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AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
COUNCIL of NATIONAL ARCHIVES LOCALS

**Date:** October 26, 2022

**To:** Valorie Findlater, Acting Chief Human Capital Officer

**From:** Ashby Crowder, AFGE

**Subject:** Bargaining Unit Work Performed by Library Foundation Employees

STATEMENT OF GRIEVANCE

This statement is to notify the National Archives and Records Administration (NARA) that the American Federation of Government Employees (AFGE) is invoking the negotiated grievance procedure as outlined in Article 26, Section 8 of the National Agreement between NARA and AFGE. This grievance procedure is being invoked to seek remedy for a violations of Articles 2, 28, and 34 of the AFGE-NARA Collective Bargaining Agreement; 5 U.S.C. §7116(a)(1) and (5), 41 U.S.C. §1710, 31 U.S.C. §501 note, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

**Description of Violation & Basis for Grievance:**

This grievance pertains to the direct conversion of bargaining unit work at presidential libraries. The Union first became aware of such conversion at the LBJ Presidential Library (“LBJ Library”) in Austin, TX, and through a statutory request for information, and other methods, became aware of possible such incidents at the Ford, Truman, Bush (41), and Kennedy libraries. This grievance pertains to such violations at these and all other LP locations for the unlawful outsourcing of said bargaining unit work. To date, the Agency has failed to remedy this violation, and as such, the Agency is in continuing violation of contractual obligations and statutory requirements.

The Agency has undertaken a conversion of bargaining unit work to private sector entities. The Agency's conversion of this work, without consulting with the Union and without providing notice and an opportunity to bargain to the Union, violates both the CBA and federal law and regulations. Furthermore, the outsourcing of federal bargaining unit work in these circumstances violates federal law where Congress has prohibited the use of appropriated funds for reviews of work performed by federal employees for contracting out, and such a review is a prerequisite for outsourcing of the federal work in question.

The Agency has undertaken to outsource work that would otherwise be performed by bargaining unit employees (including, but not limited to, the work of Archives Technicians at the LBJ and other presidential libraries). Some of the duties of these bargaining unit employees have been assigned to private sector entities. This action has affected and will continue to affect the work of bargaining unit employees working at the libraries.

Article 28 of the CBA and the governing statutes refer to “contracting out,” in which the government pays a private sector entity to perform services. The Union understands that, in this case, the government will not make payments to the private sector entity performing services. However, the Agency will still incur some costs generally associated with contracting out. The private sector entity staff is to be supervised by federal employees, so the federal government has oversight and quality assurance costs and responsibilities.

The impact on bargaining unit employees is the same whether work is contracted out or outsourced without compensation: work that would otherwise be performed by federal employees will no longer be performed by federal employees, even though the Agency still has a requirement for that work.

Article 2 of the CBA requires that the Agency comply with applicable federal statutes and regulations in the administration of matters covered by the CBA. Federal law and regulations prohibit government agencies from converting work from federal employees to contractors without first conducting a formal cost comparison.

41 U.S.C. § 1710, and 31 U.S.C. §501 note both prohibit executive agencies from contracting out work performed by federal employees unless the contracting out is based on the results of a public-private competition that, *inter alia*, formally compares the cost of performance by federal employees and private sector entities; creates an in-house bid (“agency tender”) that represents a most efficient organization; includes a solicitation; and determines that a private sector entity would be more cost effective by at least 10%.

However, Congress currently prohibits agencies from using appropriated funds to conduct public-private competitions pursuant to the Consolidated Appropriations Act, 2022 (P.L. 117-103, §741).<sup>1</sup>

Thus, no outsourcing of the Agency work at issue is permitted under these circumstances. By outsourcing work performed by federal employees in the libraries, the Agency violated federal statutes and regulations, thereby violating Article 2 of the CBA.

Article 28 of the CBA requires the Agency notify the Union and provide an opportunity to negotiate when it determines that bargaining unit work will be contracted out, which it also failed to do.

Article 34, Section 2 of the CBA requires that the Agency provide written notice and an opportunity to bargain to the Union over proposed changes in the conditions of employment. Despite its decision to outsource work, a decision which will impact bargaining unit employees, the Agency failed to notify the Union in accordance with the CBA. Likewise, by refusing to consult and negotiate in good faith with the Union regarding the conversion of bargaining unit work, the Agency also violated 5 U.S.C. §7116(a)(5).

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<sup>1</sup> Sec. 741. None of the funds appropriated or otherwise made available by this or any other Act may be used to begin or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.

Requested Remedy: That the Agency agree to:

- Cease and desist outsourcing bargaining unit work;
- Cease and desist from outsourcing without providing notice and bargaining with the Union as set forth in the CBA;
- Extricate itself from the outsourcing relationships at issue;
- Bargain with the Union regarding procedures and follow appropriate arrangements with respect to bargaining unit employees affected by the conditions of any outsourcing arrangement, to be applied retroactively;
- Return and make whole any unit employee adversely affected by the outsourcing at issue to status quo ante;
- Return to the status quo ante until the Agency has properly notified the Union and provided the Union with an opportunity to bargain concerning any proposed changes in working conditions;
- Fully comply with the AFGE-NARA CBA and all applicable federal laws, rules, and regulations; and
- Any and all other remedies appropriate in this matter.

Sincerely,

*Ashby Crowder*

ASHBY CROWDER  
Principal Representative, AFGE Council 260  
President, AFGE Local 2578

cc: Mitchell Buffone, AFGE C-260