



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST AN AGENCY

FOR FLRA USE ONLY

Case No.

Date Filed

1. AGENCY AGAINST WHICH CHARGE IS BROUGHT

a. Name of Charged Agency (include address, city, state, & ZIP)
 Environmental Protection Agency

2. CHARGING PARTY

a. Name of Charging Party (include address, city, state, & ZIP)
 AFGE, AFL-CIO
 80 F St, NW
 Washington, DC 20001

b. Agency Representative (include name, title, address)
 Nicole Patterson, Acting Director
 Labor and Employee Relations Division
 US Environmental Protection Agency
 1200 Pennsylvania Ave NW, Mail Code: 3602A
 Washington, DC 20460

b. Charging Party Representative (include name, title, address)
 Cathie McQuiston, Deputy General Counsel
 AFGE Office of the General Counsel
 80 F St, NW
 Washington, DC 20001

tel. 202-564-3849 fax
 e-mail patterson.nicole@epa.gov

tel. 202-639-4011 fax 202-318-2256
 e-mail mcquic@afge.org

3. BASIS OF THE CHARGE

a. Set forth a clear and concise statement of the facts constituting the alleged unfair labor practice, including date and location of the particular acts.

On or about May 21, 2020, Deputy Administrator Doug Benevento addressed an "all hands" meeting in Region 8. AFGE represents all employees in Region 8. In response to a question/comment from a union representative about the union's exclusion by the agency from involvement in drafting the re-opening plan and that the union looked forward to bargaining the plan, DA Benevento falsely disparaged and threatened the union and employees. Benevento claimed he had consulted with the union in a briefing and falsely stated that the union (which to the Region 8 employees was AFGE) had spoken to the media after his consultation about what he had said in a briefing. The clear implication Benevento communicated was that the agency was refusing to deal with the union because it had supposedly improperly shared the agency's communications with the union with the media, despite the fact that such activity is protected by law.

On or about July 28, 2020, Administrator Andrew Wheeler addressed an "all hands" meeting in Region 8. Wheeler and DA Benevento addressed the agency's plans during phase 3 return to the workplace during the meeting, including the status of telework. During the meeting, an employee addressed Wheeler and noted that AFGE and the agency had just bargained a new agreement and asked him how the new contract provisions would interact with Wheeler's comments about telework under Phase 3. Wheeler falsely stated that the agency had offered more telework flexibilities during contract negotiations but that the union "had turned that down because they wanted more benefits for union leadership." Wheeler then stated that after COVID 19 was over, he intended to issue a new telework policy unilaterally without bargaining with the union. (continued, see attached)

b. Which subsection(s) of 5 U.S.C. 7116(a) do you believe the Agency has violated? (1) (2) (3) (4) (5) (6) (7) (8)

c. Have you or anyone else raised this matter in any other procedure? No Yes If yes, where?
 Grievance Procedure Federal Mediation and Conciliation Service Federal Service Impasses Panel
 Equal Employment Opportunity Commission Merit Systems Protection Board Office of Special Counsel
 Other Administrative or Judicial Proceeding Negotiability Appeal to FLRA Other _____

4. DECLARATION

I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001.

THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX 1b BY [check all appropriate boxes]

In Person 1st Class Mail Fax Commercial Delivery Certified Mail e-mail (see reverse)

Cathie McQuiston

8/10/20

Type or Print Your Name

Your Signature

Date

INSTRUCTIONS FOR COMPLETING FORM 22:

General

Use this form if you are charging that a federal agency committed an unfair labor practice under paragraph (a) of section 7116 of the Federal Service Labor-Management Relations Statute. File an original form with the appropriate Regional Director, Federal Labor Relations Authority. If you do not know that address, go to the FLRA's website at www.flra.gov or contact the Office of the General Counsel, Federal Labor Relations Authority, (202) 218-7910. If filing the charge by fax, you need only file a fax-transmitted copy of the charge (with required signature) with the Region. You assume responsibility for receipt of a charge. A charge is a self-contained document without a need to refer to supporting evidence and documents that are also submitted to the Regional Director along with the charge. If filing a charge by fax, do not submit supporting evidence and documents by fax. See 5 C.F.R. Part 2423 for an explanation of unfair labor practice proceedings and, in particular, §§ 2423.4 and 2423.6, which concern the contents, filing, and service of the charge and supporting evidence and documents.

Instructions for filling out each numbered box

- #1a.** Give the full name of the agency, and component if applicable, you are charging and the mailing address, including the street number, city, state, zip code. If you are charging more than one agency or component with the same act, file a separate charge for each agency or component.
- #1b.** Give the full name, title, and other contact information for the agency's representative. Be as specific and as accurate as possible.
- #2a.** Give the full name of the union or individual filing the charge and the mailing address, including the street number, city, state, zip code. If the union is affiliated with a national organization, give both the national affiliation and local designation.
- #2b.** Give the full name, title, and other contact information for you or your representative. Providing all available contact information, especially e-mail addresses, will assist the investigation of your charge.
- #3a.** It is important that the basis for the charge be *brief and factual*, rather than opinion. Describe what happened that constitutes an unfair labor practice, who did it, where it occurred and when.
- Give dates and times of significant events as accurately as possible.
 - Give specific locations when important, e.g., "The meeting was held in the auditorium of Building 36."
 - Identify who was involved by title, e.g., "Chief Steward Pat Jones" or "Lou Smith, the File Room Supervisor."
 - Tell what happened, in chronological order.
- #3b.** Identify which one or more of the following subsections of 5 U.S.C. 7116(a) has or have allegedly been violated. Subsection (1) has already been selected for you because a violation of (2) through (8) is an automatic violation of (1). List all sections allegedly violated:
- 7116(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;
 - (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
 - (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
 - (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;
 - (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;
 - (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;
 - (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
 - (8) to otherwise fail or refuse to comply with any provision of this chapter.
- #3c.** If you or anyone else that you know of has raised this same matter in another forum, check the appropriate box or boxes.
- #4.** Type or print your name. Then sign and date the charge attesting to the truth of the charge and that you have served the charged party (individual named in box #1b). Check the box or boxes for all the methods by which you served the charge. You may serve the charge by e-mail only if the Charged Party has agreed to be served by e-mail.

(continued)

Local President Britta Copt, a member of the contract bargaining team, confronted Wheeler about his false representations during the meeting and disputed his statements about what happened during bargaining.

Wheeler repeated his false assertion that the union had turned down greater telework to get more benefits for union leadership and also stated he intended to release what the agency offered "so that everyone could see what the union turned down." He also again stated that he will unilaterally reconsider the agency telework policy without the input of the union once COVID 19 is over.

Wheeler and Benevento's statements interfered with and chilled the exercise of the rights of employees and union representatives. Both statements by Benevento and Wheeler falsely maligning the union were accompanied with threats of penalty or reprisal for the union's lawful activities.