

NTEU National Treasury Employees Union

FIGHTING FOR YOUR CONTRACT

The Federal Service Impasses Panel (FSIP) on April 1 issued a decision that generally sides with HHS management on nearly every article of the last best offers submitted for your contract.

In a single decision, FSIP has rolled back years of rights and benefits that NTEU won for employees. The Panel imposed management's proposals to drastically reduce telework, strictly curtail leave during the November-January holidays and allow managers to ask for a doctor's note any time an employee takes sick leave. The decision also strips away key employee rights in the areas of disciplinary actions, reassignments and performance evaluations. The FSIP also agreed with management's language eliminating awards committees and awards pool parity between bargaining unit employees and non-bargaining unit employees.

NTEU fully expected this decision because the process has been rigged against unions. The current administration has filled key positions in most critical areas with individuals who are aggressively ill-disposed towards labor unions, such as the FSIP appointees.

We aren't done fighting. **Your current contract, with all its rights and benefits, remains in place for now.** The FSIP refused to consider six remaining articles and until they are bargained, the new contract is not complete and cannot be implemented.

THE BACKDROP

President Trump issued anti-union, anti-employee executive orders (EO) in May 2018. That same month, HHS unilaterally imposed ground rules—that it previously had declared to be illegal—on NTEU and then demanded that the parties begin term bargaining within 30 days. In order not to risk a waiver of our right to bargain, NTEU proceeded to term bargaining table under protest. Despite NTEU's victory declaring the EOs illegal, the agency's proposals were in lock step with the orders and essentially gutted the rights of the union and employees, and severed the parties' collective bargaining relationship.

On the upside, NTEU, along with a coalition of other federal sector employee unions, sued the administration and won, taking the air out of some of the EOs. This was a major, historic victory and cause for optimism, as federal employee unions banded together and flexed their collective muscles in the courts. This shows us that we are not alone in this fight. Moreover, we will continue working with powerful allies in Congress to minimize the administration's damaging labor policies.

HHS RUSHED TO FSIP

With those circumstances, HHS engaged in blatant bad faith bargaining. Among other things, HHS refused to even discuss 34 articles that were open between the parties, and in the end, NTEU and HHS met only four times for bargaining. The goal: management raced through the bargaining process to have its proposals imposed by an agency-friendly FSIP.

As of July 31, 2018, when HHS disingenuously declared the parties to be at impasse, the parties had not even discussed 34 opened articles. Historically, FSIP has declined to assert jurisdiction where there is a pending ULP. However, this FSIP has shown utter disregard for past practice and its own regulations by asserting jurisdiction in this case. The Panel ignored the multiple pending ULPs that NTEU has filed regarding HHS's bad faith bargaining tactics and disregarded the fact that the parties have not reached a true impasse.

Even worse, FSIP ordered the parties to a rushed mediation process, revealing that it was poised to impose language rather than requiring the parties to engage in a true bargaining process.

During mediation, the parties agreed to roll over five articles leaving them unchanged. They are: Article 14 (Personnel Records), Article 18 (Family Leave), Article 21 (Leave Sharing), Article 53 (Public Transportation Subsidies) and Article 56 (Retirement/Resignation). NTEU and HHS were unable to reach agreement on the remaining articles with final offers exchanged in December.

NTEU remains convinced that the process is illegal, and we have four national grievances about that still pending.

THE PROPOSALS

Here is a look at the stark differences between NTEU and management's proposals:

Telework (Article 26)

HHS proposed to:

- eliminate the current telework program in favor of a general rule **limiting telework to one day per week** while also allowing management discretion to deny even that single day of telework for any reason it chooses, or no reason at all;
- gives managers the right to modify or terminate a telework agreement unconditionally; and
- if teleworking, management has discretion to determine if the employee may work an AWS.

NTEU proposed that you retain your current right to telework as many days as you request, and that determinations of employee eligibility be based on objective criteria instead of the whim of individual managers.

AWS (Article 25)

HHS proposed that **AWS is at management's sole discretion**. AWS schedules **must be reauthorized every six months** and, if not, the employee's schedule will terminate. **Supervisors can terminate an employee's AWS schedule for any reason or no reason.**

NTEU proposed continuing the current language in this article that gives employees the right to an AWS schedule and sets forth a fair and objective process for requesting and receiving such schedule.

Awards (Article 27)

HHS proposed eliminating all award committees and the negotiated percentage of awards based on an employee's summary rating. In its place, HHS proposed that **all decisions on performance awards and award amounts will be at the sole discretion of management, and employees have no right to grieve those decisions.** The agency's proposals:

- conflate performance and special act awards, when under the existing contract and the law they have different criteria (e.g., performance awards are tied to the annual rating of record while special act awards are not);
- are devoid of any criteria to ensure awards are fair and equitable;
- eliminate the ability to grieve a decision on awards; and
- make all awards at the sole discretion of management and waives NTEU's right to bargain over any aspect of the awards program.

NTEU proposed to largely maintain the existing awards program and contract language, but to streamline the awards process by establishing committees at the OpDiv level in order to reduce administrative burdens and costs. Additionally, NTEU proposed eliminating incentive awards and the incentive awards committees in all OpDivs except FDA, and to instead focus on performance awards in those OpDivs.

Merit Promotions (Article 36)

HHS proposed **eliminating the rating and ranking process, career ladder promotions and priority consideration.**

NTEU proposed maintaining the current process with some improvements that would make job announcements clearer and make the overall process friendlier to current HHS employees.

Annual Leave (Article 15)

HHS proposed that **no annual leave in excess of five consecutive workdays may be taken by bargaining unit employees during November, December and January**, and all requests for

annual leave during those months must be submitted by Sept. 15. It also proposed that any annual leave of five consecutive workdays immediately preceding or following a federal holiday **must be requested at least 60 days in advance.**

NTEU proposed retaining the current contract language because it is consistent with law and regulation and has worked well for more than eight years. Annual leave is already subject to managerial approval based on legitimate business reasons and should not be denied arbitrarily or for reasons that are not relevant to whether the leave may be taken at the time requested.

Sick Leave (Article 16)

HHS proposed that if sick leave can't be anticipated in advance it **must be requested no later than 30 min. after the TOD starts**; must advise of anticipated duration of the sick leave in writing; leave not authorized until approved and **if not approved you will be charged as AWOL**; charged in ½ hour increments not ¼ hour.

NTEU proposed that employees will notify the supervisor of the need to take sick leave up to two hours after the TOD starts and that sick leave will automatically be granted. Employees will be permitted to provide self-certification for sick leave taken more than three consecutive days, in lieu of a doctor's note.

Official Time (Article 10)

In the federal sector, "official time" allows employees to fight harassment, discrimination and unsafe working conditions. HHS has proposed that local chapter presidents and stewards not be allowed time to assist employees with workplace issues and concerns.

NTEU proposed reasonable reductions in the amount of time union officials can use while still allowing adequate time for chapter leaders to help employees with workplace issues.

Grievance (Article 45)

HHS has proposed eliminating the employee's right to grieve any matter under the contract.

NTEU has proposed a grievance process that holds management accountable for providing timely responses and working to resolve issues at the lowest level possible.

WHAT'S NEXT?

NTEU is fighting back and we need every employee to get engaged. Stay tuned for ways you can make your voice heard as we continue to fight for your contract.

NTEU continues to pursue national litigation that, if we win, would undo the entire process and order the union and HHS back to the beginning of term bargaining to negotiate the right way.

Because litigation takes time, the FSIP will likely impose contract language before NTEU has obtained relief through arbitration.

As a reminder, your current collective bargaining agreement is still in full force and effect.

NTEU IS HERE TO STAY

The pendulum has swung against NTEU, but it will swing back. NTEU is already laying the groundwork for that inevitability and we intend to advance your interests further than ever.

Your support will continue to be critically important as NTEU fights HHS' illegal bargaining tactics in the courts.

Stay strong and stay with NTEU. If you aren't a member, join us during this critical time when the stakes are so high.

NTEU is fighting for you!