



February 9, 2021

VIA ELECTRONIC MAIL

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

RE: National Grievance/ULP Regarding the Agency's Unilateral Changes to Employee Performance Plans (PMAPs) in Violation of Article 30 of the CBA and of 5 U.S.C. § 7116(a)(1) and (5)

Dear Ms. Sanchez:

The National Treasury Employees Union (NTEU) hereby files this grievance pursuant to Article 45, Section 8.C and D of the parties' 2010/2014 Consolidated Collective Bargaining Agreement (CBA). Specifically, NTEU alleges that the Department of Health and Human Services (HHS or the agency) violated Article 30 of the parties' CBA when it unilaterally changed bargaining unit employees' Employee Performance Plans (known as "PMAPs") without notice or bargaining with NTEU. In addition, HHS's failure to provide notice and bargain with NTEU prior to implementing these changes constitutes an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5).

Since on or about January 11, 2020, NTEU has learned that HHS had issued PMAPs to employees in various OpDivs including, but likely not limited to, ACF and SAMHSA, which contained new language and different elements from previous PMAPs. These changes were noticed or bargained with NTEU. These unilateral changes violate Article 30, Section 5.A, which states:

When the Agency creates a new performance plan for employees, the Union will be provided notice and may make recommendations and present supporting evidence pertaining thereto. The Employer will consider the Union's recommendations and advise the Union, in writing, of the results of its review no later than three (3) workdays prior to implementation.

The agency's actions also violate Article 30, Section 6.A.4, which states:

If the Employer changes any of the aspects (for example, any addition, removal or alteration of a performance aspect or measure) of a [Critical Job Element]

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requirement, it will serve notice on NTEU of such a change and bargain to the extent required by law.

The agency's actions violate Article 30 of the parties' CBA and, in addition, the agency's failure to provide NTEU with notice and an opportunity to bargain before it unilaterally implemented changes to employees' PMAPs constitutes an unfair labor practice pursuant to 5 U.S.C. § 7116(a) (1) and (5).

As to remedies, NTEU requests that HHS: (i) cease and desist from repudiating Article 30; (ii) cease and desist from committing an unfair labor practice by implementing changes to the PMAP without notice and bargaining with NTEU in accordance with law and contract; (iii) return all impacted bargaining unit employees' PMAPs to the *status quo ante*; (iv) grant make whole relief, including, but not limited to, back pay under the Back Pay Act, to all employees adversely affected by HHS's unilateral actions; (v) post a notice to all employees on all HHS bulletin boards for a period of sixty (60) days, signed by the Secretary of HHS, that HHS has violated the statute; and (vi) grant any other remedies that are deemed appropriate under law, rule and regulation.

Please contact Kate Sylvester, the NTEU National Negotiator handling this matter, to schedule a grievance meeting. She can be reached via e-mail at kate.sylvester@nteu.org or via telephone at (202) 572-5523.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony M. Reardon". The signature is fluid and cursive, with the first name "Anthony" being more prominent and the last name "Reardon" following in a similar style.

Anthony M. Reardon
National President

cc: Kate Sylvester, NTEU Assistant Counsel for Negotiations
Ken Moffett, NTEU Director of Negotiations
Frank Barczykowski, NTEU Deputy Director of Negotiations