

**LABOR GRIEVANCE ARBITRATION
BEFORE ARBITRATOR MICHAEL T. LOCONTO**

In the Matter of the Arbitration between

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 222, AFL-CIO**

and

**UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT.**

Issue: 2025 Return to In-
Office Work Order
(Class Action).

Federal Mediation and Conciliation Service, No. 250409-05235.

SUMMARY AWARD OF THE ARBITRATOR

The Employer violated the Agreement and the Statute when it unilaterally terminated regular and routine telework agreements for Agency employees on or around January 24, 2025.

The parties shall return to the *status quo ante*. Affected employees shall have the regular and routine telework agreements in effect on or around January 20, 2025 reinstated no later than the start of the next pay period following the date of this Award. The Employer shall also post a Notice and issue compensation to affected bargaining unit members as described herein.

The Employer is the losing party in this dispute and shall promptly pay the Arbitrator's fees and expenses. The Arbitrator will retain jurisdiction for a limited period of ninety (90) days and for the sole purpose of resolving any disputes regarding the implementation of the remedy described herein.



Michael T. Loconto, Esq.
Arbitrator

Dated: February 18, 2026

In the Matter of the Arbitration between

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 222, AFL-CIO**

and

**UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT.**

**OPINION
AND
AWARD**

FMCS No. 250409-05235 (2025 return to in-office work order – class action).

The parties submitted this matter to arbitration pursuant to Article 52 of the current collective bargaining agreement (“CBA” or the “Agreement”), which is effective through July 23, 2029, between the American Federation of Government Employees, Council 222, AFL-CIO (“AFGE” or the “Union”) and the United States Department of Housing and Urban Development (the “Employer;” also referred to as “HUD,” the “Agency” or the “Department”). The grievance alleged that the Employer committed an unfair labor practice (ULP) and violated Articles 18 and 49 of the CBA when it unilaterally eliminated telework assignments and ordered employees to return to work in a government office location. An arbitration hearing was held at HUD headquarters in Washington, D.C. on September 23, 2025.

Javes Myung, Esq. appeared on behalf of the Employer and was assisted by co-counsel Anju Mathew, Esq. and Julius Halstead, Esq. Mark Vinson, Esq., Assistant General Counsel, appeared on behalf of the Union; Veronica Bobbitt of AFGE Local 911 in Chicago, Illinois served as the Union’s technical advisor. The deadline for the parties to submit post-hearing briefs was unilaterally extended by the Arbitrator due to the federal government shutdown in late 2025. The parties submitted post-hearing briefs on January 9, 2026, and the Arbitrator declared the record closed.

ISSUES

The Arbitrator formulated the following issues for resolution based upon proposed submissions¹ from each party:

Whether the Employer violated Articles 18 or 49 of the Agreement or committed an unfair labor practice by ordering employees to report to work at assigned duty stations on a full-time basis pursuant to its January 24, 2025 order?

If so, what shall be the remedy?

RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 18 - TELEWORK

...

Section 18.02 – Eligibility.

- (1) With the exception of summer or seasonal employees, all employees in positions with duties that are conducive to telework are eligible to telework.
- (2) if the employee is considered “eligible” by HUD policy or this agreement, denial and termination decisions must be based on business needs or performance, not arbitrary or capricious reasons. When provisions of the Departmental policy are inconsistent with or contradict this Article, the Article will prevail.

...

Section 18.03 – Roles and Responsibilities.

- (1) The approving official shall:

...

¹ The Union proposed the following statement of the issues:

Did the Agency violate the parties’ master agreement, law, established practice or governing policy when on or about February 24, 2025, it began to unilaterally implement the Return To In-Person Work Presidential Memorandum by requiring bargaining unit employees to report to their duty station on a full-time basis? If so, what is the appropriate remedy?

The Employer proposed the following statement of the issues:

Did the Agency violate the Parties’ CBA, supplements, and other statutes or regulations when it notified bargaining unit employees (“BUE”) on January 24, 2025 that they would need to begin reporting to the office on a full-time basis and modify their Flexiplace agreement to reflect their new schedules?

- (d) Notify the Union when the agreement is terminated, suspended or modified by the Supervisor for one pay period or more.

...

ARTICLE 49 - MID-TERM BARGAINING

Section 49.01 – General. The rights and obligations of the parties regarding Mid-term Bargaining shall be in accordance with 5 USC Chapter 71 and this Agreement. The purpose of this article is to prescribe the criteria and procedures by which the Union and the Department (the parties) shall engage in negotiations during the term of the Agreement. The parties agree that it is in the interest of the Government, the public, and the parties to negotiate in good faith in order to facilitate negotiations.

- (1) The parties are encouraged to engage in pre-decisional involvement prior to formal presentation of proposals for changes to personnel policies, practices, and/or working conditions under this Article.
- (2) Nothing in this Agreement shall be deemed to waive either party's statutory rights.

Section 49.02 – Mid-Term Changes.

During the term of this Agreement, Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment. Receipt of the proposed changes by the designated Union representatives, or their designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article. Any notice sent after 4:00 p.m. shall be deemed to be received on the next business day. If feasible, management will provide advance written notice at least 30 days prior to the proposed implementation date, of any change affecting conditions of employment. Management may implement as soon as the bargaining obligations are satisfied, even if the 30 day time frame has not been exhausted.

ARTICLE 52 - ARBITRATION

...

Section 52.04 – Arbitration Fees and Expenses. The losing party shall pay the arbitrator's fees and expenses. The arbitrator shall indicate which party is the losing party. If, in the arbitrator's

judgment, neither party is the clear losing party, costs shall be shared equally. ...

...

The party or parties responsible for the payment of any associated fees or other expenses shall promptly pay the costs.

...

Section 52.08 – Prehearing Submissions and Conferences. ... If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit separate statements and the arbitrator shall determine the issue(s) to be heard and factual matters deemed to be stipulated.

...

Section 52.10 – Authority of the Arbitrator.

- (1) The parties agree that the jurisdiction and authority of the arbitrator shall be confined to the issue(s) presented in the grievance.
- (2) The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplements thereto. In the case of a back-pay award the arbitrator may authorize reasonable attorney's fees in accordance with any legal remedy allowed by law, including in accordance with standards contained in the Back Pay Act as amended by the Civil Service Reform Act of 1978.

...

- (5) The arbitrator shall resolve any arbitration disputes consistent with this Agreement.
- (6) The arbitrator's award shall be binding on the parties. An award must be consistent with current law and regulation.
- (7) Payments to the arbitrator shall be immediately paid regardless of whether any exception(s) are filed. Exceptions may include requests for reimbursements of arbitrators' fees.

...

NATIONAL SUPPLEMENT 34

...

SCOPE: This Supplemental Agreement modifies the current Telework Article due to the Department's implementation of a broader Flexiplace policy, which includes remote work and mobile work. The Department and Council 222 reached agreement on Supplement 33, Flexiplace Policy. This Supplement does not waive any rights of the Parties and modifies only those specific provisions of Article 18 mentioned below.

1. Limitations. The Parties agree that no provision of Article 18 other than those specifically identified below are modified by this Supplement.
2. Precedence. The Parties agree that HUD's new Flexiplace Policy does not supersede any provisions of the HUD-AFGE Collective Bargaining Agreement (CBA) unless explicitly stated in this Supplemental Agreement. If there is any conflict between the new proposed Flexiplace Policy and the provisions of this Supplemental Agreement, the terms of this Supplement will govern. If there is any conflict between the new proposed Flexiplace Policy and provisions of the CBA that are not modified under this Supplement, the terms of the CBA will govern.
3. Section 18.01, General. The Parties agree to replace Section 18.01 in its entirety with the following language:
Section 18.01, General.
 - (1) Definitions. For the purpose of this article, telework shall be defined as in 5 U.S.C. § 6501: "a work flexibility arrangement under which an employee performs the duties and responsibilities of [the] employee's position ... from an approved worksite other than the location from which the employee would otherwise work." Telework is simply a way of getting work done from a different location.
 - a. Regular and recurring shall mean a schedule in which at least two specified days each pay period are planned to be at a stated worksite (e.g., a HUD office, home, or other approved alternative worksite" as a matter of routine.
 - b. Routine telework is telework that occurs as part of an ongoing regular and recurring schedule with the telework day or days specified in a written telework agreement between the employee and employee's supervisor.
 - c. Situational telework is telework that is approved on a case-by-case basis and the hours or days teleworked are not part of an ongoing, and regular telework schedule. Permission for an

employee to participate in situational telework must be specified in an existing written telework agreement between the employee and employee's supervisor unless an agreement is already in place for regular and routine telework.

- (2) Departmental Policy. In accordance with § 359 of Public Law 106-346, HUD's Flexiplace Policy dated January 10, 2022, provides the telework policy for the Department of Housing and Urban Development. Under these provisions the Department encourages the implementation of telework to the maximum extent possible. No individual office or program area is authorized to establish a telework policy or modify or amend the HUD Flexiplace policy dated January 10, 2022, without the written approval of the Chief Human Capital Officer and/or the fulfillment of bargaining obligations with HUD AFGE Council 222. If Management makes any changes to the HUD Flexiplace policy dated January 10, 2022, either before or upon implementing it as a numbered handbook, those changes shall be subject to notice and bargaining obligations under the CBA.

...

5. Section 18.04, Application Requirements and Process. The Parties agree to replace Section 18.04 in its entirety with the following language:

Section 18.04, Application Requirements and Process.

- (1) Employees on a five (5) day per week schedule may telework up to four (4) days per week. Employees on compressed work schedules may telework up to three (3) days per week during a compressed week. Teleworking employees are required to report to the office at least twice a pay period.
- (2) Once an agreement is approved, employees may begin teleworking upon mutual agreement between the employee and their immediate supervisor.
- (3) Employees who are denied telework or whose request is modified by the supervisor may select either the appeal process in HUD Flexiplace Policy dated January 10, 2022, -or- the grievance procedures

outlined in Article 51 of the Collective Bargaining Agreement.

- (4) Telework agreements are not required to be renewed once they have been approved. They remain in place until either party decides to modify or terminate the agreement. The telework agreement in place at the time of the implementation of this agreement will remain an effect unless the employee is no longer eligible for telework. ...

...

- (6) Employees may apply for telework at anytime.

...

- (9) Communication levels and the methods of communication between employees and supervisors are expected to remain the same whether an employee is working in the office or teleworking. The communication requirements of the manager will be discussed with employee and identified in the telework application and agreement. Teleworkers will provide a telephone number where they may be reached by the supervisor and or, other management officials.

...

6. Section 18.06, Modification of Telework Agreements. The Parties agree to replace Section 18.06(2) with the following language:

(2) The Parties recognize that an employee's telework schedule constitutes an agreement between employee and supervisor, and the changes to the schedule may affect the method, timing, and cost of commuting as well as the scheduling and cost of dependent care. If a supervisor requires a temporary modification to the telework arrangement based on the needs of the office, the supervisor shall give the employee reasonable advance notice and shall provide as much notice as possible; under normal circumstances such as when information is available in advance (e.g., when scheduling training), this shall be no less than one full pay period. The employee may engage in discussions with the supervisor to achieve a mutually agreeable resolution if there is any conflict about the proposed temporary modification.

...

RELEVANT LAWS AND REGULATIONS

Title 5 – GOVERNMENT ORGANIZATION AND EMPLOYEES

CHAPTER 65-TELEWORK

5 U.S.C. §6501. Definitions

...

(3) Telework.—The term “telework” or “teleworking” refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

...

5 U.S.C. §7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency---

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

...

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

...

BACKGROUND

This matter arose from a presidential directive for federal workers to return to work in government offices in early 2025.

On January 20, 2025,² Donald J. Trump was inaugurated as the 47th President of the United States. President Trump issued a number of directives on Inauguration Day, including a memorandum (hereinafter “Presidential Memorandum”) entitled “Return to In-Person Work:”

² All relevant events in this dispute took place during calendar year 2025, unless otherwise specified herein.

Heads of all departments and agencies in the executive branch of Government shall, as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary.

This memorandum shall be implemented consistent with applicable law.

90 Fed. Reg. 8251 (Jan. 28, 2025).

The Parties. The United States Department of Housing and Urban Development, the Employer, is an agency of the executive branch of the United States Government. The President of the United States is the head of the executive branch of government and, from time to time, issues orders and directives to the heads of executive branch agencies. The Agency's leader, Secretary Scott Turner, was appointed by the President and confirmed by the United States Senate on February 5.

The American Federation of Government Employees, the Union, is the largest collective bargaining agent representing workers in the federal government. AFGE Council 222 represents workers assigned to HUD. Dr. Ashaki Robinson, a social science analyst in policy development and research at HUD, is the president of AFGE Local 476 and a regional vice-president for Council 222.

Stipulated Facts. At the outset of the arbitration hearing, the parties submitted the following undisputed facts for consideration by the Arbitrator:

1. On July 23, 2015, the Department of Housing and Urban Development (HUD) and AFGE National Council 222 ("Union") executed the parties' Collective Bargaining Agreement ("CBA").
2. From January 2022 until April 2022, the parties negotiated and bargained over the CBA Supplements 33 and 34 and HUD's

Flexiplace Policy, which outlined HUD's expanded workplace flexibilities.

3. On April 11, 2022, HUD and the Union executed Supplement 33 to the CBA which implemented HUD's Flexiplace Policy as it relates to remote and mobile work.
4. On April 11, 2022, HUD and the Union executed Supplement 34 to the CBA which made amendments to Article 18, Telework, in the 2015 CBA.
5. In May 2022, HUD issued its May 2022 Flexiplace Policy, Handbook 625.1 Rev. 1, which is now HUD's operative telework policy and supersedes any other references to telework in any other Agency policies or guidance dated prior to this policy.
6. On or about December 18, 2024, the parties agreed to extend the CBA through July 23, 2029.
7. On January 24, 2025, HUD Chief of Staff Andrew Hughes sent an email stating that all employees would be expected to begin reporting to a HUD office full time, unless approved for an exemption.
8. On January 24, 2025, the Office of the Chief Human Capital Officer sent an email to staff stating 18 that BUEs³ who are not on a remote work agreement are expected to begin reporting to their official HUD office on a full time basis beginning the week of February 24, 2025, and directed BUEs to submit modified Flexiplace Agreements.

Many of the additional facts that are relevant to the resolution of this matter are not in dispute.

The Evolution of Telework at HUD. Sal Viola, the Council 222 chief steward, asserted that the Employer has permitted some forms of telework since he first joined the agency in 1987. Article 18 of the Agreement defines telework and was adopted in 2015. All employees, with the exception of summer or other seasonal employees, are eligible for telework. During the COVID-19 pandemic, telework was rapidly introduced as a new norm for office workers in the

³ BUE is an abbreviated reference to “bargaining unit employees.”

Department, the government and in society generally. Specifically, Department employees were assigned to perform maximum mandatory telework on a full-time basis, which for most employees involved remote work on a five-day per week schedule. As vaccines were introduced and pandemic public health restrictions were eased, the Department sought to implement a hybrid schedule for employees. The hybrid schedules were intended maintain remote work assignments with a minimum amount of time required for employees to report to work in a government office location.

The Department developed a policy on telework called the Flexiplace Policy (the “Policy”). The Policy was implemented on January 10, 2022, subject to bargaining with the Union over matters covered by the Agreement. As the parties stipulated, the parties negotiated over the implementation of the Policy and adopted Supplements 33 and 34. Supplement 34 increased the number of days allowed per week for employees to perform telework. Specifically, Article 18 permitted employees to telework up to 3 days per week. Supplement 34 increased maximum telework to 4 days per week.

Collectively, these Supplements were adopted in April 2022 and modified Article 18 of the Agreement. The Department subsequently amended and adopted a revised Flexiplace Policy, in May 2022, which reflected the parties’ supplemental agreements.

The Policy. Handbook 625.1 Rev. 1 defines types of telework available to bargaining unit members:

CHAPTER 3. TELEWORK.

3-1 Types of Telework:

1. Telework is a voluntary arrangement where the employee is expected to report to work at an agency worksite on a regular and recurring basis at least twice each pay period and also works from an alternative worksite on a regular and recurring or situational basis. *Note: Any arrangement that requires employees to report to*

the agency worksite less than twice a pay period, including “full-time telework,” is defined as remote work under this policy.

...

3. There are two types of telework, listed below. The telework program is designed to be beneficial to both the Department and the employee. Employees are encouraged to apply for Situational telework even if they do not plan on working a Regular/Routine telework schedule. ...

a. **Regular/Routine Telework** is telework that occurs as part of an ongoing regular and recurring schedule with the telework day or days specified in a written telework Flexiplace agreement between the employee and the employee's supervisor. In order to be considered regular telework, an employee must be regularly scheduled to work at an alternative worksite for a minimum of one day per pay period. Managers and supervisors should use their discretion to determine not only the amount of time an employee can work outside the office, but the type and amount of communication necessary to ensure the work of the office is completed. Employees **MUST** report to the office a minimum of 2 days per pay period under this type of telework, regardless of their work schedule type. Employees who report to the HUD office on fewer than six days per pay period may be subject to space sharing agreements such as hoteling or hot desking.

b. **Situational Telework** is telework that is approved on a case-by-case basis where the hours or days teleworked are not part of an ongoing, and regular work schedule. Supervisors may approve instances of non-recurring work away from the agency when the employee has an approved Situational or Regular Telework arrangement.

(emphasis in original).

On October 4, 2024, the Department’s Office of the Inspector General (OIG) issued a report on the use and oversight of telework and remote work. The report was a requirement of the Telework Enhancement Act of 2010, Pub. L. No. 111-292, tit. V, 124 Stat. 3165 (2010) (the “Act”). Among other provisions, the Act required that the report provide

An explanation of ... what actions are being taken to identify and eliminate barriers to maximizing telework opportunities....

Id. at §6506(b)(2)(E). The report noted that

As of January 2024, 85 percent of HUD employees had approved telework agreements, and 9 percent had approved remote work arrangements. HUD estimated that 31 percent of remote employees were remote as a reasonable accommodation.

Based on the OIG report, Robinson estimated that 6,856 of the Department's 8,097 employees were performing regular and routine telework work pursuant to a telework agreement. Another 107 employees were approved for situational telework at the time of the report's issuance.

HUD Implements the Presidential Memorandum. Robinson explained that routine and recurring telework had benefits for the Department and affected employees. Specifically, the Department reduced in-office energy consumption and employees reduced transit costs. Robinson also asserted that most Department employees utilized telework to perform at least one day of work per week prior to the issuance of the Presidential Memorandum. The January 24 email from the Department's Chief of Staff stated that the Presidential Memorandum was intended to

increase the efficiency and accountability of the federal workforce because virtually unrestricted telework has led to poorer government services and made it more difficult to supervise and train government workers, as stated in the Government-wide guidance issued by the U.S. Office of Personnel Management. This requirement will be implemented in a phased approach.

...

Beginning the week of February 24: All bargaining unit employees who are not on a remote work agreement must report to their HUD office duty station full-time starting on their first scheduled workday in accordance with the Return to In-Office Work Presidential Memorandum.

Employees may be excused from this requirement if they have an approved reasonable accommodation based on a disability or a qualifying medical condition. Additionally, mobile workers and employees on approved Domestic Employees Teleworking Overseas (DETO) agreements are exempt from this requirement.

Over the next few days, guidance will be provided for employees on remote work agreements.

You will receive additional information on administrative requirements from the Office of the Chief Human Capital Officer shortly.

(emphasis in original). The Office of the Chief Human Capital Officer (CHRO) also issued an email on January 24. The message described the Department's planned phased approach to implementing the return to in-office work directive:

Phase 2, beginning the week of February 24, 2025: Bargaining Unit Employees who are not on a Remote Work Agreement

- Bargaining unit employees who are not on a remote work agreement are expected to begin reporting to their official HUD office full-time beginning the week of February 24, in accordance with the Return to In-Office Work Presidential Memorandum, starting on their first scheduled workday.
 - Your current Flexiplace Agreement must be modified effective February 24 to reflect your new in-office schedule due to the change in work requirements ordered by the President. Therefore, you must submit a new Flexiplace Agreement to modify your existing telework agreement and reflect your new in-office schedule and your desire to continue to participate in situational telework, if you choose to do so on an ad-hoc basis, with supervisory approval.
 - Failure to comply with these instructions may result in disciplinary action.

Phase 3: Remote Workers

- Additional instructions will be forthcoming for employees on remote work agreements.

(emphasis in original). The email described the process for employees with reasonable accommodations or DETO agreements to seek exclusions from the directive and also temporarily exempted workers assigned to the Javits Building in New York City and the Headquarters building in Washington, D.C. from the directive while construction and repair work was completed at each facility.

The Department Provides Notice of A Change. Robinson asserted that the

Department's implementation of the Presidential Memorandum effectively eliminated regular and routine telework. On February 13, the Department issued an email to a number of Union representatives, including Robinson:

Dear AFGE Officials:

Please consider this an official notification in accordance with Section 18.03(1)(d) of the CBA that management intends to modify the Flexiplace agreements of AFGE bargaining unit employees. Please see the message below for a timeline and details on this modification.

The email included a copy of the January 24 message from the Chief of Staff.

The Union considered the Department's notice to be *a fait accompli*. Robinson asserted that the provision cited by the Department was intended for modification of individual Flexiplace agreements. By comparison, Robinson asserted that the Department's intended change required mid-term bargaining pursuant to Article 49 of the Agreement. The Union did not demand to bargain over the change; Robinson asserted that the Union considered Article 18 to remain in effect.

Antonio Gaines, the Union's Council 222 president who also received the February 13 notice, viewed the Department's actions as a repudiation of Article 18. Gaines added that the Department never proposed a change to the underlying policy nor did it articulate a rationale to support the allegation that telework had led to a deterioration of government services or had created issues for supervising or training employees. By comparison, Robinson noted that the Department provided substantive notice of changes to telework agreements on two occasions during 2024. In one instance, the Department intended to modify Flexiplace agreements for

employees in the Multifamily Housing unit at the Department's headquarters building. The February 27, 2024 email notice stated that

The business-based reason related to the employee for this schedule change is as follows:

The added in-office days will facilitate more effective training, mentoring, knowledge transfer, collaboration, networking, and team-building, enhancing productivity to further enhance the Multifamily community. Furthermore, as a large, dynamic public facing business with over 1,200 employees (roughly 65% of which are either new to HUD or new to their position since 2021), a national platform with over 30,000 assets, a massive number of stakeholders, business partners and residents that depend on us, consistent in-person interaction through consolidated in-office days, will continue to be a critical component of our success. Though TEAMS has proven to be a capable tool for some virtual interaction, it falls short of the high-quality collaboration and enhanced relationship building that happens when we're physically together.

In another instance, the Department intended to modify Flexiplace agreements for employees in the Community Planning and Development (CPD) unit at the Department's headquarters. The April 24, 2024 email notice included a detailed justification for the change, focused on five areas: policy development; program execution; risk mitigation; new employees, retention, and succession issues; and stakeholder engagement.

The Union filed a grievance on May 9, 2024, asserting that the Department committed unfair labor practices (ULPs) by failing to bargain over the changes to Flexiplace agreements in the Multifamily Housing and CPD units at the headquarters building. The Union withdrew the grievances after the parties agreed to an extension of the current collective bargaining agreement in December 2024.

The Grievance. The Union filed a grievance alleging a violation of the Agreement on March 11. Specifically, the Grievance alleged that the Department

repudiat[ed] Article 18 of the CBA when it issued a “Return to In-Office Work” (“RTO”) directive and for failing to bargain in good faith with the Union concerning its unilateral termination of telework and remote work arrangements.

The Employer denied the Grievance on April 8. Lori Michalski,⁴ the CHRO at the time, asserted that the Department did not fail to bargain over the implementation of the RTO directive because the Department had already bargained over Supplements 33 and 34, which modified the telework provisions in Article 18 of the Agreement and established additional standards for mobile and remote work. The grievance denial asserted that the

procedures to change and/or terminate these flexibilities were negotiated in these National Supplements. The Agency has followed and abided by these requirements. The Agency is not required to renegotiate or give notice regarding procedures it has already negotiated with the Union.

Michalski also denied that the Department violated the law, engaged in an unfair labor practice or repudiated the Agreement. Following the implementation of the RTO directive, Michalski asserted that about 600 Department employees have routine telework agreements in place – representing approximately 10% of the workforce. Michalski asserted that some of those employees with current routine telework agreements have reasonable accommodations, while others are military spouses working on DETO agreements. Others, such as those assigned to the regional office in Atlanta, Georgia, are subject to temporary telework assignments due to space restrictions.

On April 8, the Union notified the Employer that it was invoking arbitration pursuant to Article 52 of the Agreement by filing a demand with the Federal Mediation and Conciliation

⁴ Michalski was promoted to Acting Deputy Assistant Secretary for Administration in the Department at the time of the arbitration hearing in this dispute.

Service (FMCS). On June 12, the parties notified the FMCS that Arbitrator Michael Loconto was mutually selected to resolve this dispute.

POSITION OF THE UNION

The Union argued that the Employer violated Articles 18 and 49 of the parties' Agreement, past practice and applicable law when it unilaterally implemented the Return to In-Person Work Presidential Memorandum ("PM") by requiring bargaining unit employees with valid regular/routine telework agreements to report to their duty stations on a full-time basis. Moreover, the Union asserted that the Employer's actions constituted unfair labor practices within the meaning of 5 U.S.C. §7116(a)(1) and (5). The Union asserted that by establishing this new policy, the Employer has effectively barred most eligible employees from participating in regular/routine telework. Telework has been a feature of the Agreement since the adoption of Article 18 in 2015. Previously, 6,856 employees participated in regular/routine telework – up to four days per week pursuant to the Agreement. After the implementation of the PM, only about 600 employees remain participating in regular/routine telework – all of whom do so pursuant to reasonable accommodations or DETO agreements.

The Union further asserted that the Employer failed to establish an operational need for this change. Specifically, the Employer failed to produce any evidence that regular/routine telework has diminished service quality, hindered supervision or training, or created inefficiencies. The Union also asserted that the Employer impermissibly relied on the PM for unfettered discretion to modify employee telework agreements. Executive branch directives cannot unilaterally nullify statutes passed by Congress or override binding contractual obligations negotiated pursuant to federal labor law. *See, e.g., United States Dep't of Veterans Affairs*, 72 FLRA 287, 289-290 (2021) ("Unlike rules and regulations, statutes are not subject to

5 U.S.C. §7116(a)(7)'s enforcement prohibition. But the executive order is not a statute, and §7116(a)(7) prohibits the enforcement of any rules or regulations, including executive orders, that conflict with preexisting collective-bargaining agreements.”⁵ To the contrary, the PM stated that it should be “implemented consistent with applicable law.” Moreover, the Union asserted that the Employer knew how to provide substantive reasons for changing telework assignments and had done so on at least two occasions – yet failed to do so in this case. The Employer failed to provide any testimony or other evidence of substantive justifications for the elimination of regular/routine telework.

The Union further asserted that the Employer's rationale was immaterial because it failed to provide the Union with an opportunity to bargain over the change in policy. The Agreement and the Statute mandate bargaining over changes, and the Employer failed to comply. Telework is a condition of employment, and the Employer is obligated to bargain over changes to the terms and conditions of employment. The unilateral implementation of a change in the conditions of employment is an unfair labor practice. *See* 5 U.S.C. §7116(a)(1) and (5). The Federal Labor Relations Authority (FLRA) has upheld several arbitration awards that found an agency failed to bargain over a change in telework because the changes modified conditions of employment. *Environmental Protection Agency v. AFGE Council 238*, 63 FLRA 30 (2008); *AFGE Council 222 v. HUD*, 66 FLRA 106 (2011); *see also NAGE R-144 v. Dep't of the Navy*, 65 FLRA 552 (2011) (finding proposal on telework negotiable). An unfair labor practice ruling by an arbitrator has the same force of law as a determination made by an administrative law judge in a FLRA proceeding. *See AFGE Council 236 and Gen. Servs. Admin.*, 63 FLRA 651, 652 (2009).

⁵ The Union did not concede that the presidential memorandum at issue is an executive order nor that it was issued pursuant to any apparent statutory authority.

In this case, the Union asserted that the Employer failed to provide sufficient notice of the change to telework and an opportunity to bargain prior to implementation. The Employer presented the change as a decision rather than a proposal. The Union asserted that the Employer presented the change as *a fait accompli* and, therefore, a request to bargain would have been futile. See *United States Dep't of Homeland Security, U.S. Customs and Border Protection*, 64 FLRA No. 179, ¶9 (2010) (a union does not waive its right to bargain when notice coincides with issuance of guidance implementing the change); see also *U.S. Dep't of the Navy, Naval Avionics Ctr.*, 36 FLRA 567, 572 (1990). By filing a grievance, the Union preserved its right to bargain over the implementation of the change. See *POPA v. FLRA*, 872 F.2d 451, 455-56 (D.C. Cir. 1989).

The Union also rejected the Employer's assertion that the Agreement permitted it to make changes to telework agreements without bargaining. Article 18.01(2) contemplates that employees are permitted to telework up to 4 days per week, and the Employer has established a long-standing practice of permitting employees to do so. A condition of employment may also be established by practice. *United States Dep't of the Air Force v. AFGE Local 1867*, 65 FLRA 756, 758 (2011). A binding past practice must be consistently exercised over a significant period and be implicitly or explicitly accepted by the parties. Although the Employer asserted that telework is not an entitlement for Agency employees, in practice the Employer permitted 85% of eligible employees to engage in regular/routine telework, up to 4 days per week, in accordance with the Agreement until February 24, 2025.

Moreover, the Union asserted that the Employer's implemented change was not "covered by" the Agreement. Specifically, the Employer did not satisfy its bargaining obligations prior to implementing the change. A party may only refuse to bargain about matters (1) expressly addressed in the agreement or (2) "inseparably bound up with" a subject "covered by the

agreement.” *See Soc. Sec. Admin.*, 64 FLRA 199, 202 (2009). Here, Article 18 does not contemplate the wholesale elimination of regular/routine telework. To the contrary, Article 18 explicitly states that if “Management makes any changes to Flexiplace policy handbook 625.1...those changes shall be subject to notice and bargaining obligations under the CBA.” Article 18.01(2). It is clear that regular and routine telework is a feature of the Agreement, *see* Article 18.01(1)(b), and the Employer’s elimination of the benefit required bargaining.

Although the Employer may point to a recent decision, *AFGE Local 3972 v. HUD*, 74 FLRA No. 44 (2025), the Union asserted that the facts are distinguishable from this dispute. In *AFGE Local 3972*, the Employer required employees in one unit to adjust their telework agreements to reflect one additional day of work per week in the office. The arbitrator denied the grievance, which asserted that the Agreement was violated and the Employer committed an unfair labor practice by failing to bargain over the changes. In this case, the Employer has relied on the PM to effectively eliminate regular/routine telework across the Agency. The Agreement allows eligible employees to participate in regular/routine telework “to the maximum extent possible.” Article 18.01(2). The affected BUEs in *AFGE Local 3972* retained the ability to participate in regular/routine telework, although they were required to increase the number of in-office workdays. In this dispute, no employee is permitted to engage in regular/routine telework unless they fall within limited exceptions.

The Union further asserted that the Employer’s unilateral changes to telework agreements across the bargaining unit disregarded the established criteria for amending such agreements pursuant to Article 18. A telework agreement is an agreement between the employee and his or her supervisor and does not require renewal. *See* Article 18.04(2), (4). Article 18 provides criteria for employees to qualify as eligible to perform telework and also provides individual factors for the supervisor to consider for declining an individual employee’s request for telework

or to withdraw a previous grant of telework. By unilaterally withdrawing approval for telework across the Agency *en masse*, the Employer has rendered this language meaningless.

Moreover, the Union asserted that the Employer's elimination of regular/routine telework constituted a repudiation of Articles 18 and 49 of the Agreement. These provisions are at the heart of the parties' Agreement, and the Employer has clearly and patently breached its obligations. *See Dep't of Justice v. AFGE Local 3935*, 68 FLRA 786, 788 (2015). The Employer's actions on January 24, 2025 effectively cancelled regular/routine telework for most BUEs, which amends the Flexiplace policy without bargaining as it is required to do by Article 18.01(2). Moreover, Article 49 requires a mid-term bargaining process for changes to policies or past practices. Telework was a clear condition of employment and the Employer's changes were made without providing the Union with an opportunity to bargain. These provisions go to the heart of the parties' Agreement and are intended to presser the Union's statutory right to bargain over changes to working conditions.

In summary, the Union respectfully requested that the Arbitrator sustain the grievance and award three remedies for the Employer's violations. An arbitrator is "empowered to fashion the same remedies in the arbitration of a grievance alleging the commission of an unfair labor practice as those authorized under [§] 7118 of the Statute." *Nat'l Treasury Employees Union v. FDIC*, 48 FLRA 566, 570 (1993). First, the Union requested that the Arbitrator order a return to the *status quo ante*. Here, the Union asserted that the Employer notified the Union of the change as *a fait accompli*, making any request to bargain futile; the Union filed a timely grievance alleging the Employer failed to bargain; the Employer disavowed its duty to bargain; the change has had a substantial impact on working conditions; and there would be no disruption from a return to the *status quo ante*. As such, the Union asserted that a return to the *status quo* until the completion of bargaining is appropriate. *Accord U.S. Dep't of Energy & AFGE Local 3824*, 56

FLRA 9, 13 (2000) (*internal citation omitted*). Second, the Union requested an order for the posting of a notice that the Employer violated the Agreement and the Statute by failing to meet its bargaining obligations. Finally, the Union requested the imposition of a monetary remedy for employees harmed by the Employer's violations. The Back Pay Act permits compensation for a monetary loss due to the violation of a collective bargaining agreement, which is an unjustified or unwarranted personnel action. *See U.S. Customs and Border Protection v. Nat. Border Patrol Council*, 66 FLRA 198, 204 (2011). BUEs affected by the Employer's action have incurred additional commuting costs due to the change in policy. The Union requested that the Arbitrator retain jurisdiction for the purposes of resolving any question of remedy, and any attorney's fees to which the Union may be entitled based upon the Arbitrator's findings.

POSITION OF THE EMPLOYER

The Employer asserted that it did not violate the parties' Agreement, supplements, and other statutes and regulations when it notified affected BUEs on January 24, 2025 that they would need to begin reporting to the office on a full-time basis and modify their Flexiplace agreements to reflect their new schedules. The Employer further asserted that it had no obligation to bargain over this change since it did not change the underlying policy or eliminate telework; modifications to employee Flexiplace agreements were made consistent with the requirements of the Agreement.

The Employer specifically asserted that the Agreement contains a bargained-for process for modifying telework agreements. "If a collective bargaining agreement 'covers' a particular subject, then the parties to that agreement 'are absolved of any further duty to bargain about that matter during the term of the agreement.'" *BOP v. FLRA*, 654 F.3d 91, 94 (D.C. Cir. 2011) (*citing Navy v. FLRA*, 962 F.2d 48, 53 (D.C. Cir. 1992)). The parties negotiated amendments to

Article 18 in 2022, which addressed remote work and mobile work provisions in the Employer's Flexiplace policy. When the Employer sought to initiate a change to employee Flexiplace agreements, the Employer followed the Agreement by notifying BUEs of the change, providing business reasons for the change, and requiring the development of new telework agreements. As such, no further bargaining was required. The Employer noted that another arbitrator determined that the Employer did not breach the Agreement and was not required to bargain when it changed telework agreements for Multifamily Housing unit employees in the Denver, Colorado regional office. *See U.S. Dep't of Housing and Urban Development and AFGE Local 3972*, FMCS Case No. 241002-02347 (Lundberg, 2024).

The Employer also rejected the claims that telework has been eliminated or that the Employer's policy has been changed. The Policy permits employee participation in management's discretion, and the Flexiplace agreements make clear that employees are not entitled to telework. Moreover, employees may continue to perform situational telework, as provided by the parties, and 10% of the Employer's workforce maintains a routine telework agreement.

The Employer further asserted that it followed the provisions of the Agreement when it notified BUEs of the change. Specifically, the Employer notified employees and the Union at least one pay period before the change took effect, provided reasons for the modification, and directed employees to complete a new telework agreement, in accordance with Article 18.03(1)(d) and 18.06(1), (3). In fact, the Employer provided four weeks' notice, and on January 24, 2025 identified three reasons for the modification: (1) increase the efficiency and accountability of the federal workforce, (2) increase the quality of services, and (3) improve the supervision and training of Agency employees. The Policy also permits the Employer to

permanently modify or terminate an employee's telework arrangement, at any time, for business reasons. Article 18.04 also obligated employees to report to the office "at least twice per pay period," which suggest that the number of days of in-office reporting may be increased pursuant to a valid modification.

For the foregoing reasons, the Employer respectfully requested that the grievance be denied in its entirety and the matter be dismissed. The Employer further requested that the Arbitrator identify the Union as the losing party with liability for the arbitrator's fees and expenses pursuant to Article 52.04.

OPINION

The Employer violated the Agreement.

This dispute is focused on the predominant type of telework that HUD employees performed prior to the issuance of the Presidential Memorandum: regular and routine telework. Prior to January 20, 2025, 85% of the Department's 8,097 employees participated in regular and routine telework. By comparison, only 107 employees were engaged in situational telework at the time and the remainder of the workforce did not have a telework agreement.

Unequivocally, the Agreement did not permit the Employer to unilaterally terminate telework agreements for nearly 7,000 employees. The plain language of the Agreement is replete with references to the parties' mutual understanding of the benefits that telework provides to the Employer and employees. Indeed, the parties intended to implement telework to the maximum extent possible and in accordance with applicable law. As the Employer noted, the Department's Flexiplace Policy remained unchanged and the Employer did not seek to bargain over changes to the telework provisions of the Agreement or the Policy.

By terminating telework agreements for thousands of bargaining unit members without a valid basis, the Employer repudiated the Agreement. In doing so, the Employer committed an unfair labor practice by restraining those employees from accessing a term and condition of employment.

For these and other reasons described herein, the grievance is sustained.

Article 18 Restricts the Employer's Ability to Terminate Telework Agreements. As the Employer has asserted, Department employees are not entitled to telework without qualification. All full-time, non-seasonal employees are eligible for telework pursuant to the Agreement. However, an employee must first complete an agreement, with authorization from his or supervisor, in order to perform telework on a scheduled or intermittent basis. Once an employee is approved for telework, the agreement is not subject to review and may only be terminated for certain business or performance-related reasons. *See* Article 18.02(2); Supplement 34, sec. IV, para. 34.

Business Reasons. The Employer has previously asserted valid business reasons for modifying telework agreements on a unit-wide basis. *See U.S. Dep't of Housing and Urban Development and AFGE Local 3972*, FMCS Case No. 241002-02347 (Lundberg, 2024); *aff'd*, 74 FLRA No. 44 (2025). In that case, the Employer reduced the number of telework days for employees working in a regional office unit. The arbitrator in that dispute rejected the Union's claim that the Employer was required to engage in mid-term bargaining, pursuant to Article 49 of the Agreement, prior to modifying telework agreements for the affected unit employees. This case is different. As an initial matter, the Employer only sought to modify telework agreements in one regional office unit in the previous dispute, rather than fully terminate the vast majority of regular and routine telework agreements across the entire Agency. The affected employees in the previous dispute retained the ability to perform regular and routine telework, as permitted

within the scope of the Agreement and the Policy. Here, it is established in the next section of this Opinion that the Agreement did not permit the Employer to eliminate employee telework privileges without meeting certain standards.

In addition, the Employer's decision in the previous arbitration affected a discrete group of individuals and contemplated specific business reasons. In this case, as established below, the Employer made generalized, conclusory statements to support a blanket change affecting the entirety of the bargaining unit. This distinction is relevant to the sufficiency of the Employer's rationale for terminating regular and routine telework agreements across the Agency.

The Employer's Reasons for Terminating Telework Agreements Were Arbitrary and Capricious. The Agreement makes clear that telework agreements may not be terminated for arbitrary or capricious reasons. *See* Agreement, Article 18.02(2); Supplement 34, sec. II, para. 14 and sec. IV, para. 34. Specifically, "Management shall not terminate, modify, or deny a remote work arrangement as a form of punishment or *managerial personal preference*." Supplement 34, sec. II, para. 34 (*emphasis added*).

The Employer's memorandum announcing the changes specifically cited the January 20, 2025 Presidential Memorandum as the reason for ending regular and routine telework for most employees in the Department. The Agreement does not permit the Employer to rely solely upon subjective preferences when terminating telework. Although the Employer subsequently stated limited reasons for its decision to end telework, the Employer's reasons were conclusory and were not supported by any objective measure. Moreover, the Employer's rationale for ending telework was categorically opposed to the Agreement, which detailed the parties' mutual understanding about the benefits of telework and incorporated the goals of the Telework Enhancement Act of 2010. *See* Pub. L. No. 111-292, tit. V, 124 Stat. 3165 (2010).

The Employer asserted that it was ending regular and routine telework to “increase the efficiency and accountability of the federal workforce,” and further asserted that telework “led to poorer government services and made it more difficult to supervise and train government workers.” To the contrary, the Employer and the Union extended the parties’ collective bargaining agreement roughly one month prior to the issuance of the Presidential Memorandum. The Agreement details the parties’ mutual understanding about the telework. Principally, the parties regard telework as “simply a way of getting work done from a different location.” Article 18.01(1). To this end, the parties agreed that the “[c]ommunication levels and the methods of communication between employees and supervisors are expected to remain the same whether an employee is working in the office or teleworking.” Article 18.04(9). For these reasons, the parties agreed to implement telework “to the maximum extent possible.” Article 18.01(2); *see also* Flexiplace Policy, Handbook 625.1 Rev. 1.

The Employer offered no substantive evidence to support the assertion that the telework has had a negative effect on Department operations. The Employer’s witness did not testify about why the Employer reached its conclusion about the effect of telework on the Department and did not offer any other documentary materials to substantiate its claims. In this regard, it is also clear that the Employer knew how to substantiate business reasons for modifying telework agreements. In 2024, the Employer announced modifications to telework for two units at the headquarters building in Washington. In each announcement, the Employer offered detailed reasons to support the proposed changes. The Union initially challenged the implementation of each change yet evidently accepted the Employer’s rationale by withdrawing the grievances upon reaching agreement to extend the terms of the collective bargaining agreement.

By Repudiating Article 18, the Employer Committed an Unfair Labor Practice. The Agreement and the Flexiplace Policy remain unchanged and, by extension, a small subset of

Agency employees with disability-based accommodations or DETO agreements continue to perform regular and routine telework. Therefore, it is unnecessary to determine whether a violation of Article 49 occurred when the Agency took action on January 24, 2025.

Nevertheless, by unilaterally cancelling telework agreements for thousands of Agency employees, the Employer repudiated the terms of Article 18. The telework provisions are an essential component of the parties' collective bargaining agreement. As discussed above, the Agreement provides for regular and routine telework benefits for employees, a method for approving telework, and limited options for the Employer to modify or terminate telework. The Employer circumvented these restrictions when it unilaterally cancelled regular and routine telework agreements for thousands of BUEs.

The Presidential Memorandum that was relied upon by the Employer in taking this action advised that its terms "shall be implemented consistent with applicable law." By violating the Agreement, the Employer committed a prohibited personnel practice in violation of the Statute. *See* 5. U.S.C. §7116(a)(1).

REMEDIES

The Union's requested remedies are reasonable and appropriate to address to the Employer's violations of the Agreement and the Statute. Accordingly, the parties shall reinstate the *status quo ante*. Specifically, affected bargaining unit members with active telework agreements permitting regular and routine telework prior to January 20, 2025 shall be permitted to resume telework pursuant to the terms of their previously applicable telework agreement. For the avoidance of doubt, the resumption of regular and routine telework shall begin in the next pay period following the date of issuance of this Award.

Second, the Employer shall post a Notice that it violated the Agreement and the Statute by unilaterally cancelling regular and routine telework agreements for Agency employees on or around January 24, 2025. The posting shall be made (1) by electronic mail message to the Agency's workforce, (2) by posting in a prominent location on the Agency's website, and (3) in physical locations within Agency workplaces traditionally used for employee announcements, e.g., bulletin boards in break rooms and other locations where human resources policy and regulatory posters currently exist. The Employer shall draft the Notice accordance with the terms of this Award and provide the draft notice to the Union for review and approval prior to taking the steps listed above. If the parties are unable to reach agreement on an appropriate Notice within thirty (30) days of the date of this Award, the parties shall inform the Arbitrator and the Arbitrator will issue an appropriate Notice for posting by the Employer according to the methods described herein.

Third, the economic effects of the Employer's actions were foreseeable. Article 18.06(2) specifically recognizes that changes to telework agreements affect the "cost of commuting as well as the scheduling and cost of dependent care," and Local 476 President Robinson testified that affected members have incurred increased commuting costs since the Presidential Memorandum was implemented. The Back Pay Act permits compensation for employee losses incurred due to the violation of a collective bargaining agreement. *See U.S. Customs and Border Protection*, 66 FLRA at 204. Therefore, affected employees who have incurred costs for commuting or elder care since February 24, 2025 through the date of reinstatement of their previously approved regular and routine telework agreements shall be compensated for such losses. The parties are hereby ordered to bargain over an appropriate calculation of this remedy and reach agreement on compensation for affected employees. The parties shall report back to the Arbitrator on the status of bargaining and any agreement within ninety (90) days from the

date of this Award, during which period the Arbitrator shall retain limited jurisdiction for the sole purpose of resolving any disputes that may arise regarding the implementation of the remedies described herein. Reasonable requests to extend the Arbitrator's retained remedial jurisdiction shall not be unreasonably denied.

Finally, and pursuant to Article 52.10(2), the Union is entitled to petition the Arbitrator for the award of reasonable attorney's fees in accordance with the provisions of the Back Pay Act. The Union may take such action during the period of the Arbitrator's retained remedial jurisdiction.

AWARD

The Employer violated the Agreement and the Statute when it unilaterally terminated regular and routine telework agreements for Agency employees on or around January 24, 2025.

Accordingly, the parties shall return to the *status quo ante*. For the avoidance of doubt, affected BUEs shall have their previously approved regular and routine telework agreements reinstated no later than the next pay period following the date of this Award. The Employer shall also post a Notice and issue compensation to affected bargaining unit members in accordance with the remedy described herein. The Union may also request the award of reasonable attorney's fees in accordance with Article 51.10(2) of the Agreement.

In accordance with Article 52.04 of the Agreement, the Arbitrator has determined that the Employer is the losing party in this dispute. Accordingly, the Employer shall promptly pay the Arbitrator's fees and expenses in this dispute.

The Arbitrator will retain jurisdiction for a limited period of ninety (90) days and for the sole purpose of resolving any disputes regarding the implementation of this remedy. Reasonable requests to extend the Arbitrator's retained remedial jurisdiction shall not be unreasonably denied.

A handwritten signature in black ink, appearing to read 'M. Loconto', with a large, sweeping flourish extending to the right.

Michael T. Loconto, Esq.
Arbitrator
Dated: February 18, 2026