



August 28, 2018

VIA FIRST-CLASS MAIL AND E-MAIL

Mr. David Mansdoerfer
Deputy Assistant Secretary for Operations
Office of the Assistant Secretary for Operations
U.S. Department of Health & Human Services
200 Independence Ave, SW
Washington, D.C. 20201

RE: HHS and NTEU Term Collective Bargaining

Dear Mr. Mansdoerfer:

I am writing to insist that HHS withdraw its request for assistance, filed with the Federal Service Impasses Panel on August 13, 2018, and return to the term collective bargaining table, to be compliant with the August 24, 2018, Order of the Honorable Ketanji Brown Jackson, U.S. District Court Judge.

As you know, Judge Brown declared nine provisions of the Executive Orders issued on May 25, 2018 were invalid, and further enjoined President's Trump's subordinates from implementing or giving effect to the provisions. AFGE, et al., v. Trump, No. 18-cv-1261, slip op. (D.D.C. Aug. 25, 2018). In her Memorandum Opinion, Judge Brown explained that the nine directives were contrary to the fundamental obligation of Executive agencies to bargain in good faith because the Orders effectively take subjects off the table that are mandatory subjects of bargaining, do not permit discussion of permissive subjects or bargaining, and require an inflexible exchange of written proposals as an approach to bargaining.

By contrast, quoting the Statute and case law, Judge Brown described good faith bargaining to require the parties to: "approach [] negotiations with a sincere resolve to reach a collective bargaining agreement"; "participate actively in the deliberations so as to indicate a present intention to find a basis for agreement"; maintain "an open mind"; and make "a sincere effort . . . to reach [] common ground."; and, proceed to collective bargaining discussions ready to listen and consider what the workers are proposing, with an open mind and with every intention of coming to a mutually acceptable result. AFGE, et al., v. Trump, No. 18-cv-1261, slip op. at 82-84 (D.D.C. Aug. 25, 2018).

It is beyond dispute that HHS' bargaining conduct beginning on May 25, 2018 and continuing to date has been in furtherance of the Orders. A few examples are:

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1. HHS has refused to follow the previously agreed upon 18-week bargaining schedule;
2. HHS has proposed the outright termination of articles addressing employee performance, awards, actions based on unacceptable performance, performance improvement periods, and union access to agency facilities;
3. HHS proposed to essentially eliminate the right of NTEU stewards to assist employees who may seek to vindicate a right they have under the CBA or in law;
4. HHS refused to meet with NTEU negotiators and discuss all of the parties' respective proposals, instead insisting upon written counter-proposals; and
5. HHS demanded that FMCS get involved in the bargaining after only one day of bargaining, demanded that the FMCS mediator release the parties to the FSIP after only one day of mediation, and filed a request for Panel assistance after only two days of bargaining.

If there were any doubt about what has motivated HHS' bargaining approach so far, it is dispelled by HHS' negotiators advising the Federal mediator that all of its proposals are "aligned with" the EOs.

Accordingly, to comply with the Court's injunction, HHS should immediately withdraw its request for assistance and return to the bargaining table for unassisted negotiations.

Sincerely,



Kenneth E. Moffett, Jr.
NTEU Director of Negotiations

cc: Alex Azar, Secretary, DHHS
Robert P. Charrow, HHS General Counsel