



June 13, 2018

VIA ELECTRONIC MAIL AND FIRST-CLASS MAIL

Ralph Patinella
Associate Commissioner
Office of Labor-Management
and Employee Relations
Social Security Administration
6401 Security Boulevard
2170 Annex
Baltimore, MD 21235

Re: Notice of Agency's Intent to Implement the May 2018 Executive Orders

Dear Mr. Patinella:

The National Treasury Employees Union ("NTEU" or "Union") acknowledges receipt of the agency's June 5, 2018 Notice to Implement President Trump's May 2018 Executive Orders. In that letter, you state that, "effective July 9, 2018, the agency proposes to revise [nineteen (19)] Articles, as well as any other Articles implicated by the Executive Orders, in the expired 2014 SSA-NTEU National Agreement and the parties' 2018 Ground Rules MOU to adhere to the Executive Orders." Additionally, you state that the agency "intends to provide additional information regarding the specific changes to the expired 2014 National Agreement prior to the July 9, 2018 implementation date. In addition, the agency will adhere to the 2018 Ground Rules MOU until it is modified through the statutory bargaining process." We have contacted Mr. John Kuhn to learn more about SSA's intentions, but he communicated that he is currently not aware of SSA's specific plans.

It would appear that the agency interprets the May 25, 2018 Executive Orders to supersede the Federal Service Labor-Management Relations Statute (the Statute) and to permit the agency to unilaterally implement changes to articles of the parties' collective bargaining agreement that the agency has not even submitted to the union. Moreover, SSA seems to suggest that the parties' 2018 Ground Rules MOU may be unilaterally opened by SSA even though it contains an express provision that it *may not* be opened by one party.

First, as you may know, NTEU has filed a lawsuit in federal court challenging the legality of certain provisions contained in two of the Executive Orders. Specifically, NTEU believes that the President exceeded his authority when he issued Orders that conflict with the Statute and other provisions of the Civil Service Reform Act (CSRA). More importantly, under the Statute, until the parties conclude negotiations on a successor agreement, the parties' current 2014-2018 collective bargaining agreement continues in effect. It is well-established that upon the expiration of a collective bargaining agreement, mandatory subjects of bargaining continue in effect to the maximum extent possible, absent agreement to the contrary or unless modified in a manner consistent with the Statute. U.S. Dep't of the Air Force, Headquarters, Air Force Materiel Command, 49 FLRA 1111, 1121 (1994). Case law also establishes that it is a violation of the Statute to fail to bargain over the impact and implementation of terminating provisions constituting permissive subjects of bargaining. United States Department of the Treasury Internal

Revenue Service, 66 FLRA No. 57 (2011). Based on this precedent, we do not believe SSA has any right to make unilateral changes to provisions in existing articles on July 9, or at any time until such changes are negotiated in accordance with our agreements and the law.

Secondly, the parties have executed binding and enforceable ground rules. Under those ground rules, the parties have agreed to simultaneously exchange proposals on any articles either party wishes to open on June 29, 2018, and to commence bargaining over the opened articles on July 30, 2018. SSA is thus precluded by the ground rules from unilaterally changing articles in a manner that is not consistent with the ground rules agreement of the parties. To do so would constitute a repudiation of the ground rules, a patent breach of the ground rules, and an unfair labor practice. See Department of Defense, Warner Robins Air Logistics Center, Robins AFB, GA, 40 FLRA 1211 (1991).

For these reasons, we believe that any action by the agency to unilaterally implement terms dictated by the Executive Orders on July 9, 2018, and change any terms or conditions of employment of bargaining unit employees would constitute an unfair labor practice and a patent breach of the ground rules pursuant to 5 U.S.C. § 7116(a)(1) and (5) of the Statute. Be advised that if SSA takes such action, NTEU will take appropriate legal action to enforce the parties' ground rules and to protect the employees we represent.

Finally, during the parties' ground rules negotiations the agency emphasized how important it was for the parties to continue to maintain a positive working relationship during term negotiations. The approach suggested by the agency's June 5, 2018 letter conveys the opposite approach. The parties have already negotiated ground rules, and are set to begin term negotiations that will allow the agency to seek changes to the collective bargaining agreement through bilateral negotiations with NTEU, as required by the Statute.

In order to continue to maintain a positive working relationship, NTEU looks forward to the agency continuing to comply with the Federal Labor-Management Relations Statute as enacted by Congress, the law-making branch of the federal government. That is, NTEU expects the agency to comply with the parties' binding Ground Rules, as approved on Agency Head Review on April 3, 2018, and maintain the *status quo* until the parties complete term bargaining negotiations, which are set to begin on July 30, 2018.

Please let us know when you are available to discuss this matter in advance of July 9, 2018. If you have any questions about this matter, please contact NTEU National Negotiator Brandon Braithwaite. You can reach Mr. Braithwaite via e-mail at Brandon.Braithwaite@nteu.org or via telephone directly at (202) 572-5577.

Sincerely,



Anthony M. Reardon
National President

cc: Ken Moffett, Director of Negotiations
Frank Barczykowski, Deputy Director of Negotiations
Brandon Braithwaite, National Negotiator
Christie Saunders, President, NTEU Chapter 224