UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

MEMORANDUM

TO:	Heads and Acting Heads of Departments and Agencies
FROM:	Charles Ezell, Acting Director, U.S. Office of Personnel Management
DATE:	February 3, 2025
RE:	Guidance on Collective Bargaining Obligations in Connection with *Return to In-Person Work*

On Wednesday, January 22, 2025, OPM issued a memorandum titled *Guidance on Presidential Memorandum Return to In-Person Work*. This memorandum required agencies to revise their telework policies by 5:00 p.m., Friday, January 24, 2025, and advise OPM of the date that the agency will be in full compliance with the Presidential Memorandum *Return to In-Person Work*. OPM's guidance recommends agencies set a target date of approximately 30 days for full compliance with the Presidential Memorandum, subject to any exclusions granted by the agency and any collective bargaining obligations.

OPM writes to provide guidance on the collective bargaining obligations that apply to efforts to return workers to in-person work, particularly for these organizations which have collective bargaining agreement (CBA) language on telework and remote work.[1]

The agency head's ability to set overall telework levels and to exclude specific positions from telework eligibility under the Telework Enhancement Act[2] are exercises of management rights to determine the agency's mission and organization, direct employees, and assign work.[3] Precedent of the Federal Labor Relations Authority (FLRA) strongly indicates that management rights include the right to determine the frequency of telework, including whether specific positions may telework at all.[4] Unions can negotiate procedures for determining individual telework eligibility within authorized telework levels, and appropriate arrangements for employees whose telework eligibility is altered.[5] However, the substantive amount of telework agencies

[1] This guidance has no application to law enforcement positions, border patrol, and other employment categories that are generally not eligible for telework.

[2] *See* 5 U.S.C. § 6502(a)(1)(A)

[3] *See* 5 U.S.C. § 7106(a).

[4] *NTEU*, 73 FLRA 816, 817 (2024), *AFGE Local 1712*, 62 FLRA 15, 17 (2007) ("proposals that, in effect, preclude management from auditing employees' work by the use of unannounced visits and spot checking of employees' work directly affect management's right to direct employees" and are not negotiable), *Prof'l Airways Sys. Specialists*, 59 FLRA 485, 487-88 (2003) (proposal that would allow employees to take work home to complete was nonnegotiable).

[5] 5 U.S.C. § 7106(b).

authorize and the substantive determinations of which positions will be eligible for telework is a management right. **Provisions of collective bargaining agreements that conflict with management rights are unlawful and cannot be enforced**.[6]

Agencies should review current CBA language on telework and remote work to determine if any provisions are unenforceable for conflicting with management's statutory rights under 5 U.S.C. § 7106(a) of the Federal Service Labor-Management Relations Statute (FSLMRS). Any provisions that require agencies to provide minimum telework levels, or prevent agencies from setting maximum telework levels, are likely unlawful under § 7106(a). The same applies to any provisions that require agencies to authorize telework for specific positions.

The FLRA has long held that agencies can declare unlawful provisions in existing CBAs unenforceable and no longer adhere to them, even if the CBA is past agency head review.[7] Further, agencies can immediately implement government-wide rules that do not conflict with lawful CBA provisions. "In that circumstance, an agency is obligated to provide notice of the change and provide an opportunity to bargain only after implementation."[8]

Thus, any CBA provisions that purport to restrict the agency's right to determine overall levels of telework are likely unlawful and unenforceable. Agencies should not interpret or apply such provisions to prevent compliance with the President's government-wide directive in *Return to In-Person Work*.[9] Any midterm bargaining should occur post-implementation.

Agencies should further review any criteria and procedures on approval and disapproval of telework and remote work in CBAs, and how they may have interpreted these provisions in the past. Some CBAs have language allowing management to adjust telework levels based on such matters as workload, staffing, and mission requirements (or other similar criteria). Agencies should re-evaluate if their interpretation of this language is too narrow and whether it unduly impedes the agency's ability to adjust telework levels when necessary.

In addition, agencies should review whether any CBAs or memoranda of understanding (MOUs), or extensions thereof, are pending agency head review and approval under 5 U.S.C. §7114(c)(1), and whether any CBAs or MOUs are contrary to the recent Presidential Memorandum *Limiting Lame-Duck Collective Bargaining Agreements That Improperly Attempt to Constrain the New President*, which declares that, "CBAs executed in the 30 days prior to the inauguration of a new President, and that purport to remain in effect despite the inauguration of a new President and administration, shall not be approved" under agency head review. For purposes of that

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[6] *CFPB*, 73 FLRA 670, 675–76 (2023).

[7] *See Air Force HQ*, 17 FLRA 372 (1985) (not a ULP for agency to refuse to grieve dismissal of probationary employees, despite contract terms providing for such grievances, as the law precludes them). *See also NFFE Local 1862*, 3 FLRA 182 (1980) (7114(c) agency head review after 30-day statutory deadline was improper, but this does not require agency to enforce unlawful contract terms).

[8] *U.S. DHS, U.S. ICE*, 70 FLRA 628, 630 (2018)

[9] Agencies should, however, provide notice of the change in telework policy and an opportunity to bargain with unions over procedures and appropriate arrangements consistent with 5 U.S.C. § 7106(b).

memorandum, "subordinate agency personnel" under Section 2(c) refers to agency personnel who, as of the date of the Presidential Memorandum, were not the agency head.

Agency labor relations staff should work with agency legal counsel on these approaches. OPM plans to hold a CHCO Council office hour to discuss these matters further. You may contact awr@opm.gov with questions.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Chiefs of Staff.

Attachment 1: Presidential Memorandum, *Limiting Lame-Duck Collective Bargaining Agreements That Improperly Attempt to Constrain the New President* (January 31, 2025).

Attachment 2: *White House Fact Sheet: President Donald J. Trump Stops Last-Minute, Lame-Duck Biden Collective Bargaining Agreements* (January 31, 2025).

Attachment 1: Presidential Memorandum, *Limiting Lame-Duck Collective Bargaining Agreements That Improperly Attempt to Constrain the New President* (January 31, 2025).

January 31, 2025

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Limiting Lame-Duck Collective Bargaining Agreements That Improperly Attempt to Constrain the New President

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, it is hereby ordered:

Section 1. Policy and Purpose. In the final days of the prior administration's tenure, it purposefully finalized collective bargaining agreements (CBAs) with Federal employees in an effort to harm my Administration by extending its wasteful and failing policies beyond its time in office. For example, the Department of Education negotiated a CBA on January 17, 2025 -- 3 days before I took office -- that generally prohibits the agency from returning remote employees to their offices.

Such last-minute, lame-duck CBAs, which purport to bind a new President to his predecessor's policies, run counter to America's system of democratic self-government. CBAs quickly negotiated to include extreme policies on the eve of a new administration are purposefully designed to circumvent the will of the people and our democracy. Such CBAs inhibit the President's authority to manage the executive branch by tying his hands with inefficient and ineffective practices. The Supreme Court has explained that a President "cannot choose to bind his successors by diminishing their powers."

Therefore, it is the policy of the executive branch that CBAs executed in the 30 days prior to the inauguration of a new President, and that purport to remain in effect despite the inauguration of a new President and administration, shall not be approved.

Sec. 2. Standards for CBA Duration. (a) No executive department or agency (agency) or agency employees shall make a CBA governing conditions of employment in the 30 days prior to a change in Presidential administrations that:

(i) creates new contractual obligations;

(ii) makes substantive changes to existing agreements; or

(iii) extends the duration of an existing agreement.

(b) Subsection (a) of this section applies only to the extent that its requirements do not prevent CBAs from rolling over under existing contractual provisions.

(c) To the extent that subordinate agency personnel have executed a CBA that violates the requirements of subsection (a) of this section, but the applicable agency head has not yet approved such agreement pursuant to 5 U.S.C. 7114(c), such agency head shall promptly disapprove such agreement as inconsistent with the requirements of this memorandum.

(d) The requirements of this section do not apply to CBAs that primarily cover law enforcement officers, as that term is used in 18 U.S.C. 1515(a)(4).

Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) If the Federal Labor Relations Authority or a court of competent jurisdiction issues a final judgment holding that section 2(d) of this memorandum would prevent this memorandum from being considered a Government-wide rule or regulation for purposes of 5 U.S.C. 7117(a)(1), section 2(d) of this memorandum shall be severed and rendered inoperative thereby and given no force or effect.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Director of the Office of Personnel Management is authorized and directed to publish this memorandum in the *Federal Register*.

PRESIDENT DONALD J. TRUMP

Attachment 2: *White House Fact Sheet: President Donald J. Trump Stops Last-Minute, Lame-Duck Biden Collective Bargaining Agreements* (January 31, 2025).

White House Fact Sheet: President Donald J. Trump Stops Last-Minute, Lame-Duck Biden Collective Bargaining Agreements

BIDEN CANNOT DICTATE TRUMP MANAGEMENT POLICIES: Today, President Donald J. Trump signed a memorandum directing agencies to reject last-minute collective bargaining agreements (CBAs) issued by the Biden Administration designed to constrain the incoming Trump Administration from reforming government.

- The memorandum prohibits agencies from making new CBAs during the last 30 days of a President's term.
- The memorandum directs agency heads to disapprove CBAs currently undergoing agency head review that violate this policy.
- Previous CBAs will remain in effect while the Trump Administration negotiates a better deal for the American people.

PROTECTING DEMOCRACY: This policy ensures the American people get the policies they voted for, instead of being stuck with the wasteful and ineffective Biden policies rejected at the ballot box.

- The outgoing Biden Administration negotiated lame-duck, multi-year collective bargaining agreements—during the week before the inauguration—in an attempt to tie the incoming Trump Administration's hands.
    - Three days before President Trump took office, the Department of Education negotiated a CBA that generally prohibits the return of remote employees.
    - The Small Business Administration and the Federal Trade Commission also agreed to new CBAs in Biden's final week in office.
- These CBAs attempt to prevent President Trump from implementing his promises to the American people, such as returning Federal employees to the office to make government operate more efficiently.
- President Biden's term of office ended on January 20th. Under this memorandum, he and future Presidents cannot govern agencies after leaving office by locking in last-minute CBAs.

ALIGNING FEDERAL AGENCIES WITH PRIVATE SECTOR PRACTICES: President Trump's memorandum ensures that federal agencies operate under similar rules as private sector unions and employers.

- Private sector unions and businesses renegotiate their CBAs after a new owner buys the company and are not generally bound to agreements made with the previous owner.
- Many union constitutions require approval from an incoming union President before CBAs recently negotiated with internal union staff can take effect.