



April 24, 2025

**VIA ELECTRONIC MAIL**

Mr. Max R. Wyche  
Acting Chief Human Capital Officer  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

**RE: Amended National Institutional Grievance and Unfair Labor Practice Charge — Violation of Article 23, Hours of Work, the Federal Employees Flexible and Compressed Work Schedules Act, and the Federal Service Labor-Management Relations Statute**

Dear Mr. Wyche:

The National Treasury Employees Union (NTEU) hereby files this amended national institutional grievance pursuant to Article 42, Sections 2 and 3 of the parties' 2022 National Agreement (2022 NA) and the 2025 Addendum to the 2022 NA on behalf of both NTEU and bargaining unit employees against the Internal Revenue Service (IRS or agency). The amendment is to NTEU's April 14, 2025 national institutional grievance and unfair labor practice charge concerning the breach of Articles 23 and 47 of the 2022 NA and the 2025 Addendum, a violation of the Federal Employees Flexible and Compressed Work Schedules Act of 1982 (the Act); and a violation of the Federal Service Labor-Management Relations Statute (the statute) by the IRS's unilateral termination of the right of eligible employees to continue to work or seek approval to work a 4/10 Compressed Work Schedule.

Article 23, Section 1 states: "The terms, provisions, and definitions found in this Article and the accompanying Exhibits are intended to be read in conjunction with the Federal Employees Flexible and Compressed Work Schedules Act (the "Act"), 5 U.S.C. § 6120, *et seq.*, and may not be interpreted to conflict with the requirements of the Act." Sections 3 through 8 of Article 23 "encompass the parameters and requirements" of the parties' alternative work schedule (AWS) program.

In Article 23, Section 3.A and 3.B, eligible employees are authorized to seek approval to work a 5/4-9 compressed work schedule (CWS), a 4/10 compressed work schedule, and a Maxiflex flexible work schedule (FWS). Section 5.D of Article 23 defines the 5/4-9 CWS as "a compressed work schedule that includes eight workdays of nine (9) hours each, one workday of eight (8) hours, and one (1) non-workday within the biweekly pay period." Section 5.C defines Maxiflex as, among other things, "a type of flexible work schedule that contains required core hours on less than ten (10) full workdays within a biweekly pay period" and "Employees may vary the number of hours worked on a given workday or the number of hours each week to equal eighty (80) hours in a bi-weekly pay period." Section 5.E of Article 23 defines the 4/10 CWS as "a compressed work schedule that includes four (4) workdays of ten hours each in each administrative workweek of the biweekly period."

Section 6.C of Article 23 states that “for any compressed or flexible work schedule new AWS schedules *will be approved* consistent with Exhibits 23-1 through 23-4 unless the request would cause any of the following at the level where the AWS is approved:

- (a) Diminished level of services;
- (b) Insufficient coverage; or
- (c) Increased costs.

Under Article 23 provisions, employees have been approved to work either a 5/4-9 CWS, a 4/10 CWS, or a Maxiflex FWS without any assertion of an adverse agency impact. Article 23, Section 7.A through D permits the Employer to modify or terminate a specific employee’s AWS schedule based on performance or conduct issues. Article 23, Section 7.F requires that the IRS bargain with NTEU before changing the mix of work schedules by reducing available AWS. Additionally, pursuant to the Act, before terminating a compressed work schedule or flexible work schedule contained in a collective bargaining agreement, agencies are required to determine that there is an adverse agency impact, reopen the agreement providing for the compressed work schedule, and submit any impasse to the Federal Service Impasses Panel (Panel) prior to modifying or terminating such a schedule. The Act explicitly prohibits an agency from terminating a compressed work schedule or flexible work schedule until the parties reach a new agreement, the prior agreement expires, or the Panel issues a decision on an impasse. The Act further requires that an agency’s adverse impact finding be supported by evidence. Mere assertions do not suffice.

On April 9, 2025, Melanie R. Krause, the then-Acting Commissioner of the IRS, issued a memorandum for all employees stating, among other things, that to optimize IRS operations, it would be necessary to “modify work schedule flexibilities” that are available to them: “The 4/10 work schedule will be discontinued effective May 3, 2025, the end of pay period 8. Employees on this schedule should work with their manager to select a new [AWS] schedule.” In addition, the memorandum advised employees that in selecting a new work schedule, “not all work schedules [will be] available to all IRS employees.” There was no reference or mention of Article 23 of the 2022 National Agreement or any finding by the IRS of an ‘adverse agency impact’, which is a prerequisite for the termination of an existing CWS in both Article 23 and the Act. In issuing this memorandum directly to all IRS employees, the IRS has illegally bypassed NTEU, the exclusive representative of employees.

On April 23, 2025, the IRS issued a memorandum to all employees advising them that they may no longer work on a 5/4-9 CWS or a Maxiflex FWS. Among other things, the memorandum states:

In accordance with Acting Chief Operating Officer Dottie Romo’s memorandum (.pdf) “Additional Changes in IRS Work Schedule Flexibilities to Maximize Government Efficiency” dated April 23, 2025, the 5/4/9 and Maxiflex alternative work schedules will be discontinued effective May 17, 2025 (end of pay period nine). To minimize and evaluate impacts to customers and allow a smooth transition, this change in work schedule for customer service employees in Taxpayer Services (TS) and SB/SE will be effective June 28, 2025, the end of pay period 12.

This means if you currently are on a 5/4/9 or Maxiflex schedule, you must select a new schedule and communicate your selection to your manager no later than Monday, May 12, 2025 (or Monday, June 23, for TS and SB/SE customer service employees). As a reminder, the 4/10 alternative work schedule is no longer available.

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As with the IRS's April 14, 2025, notice concerning the termination of the 4/10 CWS, there was no indication from the IRS that the 5/4-9 CWS or the Maxiflex FWS was causing an 'adverse agency impact,' as required by the Act. NTEU was never notified pursuant to Articles 23 and 47 that the agency wished to open negotiations over its proposal to terminate the 5/4-9 CWS or Maxiflex FWS. Instead, the schedules were simply terminated.

The actions taken by the IRS violate Articles 23 and 47 of the 2022 NA and the 2025 Addendum. The agency's actions also violate the Act, which requires an employer to negotiate over the termination of existing CWS or FWS before they may be terminated. These violations of the 2022 NA and the 2025 Addendum are so egregious as to constitute a clear and patent breach of the agreement and a repudiation of its terms, which constitutes bad faith bargaining and an unfair labor practice under 5 U.S.C. § 7116(a)(1), (5), and (8) of the statute. Lastly, to the extent that the IRS claims its actions are required by an Executive Order (EO) or Presidential Memorandum (PM), and such an EO or PM has the effect of a government-wide rule or regulation, the agency's actions are an unfair labor practice under 5 U.S.C. § 7116(a)(7), which states that it is an unfair labor practice to enforce rules or regulations that conflict with any preexisting, applicable collective bargaining agreement.

To remedy these violations, NTEU requests that the IRS: (i) immediately cease and desist from violating Articles 23 and 47 of the 2022 NA and the 2025 Addendum to the 2022 NA, and 5 U.S.C. § 7116(a)(1), (5), (7) and (8); (ii) revert to the *status quo ante*, i.e., that employees be permitted to retain their 5/4-9 CWS, 4/10 CWS and Maxiflex FWS or seek and be approved for a 5/4-9 CWS, 4/10 CWS and Maxiflex FWS unless such a CWS and/or FWS is lawfully terminated by mutual agreement of the parties during bargaining or an Order issued by the Federal Service Impasses Panel; (iii) post a notice, signed by the Acting Commissioner or Commissioner of the IRS, in an appropriate place that may be viewed by all employees indicating that, by its actions, the agency has violated the statute and interfered with the rights of NTEU and employees in the bargaining unit; and (iv) grant any other remedies to NTEU that may be deemed appropriate under law, rule and/or regulation.

NTEU requests a meeting pursuant to Article 42, Section 3 of the 2022 NA within twenty (20) workdays of this filing. Our representative in this matter will be Assistant Counsel Hillary LeBeau, who may be reached via e-mail at [hillary.lebeau@nteu.org](mailto:hillary.lebeau@nteu.org). Please have your representative contact her to schedule the step meeting.

Sincerely,



Doreen P. Greenwald  
National President

cc: Geralda Larkins, Director, IRS LERN  
Hillary LeBeau, NTEU Assistant Counsel  
Ken Moffett, NTEU Director of Negotiations  
Rani Rolston, NTEU Deputy Director of Negotiations  
Ryan Soon, NTEU Deputy Director of Negotiations