

## Union Grievance - Violations and Repudiation of Ground Rules and LMA - 21 Aug 2020

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Fri 8/21/2020 4:06 PM

To: FRENCH, KATHLEEN C GS-11 USAF AETC 56 FSS/FSMC <kathleen.french.1@us.af.mil>

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Ms French,

This Union grievance is being filed on behalf of the Union President by her designated agent. This Union grievance concerns the contract negotiations at Luke AFB and the ongoing violations of the parties Ground Rules, dated 24 Apr 2001. These Ground Rules are a binding document and contain the procedures to be followed by the parties for negotiating a successor Labor-Management Agreement (LMA) at Luke AFB Arizona. In this Union grievance the Union is charging that management, through their Civilian Personnel Office staff (CPO), have committed several violations of the Federal Service Labor-Management Relations Statute (statute) and its case law, which are Unfair Labor Practices (ULP) as described in 5USC§7116(a).

This Union grievance was prompted by an Aug 7, 2020 email from CPO staff to the Union with notice of the immediate unilateral implementation of the CPO's own APF Contract (Appropriated Fund). This Union grievance also concerns a similar Aug 7, 2020 email that CPO sent to all of the Luke AFB bargaining unit employees and management officials with the CPO's claim to be implementing a "new APF Contract" to replace the "old 1996 contract." In these emails CPO attached a 69 page PDF document that they labeled as "APF Contract 2020." That document is not an agreement between the parties. That document is not a meeting of the minds. That document is not a Labor-Management Agreement. That document is not a collective bargaining agreement. That document is not a binding contract and the Union is not a party to that document. These facts can easily be proven through the observation of the last page since there are no binding signatures for the Union. In that 69 page document CPO made reference to the Union and parties several times. This is a blatant effort by management, through CPO, to manipulate employees in believing that the Union is a party to that document. Furthermore, without authorization or right, management through CPO used AFGE Union representative's personal names and titles. Without authorization or right, management through CPO used the name of the American Federation of Government Employees (AFGE), AFL-CIO, Local 1547, and the AFGE logo. All of these actions by management through CPO are in violation of the parties Ground Rules, LMA and are ULP's.

Based on the emails from CPO dated, Aug 7 and Aug 14, it is clear that their intent is to totally disregard and repudiate the parties Ground Rules, dated 24 Apr 2001, and the parties 1996 LMA. This 1996 LMA and its mandatory subjects of bargaining are in force until the parties complete the negotiations for a successor LMA. These actions by management through CPO are seen as bad-faith bargaining for totally disregarding all of the signed completed Articles, and the requirements laid out in the Ground Rules and the statute. All of these actions by management through CPO are in violation of the parties Ground Rules, LMA and are ULP's.

The last two times the parties met, Mar 4, 2020 and June 11, 2020, management's chief negotiator (CPO staff) refused to resume negotiations on the last two Articles (43 and 48). Both times CPO

indicated that they would not negotiate anything unless the Union agreed to open all other Articles.

Both times CPO came to the table with new language for all Articles, and nothing for the completion of Articles 43 and 48. CPO demanded to start over with the successor LMA negotiations and abandoned what had already been in agreement. At both of these meetings, and at other times and emails, the Union clearly stated that there was NO mutual agreement to open any of the completed Articles. They refused to resume negotiations on the last two Articles. At both of these last two meetings management's team walked out after less than 30 minutes claiming it was the Union that was refusing to bargain since we would not agree to start over. Similar to the child's story of the boy taking his ball and going home when he didn't get his way.

Paragraph 14.b. of the Ground Rules clearly states:

*b. Upon reaching an agreement on each article, the Chief Negotiators will signify such agreement by initialing and dating the agreed upon article. After initialing the article, it will not be subject to further discussion unless there is a mutual agreement to reconsider or revise the agreed upon article. Each team shall receive one (1) hard copy of the agreed upon article(s) containing original initials at the end of the day. Agreed upon articles will also be shared via email by both parties in MS Word format*

The parties have signed 34 completed Articles for the successor LMA. The Union has made it clear that we NEVER agreed to open any of those agreed upon Articles. Instead of completing the last two articles, CPO has held the successor LMA negotiations hostage unless the Union agreed to open all completed Articles. CPO is under the impression that an Executive Order somehow obligates the parties to reopen signed and completed LMA Articles. The Union does not agree with that opinion.

Nowhere in the Ground Rules is there an allowance to disturb completed Articles without a "mutual" agreement. Nowhere in the Ground Rules does it state Executive Orders can affect agreed upon language or Articles. In fact, the phrase "Executive Order" is never used once in the Ground Rules. Furthermore, nowhere in the Executive Order does it state that it affects or abrogates the parties Ground Rules and its procedures, or the requirements of the statute. The Executive Orders and later Memorandum clearly allow for there to be agreements in existence that conflict with the Executive Orders. The Union charges that management through CPO are in violation of the Executive Orders, Presidential Memorandum and related OPM guidance. All of these actions by management through CPO are in violation of the parties Ground Rules, LMA and are ULP's.

The Union has offered several times to jointly take the Ground Rules to an arbitrator for interpretation, but CPO has refused to take that offer. There is currently a Union grievance before Arbitrator DiFalco for similar violations and Ground Rules interpretation, but CPO will not wait for that and instead comes with this unilateral effort to impose their own new APF Contract. Nowhere in the Ground Rules or the statute is such a method or procedure described. Since CPO didn't get their way, they now come with their notice to repudiate the Ground Rules, 1996 LMA and the total repudiation of all 34 completed Articles. CPO has committed bad-faith bargaining by not honoring the completed 34 signed Articles for the new successor LMA. CPO's unilateral actions is a repudiation of the signed agreements for the 34 completed Articles. CPO refuses to recognize the existence of those 34 Articles and allow them to be implemented in accordance with the Ground Rules and the requirements of the statute. All of these actions by management through CPO are in violation of the parties Ground Rules, LMA and are ULP's.

Paragraph 7 of the ground rules clearly states:

*b. After the initial proposals are exchanged between the parties no new proposals on new subjects will be addressed unless agreed to by the Chief Negotiators. Counter proposals or modifications of proposals addressing issues already raised will not be deemed as "new" proposals unless the proposal has been previously dealt with, agreed to, signed and dated by the Chief Negotiators.*

In this "new APF Contract" CPO is using new subjects in violation of the Ground Rules. The Union never agreed to address any new subjects. Furthermore, the Union has made it clear that its interest was to finish the last two Articles and nothing more. The Ground Rules are clear that it takes a mutual agreement to bring new subjects and it takes a mutual agreement to open signed completed Articles. Management, through CPO, are in violation of the Ground Rules since they refused to complete the last 2 Articles. This "new APF Contract" is also seen as a unilateral change in the conditions of employment for the bargaining unit employees since it was never negotiated or properly implemented. All of these actions by management through CPO are in violation of the parties Ground Rules, LMA and are ULP's.

In this grievance the Union is charging that management, through CPO, has committed several ULP's. Management had no unilateral authority to force the Union to renegotiate all of the Articles or to force the Union to be a party to their new one-sided contract. The spirit of the Ground Rules and the 1996 LMA is to complete negotiations for the new successor LMA and the Union charges that management, through CPO, are in clear violation to the spirit of those agreements.

CPO claims to be using some alleged authority within an Executive Order. However, the recent Executive Orders and related OPM guidance clearly calls for the completion of negotiations at the proper time. Since those subjects addressed in the Executive Order have already been negotiated and signed, it would have taken a mutual agreement to open. There are processes if any of the agreed upon language is found to conflict with law. The Union charges that management through CPO are in violation of the Executive Orders, Presidential Memorandum and related OPM guidance. Their actions are also ULP violations of the Federal Service Labor-Management Relations Statute.

#### Remedies Sought:

1. Cease and desist violations and repudiations of the 2001 Ground Rules and 1996 LMA.
2. Cease and desist violations of the Federal Service Labor-Management Relations Statute.
3. Management will not in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.
4. Management will cease and desist acts of bad-faith bargaining.
5. Management will cease and desist unilateral changes in the conditions of employment for the bargaining unit employees.
6. Management will cease and desist violations of the Executive Orders, Presidential Memorandum and related OPM guidance.

7. Management will cease and desist bringing new Articles and subjects to the table without a mutual agreement.
8. Immediate restoration of status quo. Management will immediately send a retraction of the August 7, 2020 emails that were sent to the Union and all bargaining unit employees, which includes that 96 page document (APF Contract 2020). The Union will be copied on all emails sent to the bargaining unit employees.
9. Management will comply with the mandatory terms of the expired 1996 Labor-Management Agreement (LMA) between the American Federation of Government Employees, Local 1547 (the Union) and Luke AFB Arizona.
10. Management will cease and desist contacting bargaining unit employees on the LMA until the new successor LMA is completed.
11. Management will maintain the personnel policies and practices and matters affecting working conditions that were in effect prior to their August 7, 2020 notice.
12. Management will cease and desist using the Unions names, logo and representatives names without authorization.
13. Management's team will schedule meetings with the Union to resume successor LMA negotiations to finish the last two articles. Scheduling of bargaining sessions will be as the parties agreed when both chief negotiators are available. Each party will have sole discretion to determine who they will have for their chief negotiator.
14. Management will acknowledge that completed Articles can only be reopened by mutual agreement. Management will also acknowledge that the completed LMA can only be implemented in accordance with the requirements of the Ground Rules and statute.
15. Management will acknowledge that they do not have the unilateral right to interpret contract language. Management agrees to cooperate in jointly taking contract interpretation issues to an arbitrator for interpretation.
16. Management will acknowledge that they do not have the unilateral right to implement their own contract/CBA/LMA.
17. All other remedies that an Arbitrator may feel are appropriate based on existing and new information presented during the arbitration hearing and grievance process to remedy the issues raised in this Union grievance.
18. Management actions are so uncalled for and egregious that they will be required to pay for all costs related to this grievance and arbitration.
20. A posting notice (hard copy and electronic) to all employees stating management will cease and desist violations and will adhere to each of the aforementioned remedies. The posting will list each remedy and an affirmed compliance statement for each.

**Harley D. Hembd**

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