FEDERAL MEDIATION AND CONCILIATION SERVICE

American Federation of Government Employees, AFL-CIO, Council 238, and United States Environmental Protection Agency.	FMCS Case No. 250319-04490 GOP: Remote Work Rescission Arbitrator Joshua Javits

Union Brief

I. Introduction

This grievance arbitration arises from the Agency's February 12, 2025, decision to unilaterally and illegally terminate all remote work agreements for bargaining unit employees represented by the American Federation of Government Employees, Council 238 ("the Union"). The termination was carried out without appropriate justification or individualized review, in direct violation of Article 34 of the Master Collective Bargaining Agreement ("MCBA"), among other applicable statutes, rules, and policies.

The grievance was filed on behalf of all covered bargaining unit employees who had remote work agreements in place as of February 12, 2025. Those agreements were entered into under Article 34 of the MCBA, and reflected management's determination that the affected employees' work was portable, did not require routine in-person presence, and could be performed as effectively from a remote location. The subsequent mass rescissions of those agreements failed to assess or rebut these conclusions, instead relying on a vague assertion that employees must now be "face-to-face" with others to the maximum extent possible.

As the Agency has failed to properly consider the factors, above, the Agency's action breached the contractual protections in Article 34 and undermined the individualized consideration

process agreed to by the parties. The Union respectfully requests that the Arbitrator sustain the grievance and direct the Agency to immediately restore all affected remote work agreements.

II. Issue Statement

The Union's proposed issue statement is:

> Whether the Agency violated the Master Collective Bargaining Agreement when it rescinded all regular remote work agreements for AFGE bargaining unit employees on February 12, 2025; and if so, what is the appropriate remedy?

III. Stipulated Facts

The Parties have agreed to the following stipulated facts ("Stip.") as part of their written submission to the Arbitrator:

1. The Parties are governed by the Master Collective Bargaining Agreement, effective June 14, 2024.
2. On January 20, 2025, the President issued a Memorandum directing agencies to increase in-person work.
3. On January 24, 2025, EPA issued an Agency-wide communication regarding return-to-office plans.
4. On February 12, 2025, the Agency issued a communication rescinding all regular remote work agreements, with limited exceptions, and requiring affected employees to report in person by April 7, 2025.
5. The Agency did not conduct individualized assessments of employee eligibility before issuing the mass rescission.
6. On February 14, 2025, the Union filed a timely grievance challenging the rescission.
7. The Agency issued a written response on March 17, 2025.
8. The Union timely invoked arbitration. Arbitrator Joshua Javits was mutually selected.
9. Each Party will submit its proposed issue statement. Arbitrator Javits is authorized to articulate the final issue.

IV. Joint Exhibits

Pursuant to the Parties' Agreement to Present Grievance to Arbitrator by Written Submission, the following documents are entered into the record as Joint Exhibits ("Jx."):

- **Joint Exhibit 1** – Master Collective Bargaining Agreement (MCBA), effective June 14, 2024
- **Joint Exhibit 2** – Union's February 14, 2025 Grievance of the Parties
- **Joint Exhibit 3** – Agency's March 17, 2025 Response to the Grievance

- **Joint Exhibit 4** – Presidential Memorandum titled "Return to In-Person Work," dated January 20, 2025
- **Joint Exhibit 5** – January 24, 2025 EPA-wide communication regarding return-to-office plans
- **Joint Exhibit 6** – February 12, 2025 Agency-wide email rescinding remote work agreements
- **Joint Exhibit 7** – EPA's revised Telework and Remote Work Policy, dated February 26, 2025

V. Argument

The Union's grievance asserts, and the record confirms, that as of February 12, 2025, AFGE bargaining unit employees held approved remote work agreements pursuant to Article 34 of the MCBA. These agreements were supported by documented determinations that:

- The employees' work was "entirely portable" and "does not routinely require in-person activities at their Official Agency Worksite" MCBA article 34, section 3(G);
- The employees could "perform all their duties as effectively from the [remote work location] as from the Official Agency Worksite" MCBA article 34, section 7(B)(1)(a)(i); and
- Remote work would "not diminish the agency's ability to accomplish its mission and meet its operational goals" MCBA article 34, section 7(B)(1)(a)(ii).

The Agency's February 12 mass email rescinded all these agreements based solely on a general assertion that employees must now be "face-to-face with their supervisors, colleagues, clients, and the public to the maximum extent possible." Jx.6. No individualized review was conducted, and the Agency failed to demonstrate that any employee's work was no longer portable or effective when performed remotely. Stip. 5.

Article 34 prohibits blanket determinations and mandates individualized consideration. The Agency's mass rescission of remote work agreements constituted a clear violation of numerous affirmative duties it assumed under the Master Collective Bargaining Agreement (MCBA). Jx.1. These provisions reflect the Parties' mutual understanding that remote work is a strategic tool that must be implemented and evaluated in a structured, individualized, and function-

based manner. The Agency's actions disregarded those contractual obligations in both process and substance.

The Remote Work article begins by affirming the Parties' recognition that remote work "has been and can continue to be beneficial for Agency operations, the workforce, and the environment," including through "increased productivity and performance," "enhanced recruitment and retention," and "improved emergency preparedness." Jx.1, Art. 34, Sec. 1. Article 34 explicitly frames remote work as a matter of strategic policy, to be approved based on mission needs or employee needs, and states that eligibility "must be based on job functions and not managerial preference." *Id*. The Agency's blanket termination of agreements, without individualized analysis of mission needs, employee eligibility, or the benefits previously acknowledged, undermines this agreed-upon framework and fails to honor the very purpose of Article 34. Stip. 5 ("The Agency did not conduct individualized assessments of employee eligibility before issuing the mass rescission.")

The MCBA requires that remote work eligibility be based on "equitable, function-based criteria," and not managerial preference. Jx.1, Art. 34, Sec. 8(A). To ensure this, the Agreement provides that any employee may request remote work "at any time," and that such requests must be considered on an individual basis. Jx.1, Art. 34, Secs. 4(A), 10(A). Supervisors must assess remote work requests based on the employee's duties, portability of work, and likelihood of continued eligibility, among other criteria. Jx.1, Art. 34, Sec. 10(B)(1)-(7).

The Agency bypassed these requirements by revoking agreements *en masse*, refusing to process or consider individual employee requests made under Section 4(A), and failing to document or provide written explanations for disapprovals, as required by Section 13(C). Stip 5.

Such actions contravene the bargained-for procedural and substantive protections designed to prevent arbitrary or preference-based decision-making.

Under the contract, supervisors must manage remote work at the unit level, including reviewing employee requests "within a reasonable timeframe (i.e., normally within 7 calendar days)" and forwarding them to the deciding official. Jx.1, Art. 34, Sec. 7(A)(1). In doing so, they are obligated to ensure appropriate management controls and treat remote and non-remote employees equally for performance monitoring. Jx.1, Art. 34, Sec. 7(A)(3). Employees are in turn required to demonstrate how they can meet performance expectations from the Remote Work Location (RWL), and to submit completed documentation to initiate or maintain agreements. Jx.1, Art. 34, Sec. 7(B)(1).

By refusing to honor or review remote work agreements already in effect, and rejecting new ones without individualized analysis, the Agency failed to perform these supervisory functions. No documented performance concerns, workload shifts, or policy rationales were provided for the terminations, indicating the Agency acted without regard to its agreed-upon contractual process.

The Agency has suggested that its actions were compelled by the January 20, 2025, Presidential Memorandum directing federal agencies to increase in-person work "to the maximum extent possible." Jx.3. In its grievance response, the Agency cited that Memorandum as the basis for its February 12, 2025, directive unilaterally terminating all telework and remote work agreements for all bargaining unit employees, asserting that the change was required to align with government-wide policy. *Id*.

Executive policy may set expectations, but it cannot displace statutes or negotiated procedures, especially where those procedures require individualized assessment and employee-

specific justification. *See Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996); *AFGE v. Trump*, 318 F. Supp. 3d 370, 422 (D.D.C. 2018) (overturned on other grounds). "The President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker…" *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

The President's Memorandum does not override existing law or contract rights. In fact, it explicitly provides that implementation must occur "consistent with applicable law." Jx.4. This language confirms that agencies were not authorized to unilaterally discard their obligations under the MCBA.

The Federal Service Labor-Management Relations Statute (the Statute) makes clear that management rights are not absolute. Section 7106(a) states that these rights are "[s]ubject to subsection (b)," and subsection (b) provides that agencies must bargain over (1) procedures they will observe when exercising those rights, and (2) appropriate arrangements for employees adversely affected by such exercises. See 5 USC § 7106(b)(2)-(3). The FLRA has held that the geographical location where employees work implicates an agency's right to determine its organization, not its right to assign work, and it is therefore a bargainable subject. *See, e.g., AFGE Local 3584 and DOJ, FCI Dublin,* 64 FLRA 316 (2009); *NFFE, Local 7*, 53 FLRA 1435, 1438-39 (1998).

Accordingly, the remote work agreements at issue, many of which explicitly designated employee duty stations and included management approvals, are best characterized as geographic and organizational arrangements that fall within the scope of negotiable procedures and appropriate arrangements. The Agency cannot excuse its failure to follow these negotiated procedures by invoking general management rights. Once a matter has been negotiated, management must comply with the agreement.

As for a remedy, the Union's grievance seeks restoration of the *status quo ante*: immediate reinstatement of all remote work agreements in effect as of February 12, 2025, and an order making whole any employee that suffered compensable harm as a result. The Union also seeks an order prohibiting future mass recissions absent individualized findings and compliance with the MCBA.

The stipulated record demonstrates a clear contractual violation: the Agency terminated remote work agreements *en masse* without the individualized assessment required by Article 34 of the MCBA. The resulting harm to affected employees, including the loss of approved remote duty stations and the disruption of previously authorized work arrangements, is inherent in the Agency's action.

However, to the extent the Arbitrator finds that additional factual development is necessary to determine the appropriate remedy for individual employees or subgroups, the Union respectfully requests the opportunity to supplement the record with declarations or affidavits documenting individualized harm, such as financial loss, caregiving disruption, or job impact. The Arbitrator's authority to reopen the record for remedial purposes is well recognized. *Navy Public Works Ctr., Norfolk, Va*., 35 FLRA 93 (1990) (An arbitrator's authority to reopen the record for remedial purposes is recognized, especially where the arbitrator reserves remedial questions or the parties consent to further proceedings to achieve a proper remedy); *U.S. Dept. of Agriculture, Food Safety & Inspection Serv. and AFGE*, 62 FLRA 364 (2008) (Authority upheld status quo ante work-location remedies including allowing telework/official time at home to resume, coupled with monetary compensation to make employees whole).

The Union respectfully requests the following relief:

1. A finding that the Agency violated Article 34 of the MCBA by rescinding remote work agreements without individualized assessment, and that the Union is the prevailing party in this matter.

2. An order requiring the Agency to restore all remote work agreements in effect prior to February 12, 2025, unless properly terminated following an individualized review consistent with the MCBA.
3. *Status quo ante* relief, including compensation for a loss of pay or benefits, and make whole compensation for harms to affected employees.
4. Attorneys' fees and costs pursuant to the Back Pay Act.
5. Retention of jurisdiction to ensure compliance with the Arbitrator's award.

VII. Conclusion

The Agency's mass rescission of remote work agreements, without individualized evaluation or proper justification, violated Article 34 of the MCBA. The Union respectfully requests that the Arbitrator sustain the grievance and award the relief outlined above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2025, a true and correct copy of the Union's Reply Brief in this matter was served via electronic mail upon the following:

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