statute with impunity. *See* Union Memorandum at 25 n.4 (citing Erich Wagner, *Lawmakers Urge Education to Rescind Unilaterally-Imposed Union Contract*, Government Executive (Sept. 24, 2018), https://www.govexec.com/management/2018/09/lawmakers-urge-education-rescind-unilaterally-imposed-union-contract/151508/). For the plethora of public policy rationales, the undersigned orders that notices be sent to all Agency employees, including supervisors and management officials.

The undersigned finds the balance of petitioned nontraditional remedies are unnecessary and unwarranted. Requiring the Secretary of the Agency to read the notices would be inappropriate, since the Secretary did not play a

direct role in the commission of the violations, *see* paragraph 7 of the Complaint; *see also USP Leavenworth*, 55 FLRA at 719 (ordering warden to read notice aloud, where warden made egregious, unlawful statements at a mandatory meeting), and furthermore Agency employees will easily be able to read the notices themselves, without the assistance of a recording. Rather than being necessary, the Respondent's notice-reading remedy strikes the undersigned as an attempt to humiliate the Secretary, a remedy which borders on being punitive. *See Ohio National Guard*, 71 FLRA at 875. The Charging Parties' request that hard copies be sent to the employee's home address is similarly superfluous, given that notices will be posted at workplaces and distributed electronically to all Agency employees.

Notices

The GC argues that notices should be signed by Denise L. Carter, Acting Assistant Secretary, Office of Finance and Operations, as that office falls directly under the Office of the Secretary and directs, coordinates, and has overall responsibility over the Office of Human Resources, which oversees labor relations at the Respondent. GC MSJ at 11-12.

As the GC correctly notes, the Authority generally requires that a notice of unfair labor practice be signed by the highest official of the agency or activity responsible for violating the Statute. *SSA*, 64 FLRA 293, 297-98 (2009). The undersigned is finds that Denise L. Carter, Acting Assistant Secretary, Office of Finance and Operations, is such an appropriate official. *See* GC MSJ at 11-12; paragraph 7 of the Complaint. Accordingly, notices should be executed by the Acting Assistant Secretary, Office of Finance and Operations.

CONCLUSION

Based on the foregoing, the undersigned recommends that the Authority grant the GC's and the Charging Parties' motions for summary judgment and issue the following order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the U.S. Department of Education, Washington, DC (Agency) shall:

1. Cease and desist from:

   (a) Implementing changes in working conditions of bargaining unit employees, without first providing the American Federation of Government Employees, AFL-CIO (the Union or AFGE) notice and an opportunity to bargain to the extent required by the Statute.

   (b) Conducting formal discussions without first providing the Union notice and opportunity to attend and participate in the meetings.

   (c) Failing to timely process all SF-1187 dues withholdings submitted by bargaining unit employees.

   (d) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

   (a) Rescind the following items: (1) the 2018 collective-bargaining agreement; (2) the October 1, 2018 telework policy; (3) the Office of Civil Rights voluntary overtime policy; (4) the reorganization to the Office of Chief Information Officer implemented on or around January 6, 2019; and (5) the performance standards for the Office of Civil Rights implemented on or around February 21, 2019.

   (b) Make employees whole for losses resulting from the Respondent's unlawful implementation of the 2018 collective-bargaining agreement.

   (c) Reinstitute the following items: (1) all mandatory subjects of bargaining contained in the 2013 collective-bargaining agreement; and/or (2) the December 18, 2017 Past Practices Document; (3) the telework policy in existence prior to October 1, 2018; (4) the organization of the Office of Chief Information Officer in existence prior to the reorganization implemented on or around January 6, 2019; and (5) the performance standards for the Office of Civil Rights in existence prior to the ones implemented on or around February 21, 2019.

(d) Bargain to the extent required by the Statute over: (1) a successor collective-bargaining agreement; (2) a telework policy; (3) a voluntary overtime policy; (4) the reorganization to the Office of the Chief Information Officer (OCIO); (5) new performance standards in the Office of Civil Rights (OCR); and (6) the relocations of the Dallas and Chicago Regional Offices.

(e) Remit to the AFGE union dues of any and all bargaining unit employees who signed and submitted SF-1187 forms for dues withholding from September 12, 2019 to present, and for whom dues were not previously remitted to the Union.

(f) Post at the Department of Education, where bargaining unit employees are located, copies of the attached nine Notices on forms to be provided by the Federal Labor Relations Authority. The Notices shall be signed by the Acting Assistant Secretary, Office of Finance and Operations, and shall be posted and maintained for sixty (60) consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. A copy of the Notices will also be electronically mailed to all Agency employees, including supervisors and management officials. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(g) Pursuant to Section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Washington Regional Office, Federal Labor Relations Authority, in writing within 30 days from the date of this Order as to what steps have been taken to comply.

Issued, Washington, D.C., October 29, 2021

David L. Welch

DAVID L. WELCH
Chief Administrative Law Judge

Case No. WA-CA-18-0173

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC, violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO, over term bargaining for successor collective-bargaining agreements.

WE WILL rescind the collective-bargaining agreement unilaterally implemented on or about March 12, 2018, and reinstitute all mandatory subjects of bargaining contained in the parties' prior 2013 agreement and/or the Past Practices Document, dated December 18, 2017.

WE WILL bargain to the extent required by the Statute a successor collective-bargaining agreement.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-18-0305

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO, over changes to conditions of employment.

WE WILL rescind the unilaterally implemented telework policy implemented on or about October 1, 2018, and reinstitute the Agency's prior telework policy.

WE WILL bargain to the extent required by the Statute over any future changes to the Agency's telework policy.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case Nos. WA-CA-18-0333, WA-CA-20-0153, and WA-CA-20-0154

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with the requirements of § 7114(a)(2)(A) of the Statute, and provide the American Federation of Government Employees, AFL-CIO (the Union) with notice and opportunity to attend all formal discussions held by the Agency.

WE WILL allow Union representatives to participate in formal discussions, including those held in-person, by phone, and/or video teleconferences, by making statements and comments on behalf of the Union.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-18-0338

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC, violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO (the Union) over changes to conditions of employment.

WE WILL rescind the unilaterally imposed voluntary overtime policy in the Office of Civil Rights implemented on or about September 5, 2018.

WE WILL bargain, to the extent required by the Statute, over any future changes to Office of Civil Rights voluntary overtime policy.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated:_____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-18-0341

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC, violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT engage in conduct that interferes with, restrains, or coerces employees in the exercise of their protected activity by refusing to recognize properly delegated union representatives.

WE WILL comply with all notices from the American Federation of Government Employees, AFL-CIO (the Union) delegating authority to specific Union officials and individuals.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-19-0118

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO, over changes to conditions of employment.

WE WILL rescind the reorganization to the Office of Chief Information Officer (OCIO) that the Agency unilaterally implemented on or about January 6, 2019, and reinstitute the organization that existed prior to the change.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. SF-CA-19-0157

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC, violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL approve or disapprove requests for official time based on the parties' 2013 collective-bargaining agreement and/or the December 2017 Past Practices Document, until such time as the parties reach a new agreement, including agreement on types and amount of official time.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case Nos. WA-CA-19-0213, CH-CA-19-0295,
WA-CA-20-0219, and WA-CA-20-0365

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL comply with our obligations under the Statute to negotiate with the American Federation of Government Employees, AFL-CIO (the Union) over changes to conditions of employment.

WE WILL rescind the unilaterally implemented performance standards for the Office of Civil Rights implemented on or around February 21, 2019, and reinstitute the performance standards that existed prior to the change.

WE WILL bargain to the extent required by the Statute when the Union requests to bargain over matters not covered by the parties' collective-bargaining agreement.

WE WILL bargain with the Union over procedures and appropriate arrangements of the Agency's relocation of the Dallas and Chicago Regional Offices.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Washington Region, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.

Case No. WA-CA-20-0025

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Education, Washington, DC (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL not fail to timely honor the written dues withholding authorizations of bargaining unit employees, or fail to remit their union dues to the American Federation of Government Employees, AFL-CIO (AFGE), as required by the provisions of § 7115(a) of the Statute.

WE WILL pay to AFGE the union dues of all bargaining unit employees who properly submitted SF-1187s from September 12, 2019 to present, and which the Agency failed to timely process.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Washington Region, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, D.C. 20424, and whose telephone number is: 202) 357-6029.