IN THE MATTER OF THE ARBITRATION BETWEEN

SSA GENERAL COMMITTEE, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,

UNION,

-AND-

SOCIAL SECURITY ADMINISTRATION,

AGENCY.

RE: SSA – TELEWORK PROGRAM

FMCS CASE NO. 250317-04421

SME FILE NO. 25213

SARAH MILLER ESPINOSA
IMPARTIAL ARBITRATOR

DECISION & AWARD

APPEARANCES

FOR THE UNION

Ashley E. Macaysa, Esq. — Staff Counsel, National VA Council, Office of the General Counsel, AFGE, AFL-CIO

FOR THE AGENCY

Chad M. Troop, Esq. — Attorney, Office of General Law, Division 2, Social Security Administration, Office of the General Counsel

PROCEDURAL HISTORY

Pursuant to the agreement ("National Agreement" or "Agreement" or "CBA") between the American Federation of Government Employees ("AFGE" or "Union") and the Social Security Administration ("SSA" or "Agency" or "Employer"), the parties designated Sarah Miller Espinosa to serve as the Arbitrator to resolve certain issues concerning alleged violations of the National Agreement. The hearing was held at the offices of the Agency in Baltimore, Maryland, on September 17 and 18, 2026. The parties had a full and fair opportunity to present evidence and arguments. The Union and the grievants were represented by legal counsel selected by the Union. The Agency was represented by legal counsel selected by the Agency. The Union called the following witnesses to testify: Martin O'Malley ("O'Malley"), Richard Couture ("Couture"), Jessica LaPointe ("LaPointe"), and Barri Sue Bryant ("Bryant"). The Agency called the following witnesses to testify: Martin Watley ("Watley"), Anthony Evans ("Evans"), Ian Taylor ("Taylor"), and Ralph Patinella ("Patinella"). A stenographic transcript of the proceedings was made. The record was closed on January 16, 2026, following the Arbitrator's receipt of the post-hearing briefs.

ISSUE

The parties agreed to allow the Arbitrator to formulate the issue. The Union proposed the following issue: "Did the Agency violate the 2019 National Agreement or any applicable law, regulation, or past practice when it unilaterally eliminated telework for certain AFGE bargaining unit employees? If so, what shall the remedy be?" The Agency proposed the following issue: "Did the Agency violate or repudiate the 2019 SSA/AFGE National Agreement when it suspended telework for certain AFGE bargaining unit employees effective March 16, 2025? If so, what is the remedy?" Having considered the parties' proposed issues, the issue, as formulated by the Arbitrator, is:

> Did the Agency violate and/or repudiate the 2019 National Agreement or any applicable law, regulation, or past practice when it stopped telework beginning in March 2025 for certain AFGE bargaining unit employees? If so, what shall the remedy be?

RELEVANT PROVISIONS OF THE NATIONAL AGREEMENT

2019 SSA-AFGE NATIONAL AGREEMENT – CHANGES EFFECTIVE JANUARY 20, 2025
(JT. EX. 1)
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Management Rights

Section 1. Statutory Rights

A. Subject to subsection (B) of this section, nothing in this Agreement shall affect the authority of any management official of any agency –

1. To determine the mission, budget, organization, number of employees and internal security practices of the agency; and

2. In accordance with applicable laws –
   a. to hire, assign, direct, layoff and retain employees in the agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
   b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
   c. with respect to filling positions, to make selections for appointments from –
      (1) among properly ranked and certified candidates for promotion; or
      (2) any other appropriate source; and
   d. to take whatever actions may be necessary to carry out the agency mission during emergencies.

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B. Nothing in this section shall preclude any agency and any labor organization from negotiating-
   1. at the election of the agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;

   2. procedures which management officials of the agency will observe in exercising any authority under this section; or

   3. appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Article 1

Governing Laws, Regulations, and Existing Conditions of Employment

Section 1: Relationships to Laws and Government-Wide Rules and Regulations

In the administration of all matters covered by this agreement, officials and employees shall be governed by existing or future laws and existing government-wide rules and regulations, as defined in 5 U.S.C. 71, and by subsequently enacted government-wide rules and regulations implementing 5 U.S.C. 2302.

Section 2. Existing Conditions of Employment

In order to change any conditions of employment that were in effect on the effective date of the SSA/AFGE National Agreement, and that are not covered by the SSA/AFGE National Agreement, the Agency shall provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with Article 4 of this Agreement.

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Article 3

Employee Rights

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Section 2. Personal Rights

A. All employees shall be treated fairly and equitably in all aspects of personnel management and without regard to political affiliation, race, color, religion, national origin, sex (including sexual orientation, and gender identity), genetic information, marital status, age, parental status or disability, and with proper regard and protection of their privacy and constitutional rights.

   The parties agree that in the interest of maintaining a congenial work environment, Agency employees, including those acting in a union/management capacity, will deal with each other in a professional manner and with courtesy, dignity, and respect. To that end, all Social Security employees, should refrain from coercive, intimidating, loud or abusive behavior.

   The parties further agree that bullying is prohibited in the workplace and will not be tolerated. Workplace bullying is repeated humiliating or offensive behavior, whereas a single act normally will not constitute bullying. Each employee is responsible for reporting repeated incidents of alleged bullying to their supervisor or any appropriate management official. Reports of bullying should include specific examples and the "who/what/when/where" facts of how the bullying behavior occurred. Upon receipt by an appropriate management official

of a report of workplace bullying, the management official will evaluate and, where appropriate, refer the allegation consistent with Agency policy and this agreement. The Agency will provide information on "Bullying in the Workplace" including examples on an Agency website. The Agency agrees to share the link to the Agency information with all employees annually. The Parties agree that the potential need for anti-bullying training will be a subject for pre-decisional involvement (PDI) in Union Management Cooperation Councils (UMCCCs) under Article 29.

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Article 7

Duration of Agreement

Section 1. Effective Date

This Agreement will be implemented and become effective per the parties' March 19, 2018 Ground Rules MOU.

Section 2. Duration of the Agreement

This Agreement will remain in full force and effect for 6 years from its effective date and automatically renew itself from year to year thereafter. However, either party may give written or electronic notice of its intent to add, amend, reopen, modify or terminate existing Articles of the Agreement not more than 120 or less than 90 calendar days prior to the expiration date. Such notice must be accompanied by a list of the Article that either party intends to add, amend, reopen, modify or terminate. Ground rule negotiations will then begin no later than 30 calendar days after receipt of the notice provided by either party. Ground rule negotiations will be conducted in accordance with Article 4, Section 2.

Section 3. Reopener

Negotiations during the term of this Agreement to add to, amend or modify this Agreement may be conducted only by mutual consent of the parties.

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Article 24

Grievance Procedure

Section 1. Purpose

The purpose of this article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances filed by bargaining unit employee(s), the Union or the Administration.

Section 2. Coverage and Scope

A grievance means any complaint:

A. by an employee(s) concerning any matter relating to the employment of the employee;

B. by the Union concerning any matter relating to the employment of any employee;

C. by any employee(s), the Union or the Administration concerning:

1. the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
2. any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.

D. Grievances on the following matters are excluded from the scope of this procedure:

1. any claimed violation of 5 U.S.C. 73 relating to prohibited political activities;
2. retirement, life insurance or health insurance;
3. a suspension or removal under 5 U.S.C. 7532 relating to national security;
4. any examination, certification, or appointment;
5. the classification of any position which does not result in the reduction in grade or pay of an employee;
6. non-selection for non bargaining unit positions;
7. non-selection for bargaining unit employees amongst properly rated and ranked candidates with the exception that employees may file grievances alleging unlawful discrimination as defined by Title VII. However, employees may file a grievance for non-selection from the exercise of a priority consideration. Employees may also file either a grievance or unfair labor practice, but not both, alleging anti-union animus;
8. Termination of an employee serving under a probationary or trial period;
9. Non-adoption of a suggestion;

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Article 41

Telework

Section 1 – Purpose

The SSA Telework Program permits eligible AFGE bargaining unit employees to perform Agency-assigned work at a management-approved alternate duty station (ADS). The Agency may offer telework opportunities provided that the technological components and equipment are available and in place and that sensitive materials, including Personally Identifiable Information (PII), can be safeguarded. Management will make telework determinations consistent with the eligibility criteria contained herein, taking into account requirements of the position, performance of the employee, impact on organizational performance, level of service provided to the American public, and availability of appropriate technology.

Section 2 – Definitions

A. Alternate Duty Station (ADS) – a management-approved work site that is geographically convenient to the employee's official duty station (ODS). Specifically:
   1. An employee's residence as reflected in his/her Telework Program Request and Agreement; or
   2. Another SSA facility that may be closer to an employee's home and where there is space to accommodate additional Agency employees.

B. Official Duty Station (ODS) – the employee's official Agency worksite.

C. Telework Program Request – a written application for participation in the Telework Program in which the employee describes the general and specific work assignments that the employee proposes to perform at the ADS.

D. Telework Program Request and Agreement – a written agreement contained in PPM S650_1 between the supervisor and the employee defining the employee's obligations and responsibilities under the Telework Program. If the Agency changes the Telework Program Request and Agreement, the union will be given notice and an opportunity to bargain to the extent required by 5 USC 71.

E. Portable Work – work normally performed at the employee's ODS that can be effectively performed at the ADS. This work is part of the employee's regular work assignment or approved special work assignments.

F. Non-Portable Work – Assignments that are not portable include those assignments that require face-to-face customer contact or the employee's physical presence at the ODS.

G. Core Day(s) – Day(s) of the week not eligible for telework. Core days shall be limited to no more than two core days per week.

H. Scheduled Telework – An employee with an approved telework agreement teleworks on a routine, regular, and recurring basis at an ADS.

I. Unscheduled Telework – An employee with an approved telework agreement is required to telework on a non-scheduled day at an ADS.

J. Episodic – Employee may request to telework on a temporary basis for projects, or routine workloads if due to personal circumstances, on a case-by-case basis. The request is subject to management approval. Assuming all eligibility criteria are met, denials will only be for bona fide operational needs. It is anticipated that instances of episodic telework will be infrequent, based upon unique workload needs of the agency, or due to the personal circumstances of the requesting employee, and limited in duration. Management will provide the employee with a specific reason for any denied request in writing.

Section 3 – Eligibility

Each Deputy Commissioner will adhere to the current number of telework days, eligible positions, and percentage of employees permitted to telework as of the date of this agreement [November 27, 2024] until October 25, 2029.

Additionally, as of the date of this agreement until October 25, 2029, each Deputy Commissioner will adhere to current component policies on:

- Credit hours at the ADS
- A 5/4/9 or 4/40 work schedule
- Overtime at the ADS (unless required by FLSA, e.g. late interview or call)
- A part-time schedule
- At the ADS on a non-tour day

Participation will be voluntary and employees may withdraw from the program at any time with notice to their immediate supervisor.

To be eligible to participate in Telework, an employee must meet all of the following conditions:

A. Not currently on an OPS or have been on an OPS in the 12 months preceding the date of the request to telework;

B. Not currently on sick leave restriction or have been counseled for sick leave abuse or placed on sick leave restriction in the 12 months preceding the date of the request to telework;

C. Not in a probationary period or formal training status. Employees who previously completed a probationary period will be considered on a case-by-case basis. Formal training does not include the normal progression of an employee through a career ladder. However, formal training may include periods when an employee needs close supervision or regular feedback from management and/or technical mentors that cannot effectively be accomplished at the ADS.

D. Complete appropriate Agency Telework training;

E. Sign and abide by the conditions of the Telework Program Request and Agreement. Once an employee is approved for participation in the Telework Program, it is understood that management may change the general and specific work assignments set forth in the Telework Program Request and Agreement.

F. Maintain at least an acceptable level of performance (e.g., successful contribution rating) or not be under review (e.g. increased service observations);

G. Have sufficient portable work to be completed at the ADS;

H. Not be excluded from participation by law, or by government-wide rule or regulation;

I. Use approved appropriate technology;

J. Not have been disciplined under Article 23 in the 12 months preceding the date of the request to telework or while on an approved telework agreement.

Section 4 – ODS Shared Work Space

Employees who telework may be required to share space (e.g. shared cubicles, hoteling) with other employees.

Section 5 – Telework Procedures

A. Work performed under a Telework arrangement may be scheduled, unscheduled, or episodic.

B. Requests to Participate in Telework

1. Scheduled Basis
   Employees will request to participate in the Telework program by electronically submitting a Telework Program Request and Agreement consistent with PPM S650_1. Management will act on requests within ten (10) working days of the close of the request period for scheduled telework. If the number of eligible employee exceeds the coverage requirements on a specific day, approval will be made in SCD order starting with the most senior. If the participant's request is denied, management will annotate the reasons for the denial on the telework request form.

   During the months of February and August of each year employees may request to participate in scheduled telework. Employees will not have to submit future requests once the original request is approved unless: a schedule change is requested by the employee during the February and August timeframes; the employee needs to revise the telework request and/or agreement; or the employee is otherwise directed by management.

2. Episodic
   Employees may request at any time to participate in episodic telework as described in Section 2. Employees not previously approved to telework may request to do so by electronically submitting a Telework Program Request and agreement consistent with PPM S650_1. Management will act on these requests no later than five (5) working days following receipt of the request. If the participant's request is denied, management will annotate the reasons for the denial on the telework request form. Depending on the nature of the assignment and employees' personal circumstances, employees may be approved to work episodic telework up to five days per week at the ADS.

3. Off Cycle Requests
   Management will consider requests, submitted electronically, to change a scheduled telework day or participate in telework outside the normal request times. If approved, employees may begin participating in telework or working the newly approved schedule at the start of the next pay period.

C. The parties recognize that Agency assigned functions, the nature of work to be performed and the type of positions can vary significantly from office to office. Management has sole discretion to temporarily change, reduce, or suspend approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs. Management also has sole discretion to change, reduce, or suspend approved telework day(s) for any employee due to the employee's performance.

Section 6 – Hours of Work and Employee Availability

Teleworkers are in a duty status when teleworking and are expected to have the resources necessary to perform their jobs and concentrate on official duties without interruption. Employees may not use duty time for any purpose other than performing Agency-assigned work. Telework is not a substitute for dependent care.

Management is responsible for supervising work in accordance with the Fair Labor Standards Act. Article 10 of the SSA/AFGE National Agreement will apply to those employees who work at an ADS.

Management may require that employees provide electronic notification to their supervisor at the beginning and/or end of their workday.

Requests for leave will be handled in accordance with Article 31 of the SSA/AFGE National Agreement.

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F._Telework Suspensions

Employee(s) may be required to report to their official duty station for training, conferences, meetings or other operational needs. Employees may resume telework as soon as the suspension of telework is over.

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Section 10 – Termination from the Telework Program

Employees may voluntarily terminate their participation in the Telework program at any time by notification to their supervisor and may reapply at the next application period.

Management retains the right to terminate an employee's participation in the Telework Program if:

a. The employee no longer meets one or more of the eligibility requirements contained in Section 3; or
b. The employee fails to comply with any of the conditions set forth in the Telework Program Request and Agreement; or
c. The employee fails to comply with the provisions of this article; or
d. There is a diminishment in the employee's performance.

Management will normally counsel employees about specific problems, including a diminishment in performance, before removing an employee from the Telework Program, except in the case of serious violations. When an employee's participation in the Telework

Program is terminated, the employee will be notified in writing of the reason for termination and the effective date of the termination. Management will consider individual circumstances when determining the effective date of removal from the program. An employee, who has been removed from the Telework Program may reapply for Telework at the first application cycle following a 1-year termination period, unless otherwise prohibited by law, rule, or government-wide regulation.

If a disciplinary action is reversed, the employee will normally resume telework at the beginning of the first pay period following the reversal as long as the employe meets the eligibility requirements.

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RELEVANT STATUTORY PROVISIONS

5 U.S.C. § 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.

BACKGROUND FACTS

On the entire record produced, including the Arbitrator's assessment of the credibility of each testifying witness and weighing the probative value of the documentary evidence admitted, the Arbitrator finds the following relevant facts:

A. Social Security Administration

The mission of the Agency is to promote economic security by providing service to the American public through the administration of authorized programs. The Agency is responsible for administration of Title II, Retirement Survivor Disability Health Insurance ("RSDHI"), and Title XVI, Social Security Income ("SSI"), as well as processing Medicare applications, both hospital and supplemental insurance Part D applications for prescription drug subsidies. There are several larger operational components which oversee certain aspects of the Agency's mission. Examples of components of the Agency include: the Office of Operations (which oversees the field offices, payment centers, workload support units, and teleservice center); the Office of Hearing Operations (which oversees hearing offices, national hearing centers, and national case assistance centers); the Office of Appellate Operations; and the Office of Quality Review.[1]

The SSA Agency head is the Commissioner. Martin O'Malley ("former Commissioner O'Malley") was nominated by President Biden and confirmed by the U.S. Senate in December 2023 to serve as the Commissioner of the SSA. Prior to serving as the Commissioner of SSA, O'Malley served on the Baltimore City Council, as the Mayor of the City of Baltimore, and as the Governor of Maryland. Former Commissioner O'Malley was subpoenaed by the Union and testified in part:

> [I] was asked by President Biden to come and help this Agency turn itself around, after three years in a row of being the most demoralized workforce in the federal government, and having been reduced by Congress to a 50-year low in staffing, while customers climbed every day to an all-time high. And, it was a great honor

[1] Some component names may have changed as a result of reorganization.

> to serve with the men and women of this Agency. One of the great honors of my life.

(9/17/25 Tr. 15:4-13).

Former Commissioner O'Malley served in this capacity through November 2024. Following former Commissioner O'Malley's tenure, there were at least two Acting Commissioners, Michelle King ("Acting Commissioner King") and Leland Dudek ("Acting Commissioner Dudek"). Frank Bisignano ("Commissioner Bisignano") is the current Commissioner of SSA. There are several associate commissioners overseeing components of the Agency. Eddie Taylor ("Associate Commissioner Taylor") is the Associate Commissioner of the Office of Labor and Management Employee Relations ("OLMER").

AFGE represents approximately 38,000 bargaining unit employees at SSA, including, for example, claims specialists, customer service representatives, legal assistants, paralegals, and attorneys. Richard Couture ("Couture") has been employed by the Agency since 2002 and currently is assigned as a senior attorney advisor in the Office of Hearing Operations ("OHO") in Springfield, Massachusetts. Couture is the president of AFGE Council 215, which represents hearing and appeals staff assigned to OHO and the Office of Appellate Operations ("OAO"). Prior to assuming the role of president of Council 215 in 2017, Couture served as president of AFGE Local 1164, which represents field office and hearing office employees in the SSA Boston region.

Couture also serves as the spokesperson for the AFGE Social Security General Committee ("General Committee"). The General Committee is a coalition of six bargaining councils. The six bargaining councils are Council 215; Council 220 (represents bargaining unit employees at field offices, teleservice centers, workload support unit, and social security card centers); 109 (represents bargaining unit employees at six payment centers and regional offices); AFGE Local 1923 (represents bargaining unit employees assigned to headquarters); AFGE Local 2809 (represents bargaining unit employees assigned to the Wilkes-Barre Direct Operations Center); and Council 224 (represents bargaining unit employees assigned to the Office of Quality Review).

As the spokesperson of the General Committee, Couture serves as "the AFGE's national president's alter ego at the commissioner level of recognition at Social Security." (9/17/22 Tr. 116:14-17). Couture testified that he is "responsible for coordinating labor relations activities and strategies amongst the various councils, with the commissioner of Social Security, or his designee, her designee, as well as the various deputy commissioners of the components of the agency."

(9/17/22 Tr. 116-117:21-4). Couture also serves as the chief negotiator for AFGE when bargaining with the Agency.

Jennifer LaPointe ("LaPointe") has been employed as a general claims specialist at the SSA Madison, Wisconsin Field Office for 16 years. LaPointe is the president of AFGE Council 220 and the vice president of AFGE Local 1346. Council 220 represents approximately 25,000 bargaining unit employees assigned to field operations, the majority of teleservice center workers, and workload support workers. Council 220 has 34 affiliate locals. Barri Sue Bryant ("Bryant") has been employed as a customer service representative at the Wilkes-Barre Direct Operations Center since 2005 and is the president of AFGE Local 2809. AFGE Local 2809 includes bargaining unit employees assigned to a teleservice center, work support unit, and benefits and records department.

SSA has approximately 1200 field offices. At the field offices, AFGE represents customer service representatives, lead customer service representatives, claims specialists, and technical experts. The primary responsibilities of customer service representatives are to answer phone calls, receive and process paper applications for social security numbers, and respond to general inquiry work for public walk-ins to the field office, as well as some post entitlement work. Four percent of public contact is in-person; 96% is by phone or internet. Approximately 40% of the work is non-portable. Lead customer service representatives perform all the duties of customer service representatives, mentor customer service representatives, and assist them with more complex issues. Forty percent of the work is non-portable. Claims specialists receive and process applications for benefits, perform records maintenance to determine continuing benefit eligibility through continuing disability reviews, overpayment processing, and rotate in to front-end interviewing. Twenty percent of the workload is non-portable. Prior to the return to 100% in-person work in March 2025, bargaining unit employees who participated in the telework program did so by teleworking up to two days per week.

AFGE represents bargaining unit employees assigned to the 22 national teleservice centers. All work for these employees is portable. Bargaining unit employees participating in the telework program were permitted to telework up to four days per week prior to March 2025. The Union also represents bargaining unit employees in 14 workload support units. The primary function of the units is to process internet applications by claims specialists and technical experts. Technical experts handle complex cases, do performance quality reviews (PQR) of peers, are assigned to

handle congressional inquiries, and provide regional virtual training as mentors and instructors. Approximately 20% of the workload is non-portable. Prior to the return to 100% in-person work in March 2025, bargaining unit employees who participated in the telework program did so by teleworking up to two days per week. Customer service representatives and lead customer service representatives assigned to card centers process paper applications for new or replacement social security cards, including in-person interviewing for new or replacement cards, and, specific to the leads, handle more complex policy questions, mentor, and conduct peer reviews, if needed. Approximately 40% of the work is non-portable.

B. Telework Prior to the November 2024 MOU

Prior to 2012, telework was referred to as flexiplace. Some employees assigned to the Office of Hearings and Appeals, Office of Quality Review, and Headquarters began participating in flexiplace in or around 2000. Telework expanded under the 2012 National Agreement. Couture was first the co-chief negotiator and then the chief negotiator for the Union for the 2019 National Agreement.

Ralph Patinella ("Patinella") was employed at the Agency for 42 years, from 1976 to early 2019, and has served as a re-employed annuitant for the past five or six years. As a re-employed annuitant, Patinella served as a senior advisor to the Associate Commissioner of OLMER. Patinella retired in March 2019 from the position of Associate Commissioner for the Office of Labor and Management Employee Relations. In this role, Patinella was responsible for administration of the nationwide labor relations and employee relations program for the Agency. Patinella began in OLMER in 1990 and was involved in the negotiations for five term National Agreements, including serving as chief negotiator in 2005, 2012, and 2019.

Negotiations for the 2019 agreement began in July 2018. At some point, the parties engaged in mediation and were then released to the Federal Services Impasse Panel (FSIP). FSIP is responsible for resolving bargaining impasses in the federal sector. Article 41 was one of the articles which was in dispute that was decided by FSIP. Couture, the chief negotiator for the Union, explained the FSIP decision and the resulting agreement between the parties as follows:

> Article 41 was one of the articles that the Panel asserted jurisdiction over.
>
> And, it was either April or May of 2019, the Panel ruled. And as it pertained to Article 41, most of what was put, and the Agency basically got most of what it wanted.

> And it was that second proposal they gave us was largely enshrined in the contract. I believe we got one provision in there regarding employees making requests on their own, to episodically telework due to inclement weather subject to management approval, that the Panel did give us.
>
> But by and large, the Agency got what it wanted from the Panel.

(9/17/25 Tr. 136-137:22-13). That is, the language included in the 2019 National Agreement resulted largely from FSIP's adoption of the Agency's offer at impasse. An agreement in principle was reached by the parties on September 27, 2019, following receipt of the decision from FSIP in May 2019.

In March 2020, as a result of the COVID-19 pandemic, bargaining unit employees transitioned to 100% telework. In or around January 2022, in anticipation of re-entry to the workplace in March 2022, the Agency and the Union negotiated an MOU setting the OHO and OAO telework levels at: five days a week for decision writers and three to four days a week for legal assistants in OHO and mostly five days a week for OAO employees. Upon reentry, Field Office staff teleworked up to two days per week; Headquarters staff, depending on the position, teleworked up to four to five days per week; bargaining unit employees assigned to Payment Centers, Workload Support Units, and Teleservice Centers teleworked up to four days per week; employees in Quality Review teleworked up to five days per week; and the number of telework days per week for bargaining unit employees assigned to Direct Operations Centers varied. Couture testified that, in or around February 2024, former Commissioner O'Malley made some changes to telework, including decreasing telework to two days per week for those assigned to Headquarters and regional offices. Couture testified that, as a result of concerns about attrition, changes were made to telework for some Headquarters staff, including increasing the number of telework days for those assigned to the Office of the Chief Information Officer ("OCIO") to five telework days per week. (9/17/25 Tr. 146-148:8-10).

On or about October 7, 2024, the Agency informed Bryant that telework would be suspended for the Wilkes-Barre benefits and record branch for approximately six weeks. Bryant testified that the suspension was the result of changes on the Medicare subsidy forms and approximately four times as many forms were sent out (and once returned, would require processing). As a result, there would be much more mail to open and prepare to scan. Bryant testified opening mail and preparing documents to be scanned is non-portable work. (9/18/25 Tr. 13-14:10-20; Un. Ex. 16).

C. November 2024 MOU Agreement to Modify the 2019 National Agreement

On or about November 27, 2024, Couture, acting on behalf of the Union, and former Commissioner O'Malley, acting on behalf of the Agency, entered a settlement agreement to resolve several pending grievances. The settlement agreement included in part:

> In consideration of the Union's withdrawal of the Grievances, the Agency agrees, upon execution of this Settlement Agreement, to implement a Memorandum of Understanding entitled, "Telework Eligibility, Participation Levels, and Episodic Situations" (MOU) that amends Article 41, Sections 2.J., 3, 5.B.2., 5.C., and 6.C. of the 2019 National Agreement. This MOU is attached to this Settlement Agreement as Exhibit A and is fully incorporated into this Settlement Agreement.

(Un. Ex. 14).

The MOU, "Telework Eligibility, Participation Levels and Episodic Situations," was executed by Couture and former Commissioner O'Malley on November 27, 2024. The MOU modified "the terms of Article 41 of the 2019 SSA-AFGE National Agreement." (Un. Ex. 15). The MOU also stated:

> The Parties recognize that given the effectiveness and productivity gains of our current balance of onsite work and telework days across the various components, the Parties agree to memorialize the Agency's current telework practices through the following modifications to Article 41 of the 2019 SSA-AFGE National Agreement.
>
> 1. The parties agree to modify the introductory language in Article 41, Section 3 as follows:
>
>   ~~Each Deputy Commissioner will determine the number of scheduled telework days, if any, eligible positions, and percentage of employees permitted to telework.~~
>
>   ~~In accordance with applicable law, each Deputy Commissioner will also determine whether teleworkers are eligible to work the following:~~
>
>   **Each Deputy Commissioner will adhere to the current number of telework days, eligible positions, and percentage of employees permitted to telework as of the date of this agreement until October 25, 2029.**
>
>   **Additionally, as of the date of this agreement until October 25, 2029, each Deputy Commissioner will adhere to current component policies on:**
>
> 2. The parties agree to modify the language in Article 41, Section 5C as follows:
>
>   ~~The parties recognize that Agency assigned functions, the nature of work to be performed and the types of positions can vary significantly from office to office.~~

~~Management has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee(s), office, component, or agency wide due to operational needs. Management also has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee due to the employee's performance.~~

The parties recognize that Agency assigned functions, the nature of work to be performed and the types of positions can vary significantly from office to office. Management has sole discretion to temporarily change, reduce, or suspend approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs. Management also has sole discretion to change, reduce, or suspend approved telework day(s) for any employee due to the employee's performance.

3. The parties agree to modify the language in Article 41, Section 2.J as follows:

~~Episodic- Employees may request to work on a temporary project on a case-by-case basis. The request is subject to management approval. It is anticipated that instances of episodic telework will be infrequent based upon unique workload needs of the agency, and limited in duration.~~

Episodic – Employees may request to telework on a temporary basis for projects, or on routine workloads if due to personal circumstances, on a case-by-case basis. The request is subject to management approval. Assuming all eligibility criteria are met, denials will only be for bona fide operational needs. It is anticipated that instances of episodic telework will be infrequent, based upon unique workload needs of the agency or due to the personal circumstances of the requesting employee, and limited in duration. Management will provide the employee with a specific reason for any denied request in writing.

4. The parties agree to modify the language in Article 41, Section 5.B.2 as follows:

~~Employees may request at any time to participate in episodic telework to work on a specific project. Employees not previously approved to telework may request to do so by electronically submitting a Telework Program Request and Agreement consistent with PPM S650_1. Management will act on these requests no later than five (5) working days following receipt of the request. IF the participant's request is denied, management will annotate the reasons for the denial on the telework request form. Depending on the nature of the project, employees may be approved to work episodic telework up to five days per week at the ADS.~~

Employees may request at any time to participate in episodic telework as described in Section 2. Employees not previously approved to telework may request to do so by electronically submitting a Telework Program

Request and Agreement consistent with PPM Sl650_1. Management will act on these requests no later than five (5) working days following receipt of the request. If the participant's request is denied, management will annotate the specific reasons for the denial on the telework request form. Depending on the nature of the assignment and employees' personal circumstances, employees may be approved to work episodic telework up to five days per week at the ADS.

5. The parties agree to modify the language in Article 41, Section 6.C as follows:

   ~~Employees may only split a telework day between the ADS and the ODS at the direction of management.~~

   Employees may split a workday between the ADS and the ODS with the approval or at the direction of management. Upon request, management will explain to employees the basis for denying their request(s) to split a workday.

6. The parties agree to strike the Article 41, Section 11.

7. The remainder of Article 41 is unaltered.

8. This MOU will be effective upon completion of agency head review as set forth in 5 U.S.C. § 7114(c).

(Un. Ex. 15). Article 41, Section 11, AFGE Notification, which the parties agreed to strike, stated: "Should the agency modify, suspend, or terminate all or a significant part of its telework program, appropriate notice will be provided to the Union." (Ag. Ex. P).

D. January 2025 Communications from the Agency Concerning Telework & February 2025 AFGE Responses

On January 23, 2025, Associate Commissioner Taylor sent a letter via email to Couture which stated:

> This is notice, effective February 24, 2025, that in accordance with Article 4 of the 2019 SSA/AFGE National Agreement, of the Social Security Administration's (SSA or Agency) intention to fully comply with and implement President Trump's January 20, 2025 Presidential Memorandum (PM), *Return to In-Person Work*, as well as the January 22, 2025 Office of Personnel Management (OPM) Memorandum "Guidance on Presidential Memorandum *Return to In-Person Work*."
>
> In alignment with these memorandums, SSA intends to revise the Agency telework policy issued under 5 U.S.C. § l6502(a)(1)(A) to state that eligible [employees]

> must work full time at their respective duty stations unless excused due to a disability, qualifying medical condition, or other compelling reason certified by the agency head and the employee's supervisor. In taking this action, the Agency intends to revise Article 41 of the 2019 SSA/AFGE National agreement to adhere to the PM.
>
> If you demand to bargain over this issue, please identify the Union's team members and provide us with proposed dates for negotiations. In the interim, please contact John Kuhn at [email address] with any questions.

(Un. Ex. 1). On January 29, 2025, Associate Commissioner Taylor sent an email to Couture which stated: "We are rescinding the attached notice. I will be in touch with you when I have more information to share." (Un. Ex. 2).

On or about January 31, 2025, the Agency, via Human Resources Internal Communications, sent an email to all Agency employees, the subject line of which was "Differences Between Resignations and Retirements." (Un. Ex. 3). The email included in part the following:

> Finally, many of you have been asking when we will be returning to in person work in the office. While we await approval of our implementation plan, and we do not know the exact date on which we will be returning to full-time in person work, we know it will happen in the near future. Therefore, please begin planning for your personal situations like daycare and eldercare accordingly. We will soon be working in the office 5 days a week (full-time) with very few exceptions. Employees with approved reasonable accommodation requests for telework will continue to telework. We will contact outstationed employees regarding next steps including your onsite work location.

(Un. Ex. 3).

On or about February 3, 2025, Couture sent an email to Acting Commissioner King. The Union recounted the Agency's "inconsistent messaging concerning telework," including the paragraph above from the January 31, 2025 email communication, and stated, in part:

> To the extent that the Agency intends to make changes to or repudiate Article 41, the Agency would be in violation of the National Agreement as well as applicable law. Article 7, Section 3 of the National Agreement makes clear that neither party may reopen the contract except by mutual agreement. **AFGE does not agree to reopen Article 41, or any other part, of the 2019 SSA-AFGE National Agreement.**

(Un. Ex. 4). The Union also:

> [demanded] that the Agency confirm whether it intends to comply with Article 41 of the National Agreement. The Union requests that the Agency make such

> confirmation by Tuesday, February 4, 2025 at 5:00 p.m. ET. Should the Agency fail to respond, the Union will interpret such failure as the Agency's intent to unlawfully repudiate Article 41 and take any and all appropriate legal action.

(Un. Ex. 4).

On or about February 5, 2025, the Union filed a "National Level Union Management Grievance against the Social Security Administration for its Repudiation of Article 41 of the 2019 SSA/AFGE National Agreement Regarding Telework." (Un. Ex. 5).

E. Office of the Chief Information Officer & Return to In-Person Work

On or about March 10, 2025, the Agency, via Human Resources Internal Communications, sent an email to AFGE bargaining unit employees assigned to the OCIO, the subject of which was "Return to In-Person Work." (Un. Ex. 6). The email included, in part, the following:

> On Monday, January 20, 2025, President Trump issued a Presidential Memorandum (PM) requiring all employees to return to work in-person **full-time.** This message serves as your official notice that your telework agreement will be terminated effective March 11, 2025, with all OCIO Employees in AFGE Bargaining Unit Positions expected to return to work in-person full time on **March 12, 2025,** even if you are awaiting reassignment to another position under the Agency's voluntary reassignment offer. **Employees who have signed up for VSIP are exempted.** Employees must return any agency equipment taken to their telework location to their SSA office location.
>
> The return to work in-person does not currently apply to employees under approved reasonable accommodations (RA) authorizing telework, temporary work at home by exception (WAHBE) agreements for medical reasons, or temporary compassionate assignments (TCA).
>
> Employees may reapply for an episodic telework agreement or a TCA for temporary, short-term needs per Article 41 of the SSA/AFGE National Agreement. Additionally, if your location has a space limitation issue, your supervisor will notify you to provide the next steps. As a reminder, any episodic telework is granted on a case-by-case basis and only in situations where the requested telework will benefit the agency.

(Un. Ex. 6).

On or about July 2, 2025, some bargaining unit employees assigned to OCIO received an email from Peter Lee ("Lee"), IT Specialist, which provided, in part:

> As part of the relocation to OCIO, I will be conducting maintenance on your E7B files today. You will likely receive system-generated emails from E7B during this process. Please be aware that the changes will include the following:

- Removal of regular telework entries from your schedules
- Deletion of any existing telework agreements on file
- Addition of a telework termination notice to each file (attached for your review)

Please note that episodic telework requests will not be affected by these updates, unless they are on the same form at which point, I will ask you to complete a new form.

(Un. Ex. 13).

F. Suspension of Telework

A letter dated March 13, 2025, from Associate Commissioner Taylor to Couture stated:

This is informational notice that in accordance with Article 41, Section 5.C. of the 2019 SSA/AFGE National Agreement, the Social Security Administration is suspending telework effective March 16, 2025, for all AFGE bargaining unit employees with the exception of employees in the Office of Hearings Operations, and the Office of Financial Policy and Program Integrity. All effected AFGE employes must return to work in-person at their respective duty stations on a full-time basis unless excused due to a disability, qualifying medical condition, or other compelling reason certified by the agency head and the employee's supervisor.

Please contact John Kuhn at [email address] with any questions.

(Jt. Ex. 2).

Also on March 13, 2025, the Agency, via Human Resources Internal Communications, sent an email to all Agency employees, the subject line of which was "Bargaining Unit Employees – Return to In-Person Work." (Un. Ex. 8). The email included in part the following:

On Monday, January 20, 2025, President Trump issued a Presidential Memorandum (PM) requiring all employees to return to work in person **full time.** This message serves as your official notice that your telework agreement will be suspended effective March 16, 2025, with all employee expected to return to work in-person full time on **March 17, 2025.**

***

The return to work in-person does not currently apply to employees under approved reasonable accommodations (RA) authorizing telework, temporary work at home by exception (WAHBE) agreements for medical reasons, or temporary compassionate assignments (TCA). In addition, employees in the Office of Hearings Operations and Office of Financial Policy and Program Integrity may remain in their current telework posture.

(Un. Ex. 8).

G. March 2025 Communication Between Couture and Acting Commissioner Dudek

On or about March 13, 2025, Couture and representatives from two other SSA unions, met with Acting Commissioner Dudek. According to Couture, Acting Commissioner Dudek said that the OCIO telework changes were temporary and connected to time-limited projects requiring in-person collaboration. Acting Commissioner Dudek committed to honoring Union contracts. (Un. Ex. 7). On or about March 14, 2025, following the March 13, 2025 email messages suspending telework, Couture sent an email to Acting Commissioner Dudek, which stated in part:

> So imagine my shock and anger when, around 5 PM ET yesterday, I received notice from OLMER and a Human Resources Internal Communication (HRIC) that contradicted the conversation we had earlier in the day. Despite the use of the word "suspension", the Agency made clear that it was eliminating telework for most of the AFGE bargaining unit and requiring workers to report onsite on Monday, March 16, 2025, for vague "operational needs." Calling an elimination a "suspension" does not make it so. The notice and HRIC indicated it is indefinite, assumedly permanent, and therefore not a suspension, which per the contract must be temporary. I would also point out that "needs" has a very different meaning than "wants" or "preferences". The Agency has not explained, for each and every installation and work unit, what non-portable workload needs must compel employees to be onsite in order to complete them, consistent with the parties' prior course of dealing. Indeed, many affected components, such as OAO, OQR, PCs, TSCs, WSUs, and the DOC have no direct in-person public contact functions, so any suspensions would be very short and rare, and certainly not indefinite. Many installations, such as 250 E Street, SW in DC, and several field offices and other facilities, cannot fully and safely accommodate all employees directed to return onsite. All and all, none of this improves service or productivity, none of this is necessary to meet real operational needs, and none of this comports with the contract and the parties' history, or even our conversation yesterday.

(Un. Ex. 9).

On the same day, Acting Commissioner Dudek responded by email in relevant part:

> I do and will honor the agreement. As I stated yesterday, I would only call back employees for operational need. I also mentioned I was considering the subject of this press release – [Correcting the Record about Social Security Direct Deposit and Telephone Services]. We also discussed the VERA, VSIP, and staff reassignments.
>
> After our conversation, management came to consensus on Positive Identity proofing. We are also moving forward with staff reassignments. To accomplish these tasks, will require a temporary suspension of the current telework posture for operational need. We need to train staff on the identity proofing. Knowledge transfer is essential for staff reassignments. The OCIO team is working on a digital solution for identity proofing and bank account validation across N8NN, field, and

> internet that should be fully deployed in the next 90 days; providing the relief valve to take the burden off the field.
>
> I promised you and SSA to be transparent. Next week, I will be sending a message to all employees that show our HR plan and our road ahead. It will be posted on the internet for the public to scrutinize. We will also be publishing on youtube our Operational Status meeting. Sunlight is the best disinfectant. My apologies for being slow to release information. That is my fault not yours.
>
> SSA's workforce is phenomenal. You know that. I know that. We work better together.

(Un. Ex. 9).

Couture replied:

> Again, neither the notice nor the HRIC say any of that, nor have any notices been provided to the affected union councils regarding the projects. Further, your explanation below doesn't justify indefinitely eliminating telework for entire components that have nothing to do with the projects you've mentioned, or (for the sake of discussion) staff reassignments which are by nature a very localized issue affecting a very limited number of employees for a very limited time. I would also note that we have successfully performed training and mentoring remotely across the Agency for at least the last five years. There can be no blanket assertion of operational need.
>
> Please fix this. Thank you.

(Un. Ex. 9).

On or about March 19, 2025, Couture emailed Acting Commissioner Dudek and expressed concerns regarding the SSA Press Release on Identity Proofing, including the "major administrative burden upon SSA field offices." (Un. Ex. 11). The email also stated, in part:

> That said, I must also point out the highlighted paragraph below, which indicates that the Agency is requiring in-person service five days per week for "support the stronger in-person identity proofing requirement."[2] First, as stated in the press release and in prior communication and correspondence, this change impacts the field offices. It does not impact any other agency component. Regardless, the Agency heavy-handedly terminated or "suspended" telework in other components that not only have nothing to do with this initiative, but also do not serve the public in-person. Put another way, there is no in-person operational need to require the non-field office components to have their telework terminated or "suspended."

[2] The content of the highlighted paragraph is: "SSA recently required nearly all agency employees, including frontline employees in all offices throughout the country, to work in the office five days a week. This change ensures maximum staffing is available to support the stronger in-person identity proofing requirement." (Un. Ex. 11).

> Further, the Agency should provide notice to AFGE Council 220 regarding the specifics of this initiative, explain why there is a non-portable workload need that requires telework to be suspended, and the expected duration of that suspension. Council 220 can then engage with the Agency as necessary to discuss and consider the Agency's position with any allegedly-necessary telework suspension based on this initiative. Accordingly, please rescind the telework terminations/"suspensions" for the unaffected components and provide appropriate notice to AFGE Council 220, and to AFGE Local 1923 for OCIO on the earlier-stated short-term IT projects, immediately.

(Un. Ex. 11).

H. Grievance

On or about March 25, 2025, the Union filed a "National Level Union Management Grievance." (Jt. Ex. 3). The grievance alleged violations of Articles 1, 3, 7, and 41 of the National Agreement as well as violations of "5. U.S.C. § 7116(a), and any and all other relevant articles, laws, regulations, and past practices not herein specified." (Jt. Ex. 3). The grievance stated, in part:

> On or about January 23, 2025, the Agency notified the Union of its decision to unilaterally implement changes to bargaining-unit employees' conditions of employment that it asserted are consistent with President Trump's January 20, 2025, Presidential Memorandum ("PM"), *Return to In-Person Work,* as well as the January 22, 2025, Office of Personnel Management ("OPM") Memorandum "Guidance on Presidential Memorandum *Return to In-Person Work.*"
>
> In its notice, the Agency provided that effective February 24, 2025, the Agency intended to revise the Agency telework policy issued under 5 U.S.C. § 6502(a)(1)(A) to state that eligible [employees] must work full time at their respective duty stations unless excused due to a disability, qualifying medical condition, or other compelling reason certified by the Agency head and the employee's supervisor. Notwithstanding guidance issued by OPM on January 22, 2025, stating that an agency's compliance with the PM is subject to collective bargaining obligations, the Agency stated that it intended to effectively repudiate Article 41 of the National Agreement in an alleged effort to comport with the PM. The Agency rescinded its January 23rd notice on January 29, 2025.
>
> On January 31, 2025, however, the Agency sent a Human Resources Internal Communication ("HRIC") email to all SSA employees, entitled "Differences Between Resignations and Retirements." While the email addressed the subject matter indicated by its title, the message also contained the following paragraph:
>
> > [f]inally, many of you have been asking when we will be returning to in person work in the office. While we await approval of our [implementation] plan, and we do not know the exact date on which we will be returning to

> full-time in person work, we know it will happen in the near future. Therefore, please begin planning for your personal situations like daycare and eldercare accordingly. We will soon be working in the office 5 days a week (full-time) with very few exceptions. Employees with approved reasonable accommodation requests for telework will continue to telework. We will contact outstationed employees regarding next steps including your onsite work location.

On February 3, 2025, the Union sent the Agency a memorandum concerning the Agency's January 31, 2025, email correspondence. The Union demanded that the Agency confirm whether it intended to comply with Article 41 of the National Agreement by Tuesday, February 4, 2025, at 5:00 p.m. ET. The Union further stated that it would interpret the Agency's failure to respond as the Agency's intent to unlawfully repudiate Article 41. 1 [1 The Union also filed a UNG concerning the Agency's repudiation of Article 41 on February 5, 2025.]

OPM issued additional guidance concerning telework on February 3, 2025, entitled "Guidance on Collective Bargaining Obligations in Connection with *Return to In-Person Work.*" Amongst other things, OPM now claims that telework levels and eligibility are a managerial right and further suggested that bargained-for provisions regarding telework may be unenforceable pursuant to 5 U.S.C. § 7106(a).

Notably, and as required by the parties' National Agreement, the Agency did not solicit telework agreements from bargaining-unit employees during the month of February. Instead, on March 10, 2025, and without prior notification to the Union, the Agency sent bargaining-unit employees working in the Office of the Chief Information Officer (OCIO) the following notice:

> [o]n Monday, January 20, 2025, President Trump issued a Presidential Memorandum (PM) requiring all employees to return to work in-person full time. This message serves as your official notice that your telework agreement will be terminated effective March 11, 2025, with all OCIO Employees in AFGE Bargaining Unit Positions expected to return to work in-person full time on March 12, 2025, even if you are awaiting reassignment to another position under the Agency's voluntary reassignment offer. Employees who have signed up for VSIP are exempted. Employees must return any agency equipment taken to their telework location to their SSA office location.

Despite this, during a meeting with the Union on the morning of March 13, 2025, the Agency represented that it did not intend to eliminate telework for all bargaining-unit employees and further represented that it intended to comply with the parties' National Agreement. Later that evening, however, the Agency provided the Union with a notice that provided in part:

> [t]his is informational notice that in accordance with Article 41, Section 5.C. of the 2019 SSA/AFGE National Agreement, the Social Security Administration is suspending telework effective March 16, 2025, for all AFGE bargaining unit employees with the exception of employees in the Office of Hearings Operations, and the Office of Financial Policy and Program Integrity. All effected AFGE employees must return to work in person at their respective duty stations on a full-time basis unless excused due to a disability, qualifying medical condition, or other compelling reason certified by the agency head and the employee's supervisor.

(Jt. Ex. 3).

The Union alleged the Agency's conduct was unlawful for the following reasons: "1. the Agency effectively repudiated Article 41 of the National Agreement"; "2. The Agency violated provisions set forth in Articles 3 and 41 of the National Agreement"; and "3. The Agency committed Unfair Labor Practices under 5 U.S.C. §§ 7116(a)(1), (5), (7), and (8) and in violation of Article 1 of the National Agreement." (Jt. Ex. 3). The Union alleged the following violations:

- Article 1, Section 1 requiring the Agency to comply with federal law and regulations;
- Article 3, Section 2.A requiring the Agency to treat all employees fairly and equitably in all aspects of personnel management;
- Article 7, Section 2 requiring the Agency to comply with the National agreement until a new term agreement is negotiated;
- Article 7, Section 3 requiring that any negotiations during the term of the agreement be conducted only by mutual consent of the parties;
- Article 41 generally requiring the Agency to adhere to certain processes and procedures regarding telework; Article 41, Section 3 regarding telework eligibility;
- Article 41, Section 5 requiring the Agency to adhere to certain telework procedures;
- Article 41, Section 6.F regarding telework suspensions;
- 5 U.S.C. §§ 7116(a)(1), (5), (7), and (8);
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

(Jt. Ex. 3).

By memorandum dated April 8, 2025, the Agency denied the grievance. The Agency explained its denial, in part, as stated:

> <u>The Agency did not violate the National Agreement and did not repudiate Article 41</u>
>
> The Union alleged the Agency is "effectively repudiating" the terms in Article 41, in violation of Article 7, Section 3 which provides negotiations during the term of the Agreement 1 [1 Under Article 7 of the National Agreement, the National

Agreement is effective until October 25, 2029.] to add to, amend or modify the Agreement may be conducted only by mutual consent of the parties. I disagree. The Agency's actions were not a repudiation of the terms in Article 41. The Union implied the Agency's act of suspending telework was an attempt to repudiate the contract. As discussed below, the Agency's actions related to suspending telework were not and are not in conflict with Article 41 and are fully within the provisions of Article 41.

When looking at the telework article and the intent of the parties, we must first turn to Section 1. Section 1 provides the purpose of the telework article and further states management will make telework determinations consistent with the eligibility criteria in Article 41, taking into account requirements of positions, employee performance, impact on organizational performance, level of service provided to the American public, and availability of appropriate technology.

The Union alleged that the March 10th and 13th notices "effectively eliminated telework" in violation of Article 41, Section 3 of the National Agreement. Section 3, in relevant part, states:

> Each Deputy Commissioner will adhere to the current number of telework days, eligible positions, and percentage of employees permitted to telework as of the date of this agreement [November 27, 2024] until October 25, 2029.

However, Section 5C states management has sole discretion to temporarily change, reduce, or suspend approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs and due to employee performance. The March 13th notice specifically stated the return to in-office work was a suspension of telework, which is temporary in nature. While the March 10th HRIC mistakenly labeled the return to in-office work as a telework termination, the ACOSS corrected that misplaced language verbally to the Union on March 13th and the subsequent March 13th notice incorporated the corrected language addressing a temporary telework suspension. Management has thus clearly articulated their actions as suspension of telework and employee telework agreements have not been terminated.

The Union also alleged the Agency failed to comply with Article 41, Section 5.B.1 because the Agency did not solicit telework requests in February 2025. Section 5.B.1 provides:

> During the months of February and August of each year, employees may request to participate in scheduled telework. Employees will not have to submit future requests once the original request is approved unless: a change is requested by the employee during the February and August timeframes; the employee needs to revise the telework request and/or agreement; or the employee is otherwise directed by management.

> Notably absent from this provision is any requirement that the Agency solicit telework requests in February and August. Because the plain language in Section 5.B.1 does not require Agency solicitation, I find the Agency did not violate Section 5.B.1 when it did not solicit employees for telework requests in February of 2025.
>
> The Agency did not commit an Unfair Labor Practice (ULP) under 5 U.S.C. § 7116(a)(1), (5), (7) and (8).
>
> The Union also alleged the Agency's repudiation of Article 41 is an unfair labor practice, in violation of 5 U.S.C. §§ 7116(a)(1) and (5) of the Statute. As I have found the Agency did not repudiate Article 41 of the National Agreement, I also find the Agency did not engage in an unfair labor practice.
>
> With respect to Section 7116(a)(7) and (8), the Statute prohibits the enforcement of any rules or regulations, that conflict with pre-existing collective bargaining agreements. As discussed above, the Agency's action to temporarily suspend telework does not conflict with Article 41 or the Statute and, therefore, is not an unfair labor practice under Section 7116(a)(7) or (8).
>
> The Union's Position Interferes with Management's authority Under 5 U.S.C. § 7106(a).
>
> Finally, I note that under 5 U.S.C. § 7106(a), nothing shall affect the authority of any management official of any agency, in accordance with applicable laws, "to assign work, to make determinations with respect to contracting out, and to determine the *personnel* by which *agency operations* shall be conducted." (emphasis added). The Agency's decision to allow for the return of bargaining unit employees to help process mission-critical work is both an operational need and a valid exercise of agency-management's rights to increase in-office presence for frontline work. 5 U.S.C. § 7106(a). Preserving the management authority of officials is essential to the constitutional structure and agency operations, and AFGE's assertion that management could not manage its operations constitutes an impermissible interference on the Agency's statutorily created management rights under Section 7106(a).2 [2 The Agency submits that this grievance is an unconstitutional usurpation of the exclusive executive powers vested in the President under the following clauses: Article II, § 2 of the United States Constitution; and the Constitution's separation of powers.].

(Jt. Ex. 4). On or about April 9, 2025, the Union invoked arbitration, resulting in the instant proceeding. (Jt. Ex. 5).

I. Customer Service

Agency witness Ian Taylor ("Taylor") is a Center Director in the Office of Central Operations who has been employed by the Agency for 22 years. Taylor is responsible for monitoring performance data, including Agency production statistics for field operations

(including the Teleservice Center, Workload Support Units, and eight Regional Payment Centers, also known as Program Service Centers). Taylor is tasked with making recommendations to Agency leadership to realign or make improvements based on the data. Taylor is also responsible for briefing Commissioner Bisignano on a weekly basis concerning Agency performance as related to operations. Taylor testified that the manner in which data is collected has remained unchanged from the time period when former Commissioner O'Malley led the Agency to present (as of the date of the hearing). Taylor explained the importance and use of performance analysis to the operations of the Agency as follows:

> A. It's our key opportunity to determine whether the inputs, all of the decision making that we're doing, is having the intended effect on the output, on the data, on customer experience, customer service. Are we serving more customers? Are we serving them quicker with the same degree of quality or is there a slowdown somewhere?
>
> Q. And can you tell me how the analysis and performance statistics is used to improve agency performance?
>
> A. It's used to improve agency performance because we, instead of looking at it at a monthly cadence, or quarterly, or yearly, every week, I go up and talk to Frank. I make sure my executives and chiefs now are aware of what's going on with the data so that we can get ahead of issues before they become real problems, so that everyone's dialed into the same information, the same, working from the same type of data, understanding the same story so that we can all arrive at the same conclusions about whether we need to make a change or whether the change that we intended is having the effect that was desired.

(Tr.147-148:7-9). Taylor also testified that there has been a significant reduction in staff since January 2025 "due to the various things that were offered to employees, the resignation program, voluntary separation incentives, voluntary early-out authority." (9/18/26 Tr. 171:6-9). Taylor testified that the Office of Hearing Operations (now called the Office of Disability Adjudication) "were excluded from the rescission of telework" because they did not have a hearing backlog. (Tr. 169-17-:8-16).

Agency witness Martin Watley ("Watley") is the Area Director for the State of Tennessee and has been employed by the Agency for approximately 19 years. Twenty-eight offices are located within Tennessee, and approximately 605 employees are assigned to the offices. Watley testified that some of the larger field offices provide service to up to 1,200 members of the public

each week. Watley testified that in early 2025, field offices were experiencing long lines and wait times, sometimes resulting in early office closures.

Agency witness Anthony Evans ("Evans") is the District Manager of the Gwinnett and Covington field offices in Northwest Georgia and has been employed by the Agency for 21 years. Evans explained the challenges faced by the field offices he supervises in early 2025 as follows: "Long wait lines, frustrated customers, complaints from customers that management had to [respond] to either Google reviews or congressional inquiries. Just poor customer service overall." (9/18/25 Tr. 80:9-13). Evans testified that during early 2025, there would be lines of 50 to 70 people outside before the offices opened.

Taylor testified concerning the following Agency production statistics:

Title II, Retirement, Survivor, and Health Insurance Claims

- April 2024 – August 2024 – initial claims received 2,953,175
- April 2025 – August 2025 – initial claims received 3,253,296

- April 2024 – August 2024 – initial claims processed 2,869,642
- April 2025 – August 2025 – initial claims processed 3,297,628

(Ag. Ex. H). Taylor further testified that 82% of claims were processed timely in March 2025 as compared to 87% of claims that were timely processed in August 2025. (Ag. Ex. I).

Disability Claims

Average processing time (how long it takes to adjudicate a disability decision from the time that the claim is received by the Agency):

- August 2024 – 231 days
- January 2025 – 240 days
- August 2025 – 217 days

(Ag. Ex. J). Witnesses noted that the Agency is reliant upon state agencies to complete part of the disability claim process.

Disability Reconsideration

Number of disability reconsiderations completed:

- April 2024 – August 2024: 229,166
- April 2025 – August 2025: 268,014

(Ag. Ex. L).

Supplemental Security Income Claims Completed

Number of claims completed:

- April 2024 – August 2024: 623,399
- April 2025 – August 2025: 660,065

(Ag. Ex. K)

800 Number Total Customers Served (Agent + Self-Service)

- April 2024 – August 2024: 13,328,524
- April 2025 – August 2025: 15,510,856

(Ag. Ex. M).

800 Number - Speed of Answer

- January 2025 – 30 minutes
- August 2025 – 9 minutes

(Ag. Ex. N). According to Taylor, the August 2025 speed of answer statistic represents a "historic low." (Tr. 194:17).

Processing Centers

Taylor also explained during his testimony that there are 5,000-6,000 employees assigned to eight centers responsible for processing all items that SSA systems cannot automate (these actions are referred to as clearances).

Total Actions Processed

- April 2024 – August 2024: 4,584,577
- April 2025 – August 2025: 5,759,999

(Ag. Ex. O).

At hearing, Taylor was asked "And can you just kind of summarize generally what you've seen since the suspension of telework in March 2025?". Taylor responded: "My professional opinion, based on looking at the data every day, every week for the past five years, since March of 2025, we are processing more and we are more productive." (Tr. 201-202:19-3). After telework

stopped for employees assigned to field offices in March 2025, Watley and Evans testified that they believed customer service, collaboration, and accountability improved.

POSITION OF THE UNION

The Union contends that "the Agency violated the 2019 National Agreement when it unilaterally eliminated regularly scheduled telework for AFGE bargaining unit employees." (Union Brief at 15). In support of its position:

> The Union maintains that the Agency eliminated, rather than suspended, telework for bargaining unit employees beginning on March 16, 2025. The Agency's conduct amounts to a violation of several provisions of the 2019 National Agreement. First, the Agency's conduct amounts to a violation of Article 41, Section 3, as the Agency was required to sustain telework levels through the duration of the parties' agreement. Second, the Agency violated Article 41, Section 5.C by functionally eliminating regularly scheduled telework. Although the Agency maintains that it is temporarily suspending telework due to operational needs, which is permissible under Article 41, Section 5.C. the record demonstrates that the Agency's purported suspension was not temporary in nature nor justified by any contemporaneous bona fide operational need. The Agency's conduct also constitutes a violation of Article 7, Section 3 as the Agency is prohibited from modifying the parties' agreement without consent from the Union. Here the Agency's functional elimination of telework operates as a unilateral modification to Article 41, Section 3 and 5.C. and therefore, a violation of Article 7, Section 3.

(Union Brief at 15-16).

The Union argues "the Agency's indefinite suspension of scheduled and already approved telework operates as a functional elimination of telework, amounting to an improper modification as well as violation of Article 41, Sections 3 and 5.C." (Union Brief at 16). The Union asserts "Article 41, Section 3 expressly provides that the Agency will adhere to the current number of telework days, eligible positions, and percentage of employees permitted to telework through October 25, 2029" and that "the telework levels as determined by the Agency were to remain in effect for the duration of the agreement unless changed through the mutually agreed-upon procedures set forth in Article 7." (Union Brief at 16). The Union contends that "while the Agency retains the right to temporarily suspend telework for a bona fide operational need, it cannot

eliminate regularly scheduled telework under that section." (Union Brief at 16-17). The Union asserts that "the record shows that the parties modified Article 41, Section 5.C by deliberately removing language allowing for the elimination of telework" and highlights the testimony of "Former Commissioner O'Malley and Mr. Couture", who "confirmed the parties' intent in removing such language." (Union Brief at 17).

The Union asserts that "the Agency's purported "suspension" amounts to an elimination of telework as it lacks temporal limits and reinstatement criteria." (Union Brief at 17). The Union argues "Although Section 5.C allows the Agency to "*temporarily* change, reduce, or *suspend* approved telework day(s) for any employee(s), office, component, or agency-wide due to *operational needs,"* "the Agency's March 13th suspension lacks any temporary features, and to date, regularly scheduled telework has not been restored for the AFGE bargaining unit." (Union Brief at 18). The Union avers:

> Although the word "temporary" is not defined within Article 41, it is a fundamental rule of contract interpretation that clear and unambiguous language be given its plain meaning. As commonly understood, "temporary means lasting for a limited time and not permanent or open-ended. While Mr. Patinella suggested that a "temporary suspension" could be indefinite in duration, his interpretation is inconsistent with the plain meaning of the term.
>
> Furthermore, the Agency's failure to solicit telework agreements from employees as well as its removal of regular telework entries from employees' schedules lends to the conclusion that the Agency's suspension of telework was not temporary in nature.

(Union Brief at 18). The Union also asserts the Agency "has provided no end date for the suspension, nor has one been identified as of present date." (Union Brief at 19).

Next, the Union asserts "the custom and practice of the parties is the most widely used standard to interpret ambiguous and unclear contract language and most arbitrators rely on the parties' manifestation of intent as shown through past practice and custom." (Union Brief at 19). The Union contends that when the Agency has suspended telework in the past, "it has done so in a manner that is narrowly tailored and tied to a [bona fide] "operational need"." (Union Brief at 19). The Union argues "Consistent with the parties' practice, an "operational need" exists where the duties being performed are non-portable and cannot be effectively accomplished through telework." (Union Brief at 19). The Union highlights the definitions of portable work and non-portable work found in Article 41, Section 2. The Union contends that "particularly since post-

COVID reentry in March 2022, the Agency has only implemented telework suspensions temporarily and in a narrowly tailored manner." (Union Brief at 19-20). Further, the Union asserts "that when the Agency has previously suspended telework, the Agency's decision was driven by a particular set of circumstances and that suspension tended to occur on a local level." (Union Brief at 21).

The Union asserts that the Federal Labor Relations Authority ("FLRA" or "Authority"), in Dep't of Veterans Affairs v. AFGE Local 2338, 73 FLRA 914 (2024): "underscores that management must provide a real operational need when justifying decisions and that those needs must be sincerely held at the time of the decision." (Union Brief at 22). The Union argues that "interpreting Article 41, Section 5 C. in a manner that would allow the Agency to shift its justification over time would render that provision meaningless and be contrary to the parties' express intent that telework would not be eliminated." (Union Brief at 22). The Union states "Beginning in January of 2025 through the date of the hearing, the Agency offered differing explanations for both its elimination and purported suspension of telework" and that "the record demonstrates that the Agency's explanations have continued to evolve over time." (Union Brief at 23). The Union cites notices, communications, and hearing testimony in support of its position.

Concerning the testimony proffered by the Agency at hearing related to "a severe service delivery crisis," the Union argues "the Agency's longstanding service delivery crisis predates the Agency's suspension of telework and is insufficient to justify its suspension." (Union Brief at 23-24). The Union asserts "the Agency's service delivery challenges … are a result of longstanding structural problems," "almost every public service metric has been in decline for the prior 10 years," and that "these challenges stemmed from chronic staffing shortages due to the Agency's budget, hiring freezes, and workload volumes." (Union Brief at 24). The Union contends that "the Agency failed to present evidence that telework caused a deterioration in production or service delivery at the time the suspension was imposed." (Union Brief at 24). Related to Agency witness Taylor's testimony, the Union contends that while "Taylor suggested that telework exacerbated these problems, his assertion was not tied to contemporaneous data, metrics, or analysis demonstrating a causal relationship"; was "undermined by the testimony of former Commissioner O'Malley" who testified in part "that the Agency agreed to sustain levels of telework to combat attrition rates and demoralization, both of which were a grave threat to the Agency's longstanding service issues"; and "the data that was collected subsequent to the Agency's suspension of

telework does not establish a contemporaneous operational need and the Agency's claimed performance improvement may have resulted from other intervening factors." (Union Brief at 25).

The Union further contends:

> To the extent that the Agency relies on identity proofing as a basis for implementing a nationwide suspension of telework, the Agency's justification is undermined by its own actions. First, less than two weeks after the Agency issued a news release announcing in-person identity proofing requirements, the Agency rolled back the requirements for individuals applying for Social Security Disability Insurance ("SSDI"), Medicare, and Supplemental Security Income ("SSI"). [Union witness] Ms. LaPointe also explained that in advancing the identity-proofing project, the Agency relied on remote-capable methods such as video service and online platforms. Even assuming identity proofing constituted a legitimate operational need, it did not justify the suspension of telework for employees, and components not tasked with performing identity-proofing work.

(Union Brief at 24).

The Union next argues that "the Agency failed to demonstrate how in-person presence would resolve the Agency's longstanding structural issues"; "evidence that much of the work is portable directly undermines the Agency's claim that in-person presence was necessary to address its asserted structural concerns"; and "the Agency's own data confirms that an overwhelming percentage of customer service requests are made online or over the phone." (Union Brief at 26). The Union contends "staffing shortages are not considered a temporary operational need justifying the suspension of telework" and "the Agency has tools available to address understaffing concerns," including "[movement] towards a universal work-sharing methods to address staffing shortages by redistributing work across field offices, components, or employees regardless of physical location." (Union Brief at 28).

The Union avers that "the Agency's justifications are pretextual and post-hoc justification for its unlawful conduct." (Union Brief at 28). The Union first asserts "the Agency's rationale has shifted over time" and that "the Agency only began describing its elimination of telework as a "suspension" after the Union continuously challenged its unlawful conduct through the filing of its February 5th grievance and through other communications with management officials." (Union Brief at 29). Next, the Union argues "the absence of any decision-maker testimony undermines the Agency's claimed operational determination and the Agency offered no reason for its absence." (Union Brief at 29). The Union states "the record supports the conclusion that the Agency's action to effectively eliminate telework was not driven by a Bonafide operational need, but by a

preference to eliminate telework notwithstanding the limitations imposed by the parties negotiated agreement." (Union Brief at 30-31).

In anticipation of an Agency argument purporting "that the modified provisions of Article 41 are not enforceable as they interfere with its managerial right to assign work under §7106 (a) of the statute," "the Union maintains that Article 41, Sections 3 and 5 C., are enforceable because the parties bargained over those provisions pursuant to §7106(b) notwithstanding any possible effects on management rights under 7106(a)." (Union Brief at 31). In furtherance of its argument, the Union asserts:

> If the parties reach an agreement, the agreement is subject to approval by the head of the agency pursuant to §7114, which requires that agreements between an agency and an exclusive representative be made in "accordance with the provisions of [Chapter 71] and any other applicable law, rule, or regulation. Critically, once an agency elects to bargain a provision that is covered under § 7106 (b)(1), and the foregoing processes are concluded, the provision is enforceable through grievance arbitration notwithstanding its possible effect on management rights under §7106 (a). This comports with longstanding federal labor relations policy that parties to a collective bargaining agreement must have reasonable assurance that negotiated terms will be honored.

(citations omitted) (Union Brief at 32).

The Union further contends:

> Article 41 Sections 3 and 5 C. are enforceable as procedures under § 7106 (b)(2) as those provisions do not directly interfere with the Agency's ability to assign work" and the FLRA "has previously confirmed that provisions regarding the location at which employees are qualified to perform work are enforceable procedures under § 7106 (b)(2).

(Union Brief at 33). The Union asserts "this includes the procedures an agency agrees to with respect to when an employee works at their official duty station and the frequency of telework." (Union Brief at 33).

The Union avers "it is evident that the modified provisions of Article 41 do not interfere with management's right to assign work." (Union Brief at 34). In support of its position, the Union contends:

> The Agency retains the ability to determine telework eligibility for employees who participate in the parties' telework program. For instance, under Section 3 G, an employee is not eligible to telework if they do not have "sufficient portable work to be completed at the ADS." Here, the Agency failed to provide any evidence demonstrating that bargaining unit employees lacked portable work. In fact, the record establishes that a significant portion of the work performed by bargaining

> unit employees is largely portable work. Conversely, if the Agency has an operational need that requires employees to perform non-portable work, the Agency may temporarily suspend telework to meet that operational need.

(Union Brief at 34).

The Union next argues that Article 41, Sections 3 and 5. C are appropriate arrangements under §7106 (b)(3) as those provisions "do not excessively interfere with the Agency's ability to assign work." (Union Brief at 35). The Union asserts:

> First, the "provisions do not negate the exercise of a management right by reversing management's substantive decision altogether." As previously stated, the Agency retains the discretion to determine employee participation in the telework program on a case-by-case basis. Although it has not proven so in this case, Section 5. C explicitly preserves management's discretion to temporarily suspend telework for operational needs. Throughout the life of the agreement, the Agency has exercised its right to assign work and to direct employees while telework levels have remained largely unchanged. And again, the Agency also has a number of tools it may utilize to assign work to employees in operational components. Because management discretion remains intact, the employee benefits clearly outweigh any burden on management.

(Union Brief at 37). Further, the Union asserts that while it "does not concede that the modified provisions interfere nor excessively interfere with management rights under § 7106 (a)," even if Article 41, Sections C and 5. C "affect[ed] the Agency's right to assign work," the provisions "remain enforceable under § 7106 (b)(1) … as the Agency voluntarily elected to bargain over telework." (Union Brief at 37).

The Union next argues that "the Agency's unilateral elimination of scheduled telework for bargaining unit employees also amounts to a repudiation of the parties' agreement." (Union Brief at 39). The Union asserts:

> A federal agency that clearly fails or refuses to honor a collective bargaining agreement may be found to have repudiated the agreement. The repudiation of a negotiated agreement constitutes an ULP in contravention of 5 U.S.C. § 7116 (a)(1) and (5). In determining whether a party repudiated a collective bargaining agreement, the FLRA performs its analysis utilizing a two-prong test. First, the FLRA examines the nature and scope of the purported breach of the agreement … Second, the FLRA analyzes the nature of the agreement provision allegedly breached. That is, whether the provision went to the heart of the parties' agreement.

(citations omitted) (Union Brief at 39).

In the instant matter, the Union asserts "the Agency's open-ended, indefinite suspension of telework operates as a functional elimination of regularly scheduled telework," "is therefore

[violative] of Article 41, Sections 3 and 5.C," and "constitutes a clear and patent breach of Article 41." (Union Brief at 39). The Union further asserts "Article 41, Sections 3 and 5.C go to the heart of the parties' agreement" because:

> Article 41, Section 3 is a key provision of the parties' telework program because it applies to all bargaining unit employees and permits employees to preserve existing and already approved telework arrangements. Moreover, Section 3 as amended by the parties' Telework MOU was a critical provision of the agreement because it provided employees with consistency and clarity regarding telework while preserving ongoing significant cost savings in employee commuting and dependent care expenses. The term was central inducement for the Union; it agreed to the MOU because the Agency committed to specific telework levels that allowed employees to maintain their existing schedules.

(Union Brief at 39-40). As to the Agency's argument that the "telework program was not terminated because it continues to permit bargaining unit employees to telework on an individualized basis," the Union contends, in part, "there is a sharp distinction between the foregoing and the promises agreed to within Article 41, Section 3. These are narrow individualized exceptions [episodic telework, telework for employees with a qualifying disability as a reasonable accommodation, and telework as a temporary compassionate assignment] that exist outside of the core bargain." (Union Brief at 40).

The Union also argues that the Agency's initial notice to the Union and employees "maintained that it was requiring employees to return to office full-time to implement Donald Trump's PM." (Union Brief at 41). The Union asserts:

> …that the PM was not issued pursuant to statutory authority, and therefore cannot override the Agency's legal obligations. Nothing in the PM indicates that an agency is permitted to disregard its bargaining obligations to a union and the PM itself states "this memorandum will be implemented consistent with applicable law." Furthermore, Article 41 was in effect before the PM was issued. As such, and to the extent that the Agency is eliminating telework to comport with the PM the Agency's conduct constitutes a violation of § 7116 (a)(7).

(citation omitted) (Union Brief at 42).

The Union requests that the Arbitrator sustain the grievance and "provide all requested remedies, including an order to the status quo ante and notice posting," "order the Agency to cease-and-desist from any future violations of the 2019 National Agreement," and that "the Arbitrator retain jurisdiction for purposes of resolving any question of remedy based upon the Arbitrator's findings." (Union Brief at 44).

POSITION OF THE AGENCY

The Agency's position is best summarized in its post-hearing brief:

> The Social Security Administration (Agency) has a critical responsibility to the American public to administer its retirement and disability benefit programs in a timely manner. However, as the total number of Social Security beneficiaries has consistently increased over the past several years, the Agency has been faced with substantial operational challenges to deliver timely service to its customers. As of the beginning of 2025, the Agency's backlogs of pending claims were at or near all-time record highs, customers were waiting an unacceptable length of time to receive disability benefit decisions, and field offices were struggling to handle long lines, early office closures, and delays for in-office appointments based on a lack of available on-site employees due to telework. The Agency needed to take action to address this public service crisis and these unsustainable public service trends.
>
> The Agency ultimately decided to suspend telework for certain employees within the American Federation of Government Employees (AFGE) bargaining unit to address its critical operational need to improve the quality and timeliness of its customer service. The Agency's suspension of telework was conducted in accordance with management's sole discretion to suspend telework due to operational needs under Article 41 of the SSA/AFGE National Agreement. Accordingly, the Arbitrator should deny the Union's grievance challenging the Agency's suspension of telework …
>
> ***
>
> The Union contends that the Agency violated and effectively repudiated Article 41 of the agreement when management announced that telework was being suspended for certain AFGE bargaining unit employees, effective March 16, 2025. However, management was entitled to exercise its sole discretion to suspend telework due to operational needs in accordance with its negotiated authority under Article 41, Section 5.C of the Agreement. …the Agency has demonstrated that it had and continues to have an operational need to suspend telework to improve its ability to deliver disability and retirement benefits to the American public in a timely manner. Because the Union has failed to sustain its burden to show that the Agency violated or repudiated Article 41 of the Agreement, the Arbitrator should deny the Union's grievance.

(Agency Brief at 1-2 and 5).

The Agency highlights, in part, the factual background of the instant matter: "the original language of Article 41, Section 3 of the Agreement" allowed "the Agency's Deputy

Commissioners [to exercise] their authority to set telework frequencies for the AFGE bargaining unit employees within each of their components" and "the original language of Article 41, Section 11 also stated "should the Agency modify, suspend, or terminate all or a significant part of its telework program, appropriate notice will be provided to the Union."" (Agency Brief at 3). The Agency asserts that former Commissioner O'Malley "signed a settlement agreement with the Union, in which he agreed to implement a Memorandum of Understanding (MOU) that contained several changes to the original language of Article 41." (Agency Brief at 3). Concerning the MOU, the Agency contends:

> In pertinent part, the parties modified language in Article 41, Section 3 to state "Each Deputy Commissioner will adhere to the current number of telework days, eligible positions, and percentage of employees permitted to telework as of the date of this agreement until October 25, 2029." Notably, however, the parties agreed to retain management's ability to make modifications to the Agency's telework program in amended language of Article 41, Section 5C that states, "Management has sole discretion to temporarily change, reduce, or suspend approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs." Former Commissioner O'Malley testified that it is "super clear" that management retains "sole discretion" to temporarily suspend telework and that he did not bargain away management's authority to do so by signing the MOU. The parties also agreed to eliminate Article 41, Section 11, which previously required the Agency to provide "appropriate notice" to the Union if significant changes were made to the Agency's telework program.
>
> On March 13, 2025, the Agency provided written notice to the Union that it was "suspending telework effective March 16, 2025, for all AFGE bargaining unit employees with the exception of employees in the Office of Hearing Operations and the Office of Financial Policy and Program Integrity." The notice indicated that this suspension of telework was being carried out in accordance with Article 41, Section 5.C of the Agreement.

(citations omitted) (Agency Brief at 4).

The Agency contends Article 41, Section 5.C provides "management has "sole discretion" to suspend telework for any office, component, or agency-wide "due to operational needs"" and that "management's authority to suspend telework based on "operational needs" is further grounded in Article 41, Section 6.F of the Agreement, which provides that "[e]mployee(s) may be required to report to their official duty station for training, conferences, meetings or other operational needs." (citations omitted) (Agency Brief at 5). As related to operational needs, the Agency asserts "the preeminence of the Agency's mission is evident from the language of Article 41, Section 1 of the Agreement, which states that management will consider the "impact on

organizational performance" and "level of service provided to the American public" when making any determinations about telework." (Agency Brief at 6). The Agency also asserts:

> The term "operational needs" was intentionally not defined within the Agreement. Ralph Patinella testified that the parties "had a clear understanding of what [the term "operational needs"] meant during negotiations of the Agreement. He stated that the parties had a common understanding that management had full discretion to determine whether an operational need existed that would require management to take a particular action, such as suspension of telework. Patinella further testified that the standards to invoke management's authority to modify employees' work arrangements had been progressively lowered over the course of the parties' bargaining history and that the "operational need" standard was a "much lower standard to meet than prior standards of "operational emergency" and "operational exigency."

(citations omitted) (Agency Brief at 6-7).

The Agency next contends that it "established that there was an "operational need" to suspend telework for certain AFGE bargaining unit employees to improve its ability to provide critical public services to the American public in a timely fashion" because "the Agency was faced with a "public service crisis" based on its ongoing challenges to deliver timely service to the American public in early 2025." (Agency Brief at 7). In support of its position, the Agency asserts, in part, that it "has been tasked with serving more customers than ever before in its history with its customer base increasing by an average of approximately one million customers per year"; that "the Agency also saw significant increases in the volume of its initial disability claims, disability reconsiderations, and Retirement, Survivors, and Health Insurance (RSHI) claims that were received during fiscal year 2024, as compared to the prior fiscal year"; and that "while the Agency's critical workloads have been progressively increasing, the Agency has not been able to increase its staffing proportionally to its increased workloads due to Congress's budget appropriations." (Agency Brief at 7). The Agency points to the testimony of former Commissioner O'Malley concerning the "customer service crisis" in support of its position. (Agency Brief at 8). The Agency contends that it "has faced considerable pressures – both internally and externally – to improve the quality and timeliness of service that is being provided to the American public." (Agency Brief at 11). The Agency points to the "long lines, early office closures, and delayed in-person appointments at offices" as evidence of "poor customer service." (Agency Brief at 10). The Agency also cites the testimony of Union witness Couture affirming "that the Agency was experiencing "a lot of in-office foot traffic to the field offices" in early 2025, even prior to new

identity-proofing requirements that were [implemented] in March 2025." (citations omitted) (Agency Brief at 11).

In further support of its position, the Agency states, in part:

> [Agency witness] Taylor testified that his analysis of the Agency's performance metrics showed trends that were "all going in the wrong direction" as of the beginning of fiscal year 2025; for example, the Agency's volume of backlogged pending claims, average wait times for disability decisions, and average customer wait times at Social Security offices had all increased over the course of the prior fiscal year under former Commissioner O'Malley's tenure. Taylor testified that these customer service trends were simply not sustainable. Taylor testified that, based on his review and analysis of the Agency's production statistics, the Agency had an operational need to suspend telework in March 2025.

(citations omitted) (Agency Brief at 12).

The Agency asserts it notified the Union "that it had decided to suspend telework for certain AFGE bargaining unit employees effective March 16, 2025, in accordance with Article 41, Section 5.C." (Agency Brief at 13. The Agency also asserts that "although the Agency had authority under the Agreement to suspend telework on an "agency-wide" basis," it did not, "as certain components including the Office of Hearing Operations (OHO) were excluded from the telework suspension based on an evaluation of the operational needs of each component." (Agency Brief at 13). The Agency avers "the Agency's decision to temporarily suspend telework was motivated by its critical operational need to address the "public service crisis" facing the Agency" and "the suspension of telework directly supports the Agency's ability to improve the quality and the timeliness of its customer service to the American public." (Agency Brief at 13).

The Agency argues the suspension of telework for field office employees "has provided management with the capacity to assign more employees to assist in-person customers, avoided early office closures, and improved wait times for in-person appointments." (Agency Brief at 15). Concerning the Union's argument "that management did not have an operational need to suspend telework for field office employees because there are certain workloads, such as phone appointments and internet claims that can be [performed] by an employee while teleworking," the Agency asserts, in part, "a field office employee who is teleworking is not available to assist with "all hands on deck" or "blitz" approaches that are commonly employed by management when more technicians are needed to assist with in-person interviewing to alleviate long wait times for customers and prevent early office closures." (Agency Brief at 16-17). The Agency avers:

> Regardless of whether field office employees can perform a subset of certain portable functions of their position while teleworking, their unavailability to assist with these essential front-line duties as needed throughout each work day has directly contributed to the Agency's operational challenges with serving in-person customers.

(Agency Brief at 17).

The Agency further asserts that "the suspension of telework also allows the Agency to improve the efficiency of employees' productivity across workloads and across components, even with those components that are not responsible for directly serving in-person customers." (Agency Brief at 17). The Agency cites the benefits of in-person work, including that "the increased opportunity for employees to collaborate while working together on site improves the efficiency of services and decreases workload processing time"; it "allows for improved quality of training and mentoring for AFGE bargaining unit employees which contributes to improved efficiency and productivity"; and it "provides management with an improved ability to hold employees accountable for their workloads throughout each work day," which "further supports the Agency's ability to improve the quality and timeliness of its customer service." (Agency Brief at 20).

The Agency contends:

> While the Union may disagree with the Agency's decision to suspend telework or prefer that the Agency had adopted a different approach to address the undisputed "public service crisis," the parties expressly agreed that management was endowed with "sole discretion" to decide whether to suspend telework when faced with "operational needs" to do so. The Agency's critical need to address its undisputed "public service crisis" surely satisfied the "operational needs" standard contained in Article 41, Section 5.C of the Agreement. While the Union may speculate that the suspension of telework might contribute to attrition of the Agency's workforce management is not required under the Agreement to balance the Agency's "operational needs" against any other factors – speculative or otherwise – that may potentially be raised by the Union. As such, the Union cannot sustain its burden to show that the Agency did not have an operational need to suspend telework in March 2025.

(Agency Brief at 20).

Additionally, the Agency asserts its "determination that the suspension of telework would help address its occupational needs is well supported by detailed objective statistical data," demonstrating "that the Agency has been able to significantly reduce its backlogs of pending cases and improve customer wait times across numerous critical workloads since the suspension of telework in March 2025." (Agency Brief at 20). The Agency highlights production statistics in

support of its assertion that "Agency employees have been more productive and have been processing more claims since the suspension of telework in March 2025." The Agency asserts:

> While the Agency still currently has substantial backlogs and continues to work to further reduce customer wait times, the suspension of telework has allowed the Agency to make significant strides towards addressing its critical and ongoing operational need to provide more timely service to the American public.

(Agency Brief at 24).

The Agency next argues that "Management was not required to engage in any bargaining with the Union regarding the suspension of telework because it has "sole discretion" to make modifications to the Agency's telework program." (Agency Brief at 24). In support of its position, the Agency refers to the testimony of Patinella, former Commissioner O'Malley, and Couture. The Agency asserts:

> Thus, it is undisputed between the parties that, under the clear and unequivocal language of Article 41, management has "sole discretion" to make temporary modifications to the Agency's telework program without engaging in any negotiations with the Union. Accordingly, the Arbitrator should reject any argument advanced by the Union suggesting that the Agency somehow violated and/or repudiated Article 41 by "unilaterally" suspending telework without engaging in any negotiations or consulting with the Union as such argument is plainly inconsistent with the language.

(citations omitted) (Agency Brief at 26).

The Agency further argues that it "was not obligated to provide any specific notice to the Union regarding its decision to suspend telework under Article 41 of the Agreement" because "when the Union and the Agency agreed to the amended language of Article 41, via the MOU signed in November 2024, the parties explicitly agreed to "strike the Article 41, Section 11" in its entirety." (Agency Brief at 26-27). The Agency avers "where the parties have agreed to strike a provision of the collective bargaining agreement via an MOU, the modified language of the agreement controls, and the stricken contract language is no longer enforceable." (Agency Brief at 27). Therefore, the Agency concludes "the amended language of Article 41 does not require management to provide *any* notice to the Union regarding its decision to suspend telework, let alone provide any explanations regarding the Agency's operational needs or the length of the suspension." (Agency Brief at 27).

The Agency contends "the Union cannot demonstrate that management has permanently terminated telework in violation of Article 41." (Agency Brief at 29). The Agency argues:

> While the Article 41 MOU removed language that provided management with authority to "eliminate" telework, the amended language of Article 41 nonetheless still provides management with "sole discretion to temporarily change, reduce, or suspend" telework in accordance with the Agreement. Both Ralph Patinella and Rich Couture testified that the Agreement does not define the term "temporarily" as it pertains to the suspension of telework, nor does it specify any maximum length of time for which telework may be suspended. Accordingly, under the language of the Agreement, Patinella testified that a suspension of telework "could be a short period of time, [or] it could be indefinite, depending on the operational need of the Agency," so long as telework is not eliminated on a permanent basis.

(Agency Brief at 29).

In further support of its position, the Agency points to the "suspension notice [which] explicitly informed the Union that the Agency was "suspending telework" in accordance with Article 41, Section 5.C" and the testimony of Couture that former Commissioner Dudek told Couture on more than one occasion that Dudek had "no intention of eliminating or terminating telework." (Agency Brief at 29-30). Concerning the Union's argument that "two emails sent to employees within the Office of the Chief Information Officer (OCIO) reflect that telework has been eliminated, rather than suspended," the Agency contends the HR communication only indicates "that the specific OCIO employees' current *telework agreements* would be "terminated"" and "does not indicate that the Agency's *telework program* was being "terminated."" (Agency Brief at 30). Concerning the email from IT Specialist Peter Lee sent to employees within a particular OCIO unit, the Agency argues "a single off-hand remark regarding personnel file maintenance by a OCIO employee who does not even appear to be a management official is insufficient to establish that the Agency has "eliminated" telework." (Agency Brief at 31).

Further, "Article 41, Section 5 of the Agreement does not mandate that management must solicit telework applications in February." (Agency Brief at 31). The Agency states:

> AFGE bargaining unit employees remain capable of performing telework in appropriate circumstances under the Agreement. As discussed previously, the Agency excepted certain AFGE bargaining unit employees from the suspension of telework based on a determination that there was no operational need within their component to do so. Moreover, AFGE bargaining unit employees generally remain eligible to perform telework on an episodic basis, and that the Agency has routinely granted requests for episodic telework under Article 41, Section 5.B.2 of the Agreement. The Agency also continues to provide telework to employees when eligible under other authorities under the Agreement and Federal law, including reasonable accommodations under Article 18, Section 10; temporary compassionate allowances under Article 27, Section 10; and work-at-home-by-exception under Article 39 of the Agreement. The fact that the Agency continues

> to provide telework to eligible AFGE bargaining unit employees under other provisions of the Agreement further reflects that Agency has not permanently "eliminated" telework in violation or in repudiation of the Agreement.

(citations omitted) (Agency Brief at 32).

> Concerning the temporary nature of the suspension of telework, the Agency asserts:
>
> At this time, the Agency continues to closely monitor its performance data to evaluate its ongoing operational needs to suspend telework. Ian Taylor testified that he provides weekly briefings to Commissioner Bisignano regarding the Agency's performance data to monitor whether the Agency is meeting its internal goals and performance targets and to determine whether any operational changes are warranted. The Agency will continue to evaluate its ongoing operational needs to determine whether the reinstatement of telework for affected AFGE bargaining unit employees is appropriate in accordance with Article 41, Section 5.C.

(Agency Brief at 33).

> The Agency argues:
>
> In the event that the Arbitrator were to find that the Agency somehow violated the Agreement, any potential award that directs the Agency to lift its suspension of telework for AFGE bargaining unit employees would excessively interfere with management's rights to assign work and direct employees under 5 U.S.C. § 7106. As such, the Arbitrator should decline to grant the Union's requested remedy.

(Agency Brief at 34). The Agency cites FLRA decisions that, the Agency asserts, support its position. The Agency concludes, in part:

> Even if it were assumed that the frequency of telework is not inherent to management's right to assign work, the Agency has nonetheless demonstrated a clear relationship between employees' job locations and duties based on the Agency's critical need to provide in-person service to the American public. If the Arbitrator were to issue an award restoring telework for AFGE bargaining unit employees, Agency management would also be improperly foreclosed from providing in-person supervision to bargaining unit employees to direct, monitor, and evaluate their work. Accordingly, the Arbitrator should not order the Agency to restore the prior frequency of telework because it would excessively interfere with management's right to assign work and to direct employees under 5 U.S.C. § 7106.

(Agency Brief at 38). The Agency "respectfully requests that the Arbitrator deny the Union's grievance." (Agency Brief at 39).

ANALYSIS AND DECISION

A. Contract Language Interpretation

The instant matter involves a dispute over an alleged violation of the National Agreement as well as an alleged unfair labor practice. In a contract language interpretation matter, the party asserting the violation of the agreement, here, the Union, has the burden of proof to establish by a preponderance of the credible evidence that the action of the Agency violated the agreement and/or applicable law. In determining the meaning of the contract language at issue and whether or not the Agency's actions violated particular provisions of the National Agreement, the Arbitrator considers and employs primary rules of contract interpretation. It is presumed that the parties did not intend to negotiate provisions of the collective bargaining agreement that either negate or render meaningless other provisions of the Agreement. The history of negotiations and plain meaning of the language employed are important considerations. The Arbitrator draws the essence of the decision and award from the terms of the agreement.

B. Article 41 History of Negotiations

In order to understand the commitment made by the parties in relation to telework and to determine whether, as the Union alleges, the Agency violated Article 41, Telework, it is instructive to consider the history of negotiations leading to the 2019 National Agreement as well as the MOU executed in November 2024 that significantly altered Article 41. First, the Agency and the Union have negotiated and included provisions in the National Agreement related to telework for approximately two decades. When engaged in collective bargaining for the 2019 National Agreement, the Agency proposed several changes to Article 41. Ultimately, the parties reached impasse as to Article 41 and a number of other issues. The FSIP awarded the Agency's offer as to Article 41. When the Agency and the Union entered an agreement in September 2019, the language of Article 41 was, in large and relevant part, the language awarded by FSIP.

The last sentence of Article 41, Section 1, of the 2019 National Agreement states: "Management will make telework determinations consistent with the eligibility criteria contained herein, taking into account requirements of the position, performance of the employee, impact on organizational performance, level of service provided to the American public, and availability of

appropriate technology." (Jt. Ex. 1). Patinella, the chief negotiator for the Agency, testified that it was important to the Agency to include language which recognized the need to consider the level of service provided to the American public. When asked during his testimony, "And can you explain the meaning of the phrase, level of service to the American public?", Patinella answered:

> Sure. Well our mission, SSA is unique, our mission is to serve the public, to make sure that the folks get the benefits they are entitled to, and we put that phrase in the 2019 contract specifically to emphasize that. It does not only appear in this Article, it appears in several places in the contract.
>
> So we wanted to make that very clear that level of service to the American public is very important, it's our mission, and we need to re-state that so everyone, it's right up front and everyone understands it.

(9/18/25 Tr. 238:7-21).

Prior to the November 2024 MOU, Article 41, Section 3 of the National Agreement stated in part: "Each Deputy Commissioner will determine the number of scheduled telework days, if any, eligible positions, and percentage of employees permitted to telework." (Un. Ex. 15). Article 41, Section 5.C, stated:

> The parties recognize that Agency assigned functions, the nature of work to be performed and the type of positions can vary significantly from office to office. **Management has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee(s), office, component, or agency wide due to operational needs.** Management also has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee due to the employee's performance.

(emphasis added) (Un. Ex. 15). Concerning the use of the term "operational needs," Patinella testified the language has evolved to this lower standard, from "operational exigency" (the term included prior to the 2005 agreement) to "operational emergency" (the term included in the 2005 agreement) to "operational need" (the term included in the 2019 agreement). Patinella also testified, in part, that the term operational need "was intentionally not defined. The parties had a clear understanding of what it meant and it's management's call to determine what an operational need is if they want to take a certain action." (9/18/25 Tr. 250:3-10). When asked "What is the significance of the term sole discretion in this section of the agreement?", Patinella responded: "That means we made it very clear, the parties made it very clear, it's management's call, it's not a joint decision, it's not the employee's decision, it's the decision of management and it could be at any one of the levels identified in the language." (9/18/25 Tr. 243:1-5). Patinella also testified

that Article 41, Section 6.F also was amended to make clear that "Employee(s) may be required to report to their official duty station for training, conferences, meetings **or other operational needs.** Employees may resume telework as soon as the suspension of telework is over." (emphasis added) (Jt. Ex. 1). In testifying about the operation of the telework language in Article 41, prior to the adoption of the 2024 MOU, Couture, the Union's chief negotiator, stated in part: "it basically stated that management had sole discretion to change, reduce, suspend, or eliminate approved telework days for any employees, office, component, or agency-wide [based on] operational needs." (9/17/25 Tr. 149:9-13).

On or about November 27, 2024, Couture and former Commissioner O'Malley, acting in his role as the Agency head, executed a settlement agreement which included an MOU altering certain provisions of Article 41. The change to Article 41, Section 3, was as follows:

> 1. The parties agree to modify the introductory language in Article 41, Section 3 as follows:
>
> ~~Each Deputy Commissioner will determine the number of scheduled telework days, if any, eligible positions, and percentage of employees permitted to telework.~~
>
> ~~In accordance with applicable law, each Deputy Commissioner will also determine whether teleworkers are eligible to work the following:~~
>
> **Each Deputy Commissioner will adhere to the current number of telework days, eligible positions, and percentage of employees permitted to telework as of the date of this agreement until October 25, 2029.**
>
> **Additionally, as of the date of this agreement until October 25, 2029, each Deputy Commissioner will adhere to current component policies on:**

(Un. Ex. 15). That is, the parties unambiguously agreed to maintain the current number of telework days, eligible positions, and percentage of employees permitted to telework as of November 27, 2024 until the expiration of the National Agreement on October 25, 2029. This understanding was confirmed during testimony at the hearing by Couture, the chief negotiator and signatory to the MOU for the Union, and former Commissioner O'Malley, the then Agency head and Agency signatory to the MOU.

Agency witness Patinella, who was not involved in the negotiation of the November 2024 MOU, acknowledged in his testimony:

> That was all changed by virtue of the MOU. The MOU locked in the number of days that existed at that time, so it was a guarantee, there was no flexibility given

> to any deputy commissioner to determine his or her organization's telework capabilities, and also the hours of work criteria, that flexibility was taken away, and the hours of work provisions that existed at the time were codified and remain.

(9/18/25 Tr. 241:5-13).

Pursuant to the November 2024 MOU, the parties also agreed to modify Article 41, Section 5.C:

> ~~The parties recognize that Agency assigned functions, the nature of work to be performed and the types of positions can vary significantly from office to office. Management has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee(s), office, component, or agency wide due to operational needs. Management also has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee due to the employee's performance.~~
>
> **The parties recognize that Agency assigned functions, the nature of work to be performed and the types of positions can vary significantly from office to office. Management has sole discretion to temporarily change, reduce, or suspend approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs. Management also has sole discretion to change, reduce, or suspend approved telework day(s) for any employee due to the employee's performance.**

(Un. Ex. 15). When asked to explain the changes made to Article 41, Section 5.C, Couture testified:

> Sure. So the stricken language, which was the original 2019 contract language, it basically stated that management had sole discretion to change, reduce, suspend, or

> eliminate approved telework days for any employees, office, component, or agency-wide operational needs.
>
> And then there's similar language with respect to employee performance. That language was changed to the bolded language below, where the big change was adding the adverb, temporarily.
>
> So, if management has sole discretion to temporarily change, reduce, or suspend approved telework days, the verb eliminate was eliminated, that was stricken.
>
> And so, that was the big change in that section.

(9/17/25 Tr.149-150:8-1). This change was also confirmed during the testimony provided by former Commissioner O'Malley. Former Commissioner O'Malley explained during his testimony:

> That requires us to, you know, have the ability as management should, and the leeway to ask people to – to demand that people change their schedules, or their teleservice, or even sometimes their assignment, in order to serve the American people.
>
> I mean, to wit, for example, I remember we had a spontaneous closure of a field office in Southeast Cleveland, because suddenly they got wiped out of like, four or five staff people all in the same week. And so, the office couldn't operate.
>
> So, in a situation like that, or others, I mean, we have, management has to have the ability temporarily to change such things.
>
> And, it's a very similar clause to what was in the IFPTE contract, and the other bargaining unit, NTEU. Yeah.
>
> And, you know, it's a very similar clause to that. To give management the ability temporarily, due to operational needs to change that balance.

(9/17/25 Tr. 35-36:7-6).

In sum, the Agency agreed it would not eliminate telework and that the Agency has "the sole discretion to temporarily change, reduce, or suspend approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs." (Un. Ex. 15). Thus, with the exception of changes specific to individual employees as outlined in Article 41, the Agency's ability to change, reduce, or suspend telework is limited to circumstances under which the action is temporary. This understanding was confirmed by both Union and Agency witnesses.

Pursuant the November 2024 MOU, the parties also agreed to eliminate Article 41, Section 11: "Should the agency modify, suspend, or terminate all or a significant part of its telework

program, appropriate notice will be provided to the Union." (Ag. Ex. P). Couture explained this change during his testimony as follows:

> Paragraph 6 of the MOU states that the parties agree to strike the Article 41, Section 11.
>
> That concerned notification to AFGE of any substantial changes to the telework program, including termination.
>
> And so, that section was stricken in its entirety to avoid confusion. Because we had taken the word eliminate out of the earlier section, we didn't want to leave a paragraph in there that referred to termination because it would create an inconsistency. It would create confusion.
>
> We wanted to make it clear that elimination of telework, termination of telework, was no longer on the table.

(9/17/25 Tr.151-152:9-1). Couture also testified concerning changes made to episodic telework as well as the conditions under which an employee may split a telework day, provisions which are not relevant to the instant dispute.

C. The Agency violated Article 41, Section 3 of the National Agreement

There is no question that, as of March 2025, the Agency failed to maintain the level of telework, which it unambiguously committed to do in the November 2024 MOU. It is uncontested that the November 2024 MOU altered the language of Article 41 of the National Agreement. The only contractually permissible manner for the Agency to alter telework for the thousands of bargaining unit employees spread across several components, including field offices, centers, and headquarters, was to do so in accordance with Article 41, Section 5.C. For the following reasons, the Arbitrator concludes the Agency's actions were not permitted by the terms of that section.

First, according to Article 41, Section 5.C, the Agency may only "temporarily change, reduce, or suspend" telework. The term "temporarily" is not defined in the National Agreement. Per the Merriam-Webster dictionary, "temporarily" is an adverb meaning "during a limited time." Further, the Agency purports it "suspended" telework for the many components affected and that it did not eliminate telework. As the plain meaning of "temporarily" and "suspend" make clear, however, to suspend an action temporarily means that the action will begin again. In the instant case, the Agency has not provided any meaningful response to the question of when or under what circumstances telework will resume. This absence of any temporal or conditions-based considerations leaves the Agency essentially asserting the suspension of telework is temporary

because the Agency says it is temporary, but the Agency cannot or will not say when, if ever, telework will resume. While Taylor testified that the Agency closely monitors its production statistics, Taylor is not a decision-maker in regard to the suspension or resumption of telework and Taylor did not indicate what production statistics results, if any, would lead the Agency to resume telework. Simply put, the Agency cannot credibly assert the cessation of telework is temporary because the Agency used the word "suspend" rather than "eliminate."

This is especially so given the Agency's actions leading up to and following its March 2025 "suspension" of telework. First, on or about January 23, 2025, the Agency notified the Union that, effective February 24, 2025, it was SSA's:

> intention to fully comply with and implement President Trump's January 20, 2025 Presidential Memorandum (PM), *Return to In-Person Work,* as well as the January 22, 2025 Office of Personnel Management (OPM) Memorandum "Guidance on Presidential *Return to In-Person Work.*
>
> In alignment with these memorandums, SSA intends to revise the Agency telework policy issued under 5 U.S.C. § 16502(a)(1)(A) to state that eligible [employees] must work full time at their respective duty stations unless excused due to a disability, qualifying medical condition, or other compelling reason certified by the agency head and the employee's supervisor. In taking this action, the Agency intends to revise Article 41 of the 2019 SSA/AFGE National Agreement to adhere to the PM.

(Un. Ex. 1). There can be no serious dispute that the Agency plainly expressed its intentions to repudiate Article 41 of the National Agreement on or about January 23, 2025, prior to its rescission of the notice.

However, on or about January 29, 2025, the Agency sent an email to the Union rescinding the January 23, 2025 notice and stated the Agency "will be in touch" with the Union when the Agency had "more information to share." (Un. Ex. 2). Despite its assertion that it was rescinding the notice to discontinue telework, on January 31, 2025, the Agency sent an email to all Agency employees, which included the following:

> Finally, many of you have been asking when we will be returning to in person work in the office. **While we await approval of our implementation plan, and we do not know the exact date on which we will be returning to full-time in person work, we know it will happen in the near future.** Therefore, please begin planning for your personal situations like daycare and eldercare accordingly. **We will soon be working in the office 5 days a week (full-time) with very few exceptions.** Employees with approved reasonable accommodation requests for

> telework will continue to telework. We will contact outstationed employees regarding next steps including your onsite work location.

(emphasis added) (Un. Ex. 3). While the Union, through the efforts of Couture, attempted to seek clarification from Acting Commissioner King as to whether the Agency intended "to unlawfully repudiate Article 41," the Agency did not respond to the Union by February 4, 2025, the date requested by the Union for a response. The Union filed a national level grievance on February 5, 2025. (Un. Ex. 4 and Un. Ex. 5).

On or about March 10, 2025, AFGE bargaining unit employees assigned to the OCIO received an email which stated in relevant part:

> On Monday, January 20, 2025, President Trump issued a Presidential Memorandum (PM) requiring all employees to return to work in-person **full-time.** This message serves as your official notice that your telework agreement will be terminated effective March 11, 2025, with all OCIO Employees in AFGE Bargaining Unit Positions expected to return to work in-person full time on **March 12, 2025,** even if you are awaiting reassignment to another position under the Agency's voluntary reassignment offer.

(Un. Ex. 6).

On or about March 13, 2025, the Agency sent an email to all Agency employees which stated in relevant part:

> On Monday, January 20, 2025, President Trump issued a Presidential Memorandum (PM) requiring all employees to return to work in person **full time.** This message serves as your official notice that your telework agreement will be suspended effective March 16, 2025, with all employees expected to return to work in-person full time on **March 17, 2025.**

(Un. Ex. 8).

Also on or about March 13, 2025, the Agency sent a notice to the Union which stated in relevant part:

> This is informational notice that in accordance with Article 41, Section 5.C. of the 2019 SSA/AFGE National Agreement, the Social Security Administration is suspending telework effective March 16, 2025, for all AFGE bargaining unit employees with the exception of employees in the Office of Hearings Operations, and the Office of Financial Policy and Program Integrity. All effected AFGE employees must return to work in-person at their respective duty stations on a full-time basis unless excused due to a disability, qualifying medical condition, or other compelling reason certified by the agency head and the employee's supervisor.

(Jt. Ex. 2).

That is, while the Agency began using the term "suspend" in reference to stopping telework for many bargaining unit employees in the communications it issued on or about March 13, 2025, the Agency continued to reference the January 20, 2025 PM "requiring all employees to return to work in person **full time**" (Un. Ex. 8) and did not indicate, other than the use of the term "suspend," that its actions would be temporary. Also on or around March 13 or 14, 2025, the Agency issued a press release which stated, in part: "SSA recently required nearly all agency employees, including frontline employees in all offices throughout the country, to work in the office five days a week. This change ensures maximum staffing is available to support the stronger in-person identity proofing requirement." (Un. Ex. 11). The weight of the evidence leads the Arbitrator to conclude that while the Agency changed the word "eliminate" to "suspend" following the initial grievance filed by the Union, the record does not contain persuasive evidence that the purported "suspension" was temporary.

This conclusion is further supported by the partial explanation provided by Acting Commissioner Dudek concerning the reasons for stopping telework when talking with Couture, an explanation that is inconsistent with the reality of the continued cessation of telework as of the date of the hearing. Couture testified that Acting Commissioner Dudek communicated to him that the Agency would honor the Union contracts. In a March 14, 2025 email reply to Couture, Dudek wrote, in part:

> After our conversation, management came to consensus on Positive Identity proofing. We are also moving forward with staff reassignments. To accomplish these tasks, will require a temporary suspension of the current telework posture for operational need. We need to train staff on the identity proofing. Knowledge transfer is essential for staff reassignments. The OCIO team is working on a digital solution for identity proofing and bank account validation across N8NN, field, and internet that should be fully deployed in the next 90 days; providing the relief valve to take the burden off the field.
>
> I promised you and SSA to be transparent. Next week, I will be sending a message to all employees that show our HR plan and our road ahead. It will be posted on the internet for the public to scrutinize. We will also be publishing on youtube our Operational Status meeting. Sunlight is the best disinfectant. My apologies for being slow to release information. That is my fault not yours.
>
> SSA's workforce is phenomenal. You know that. I know that. We work better together.

(Un. Ex. 9). Despite Acting Commissioner Dudek's assurances, the cessation of telework did not end after 90 days, nor is there evidence that the Agency sent "a message to all employees that show our HR plan and our road ahead." (Un. Ex. 9).

Acting Commissioner Dudek resigned and Commissioner Bisignano was confirmed as the Agency head in May 2025. Former Acting Commissioner Dudek was not called as a witness nor were any Agency decision-makers. As of the time of the hearing, there was no change to the cessation of telework instituted in March 2025.

The Agency presented no testimony or persuasive documentary evidence to establish that the cessation of telework was intended to last for a finite period of time or what that time period would be, measured either in days or months or as determined by circumstances or conditions specified by the Agency. Rather, the Agency provided testimony from Patinella, who was not involved and had no first-hand knowledge of the negotiations leading to the November 2024 MOU. During his testimony, Patinella asserted "temporary" could mean "indefinite." The Arbitrator rejects this interpretation of the Agreement, because, first, Patinella was not involved in the negotiations and has no first-hand knowledge of what the parties meant by "temporary." Further and importantly, by definition, temporary and indefinite are not synonymous. The Arbitrator credits the testimony of Couture and former Commissioner O'Malley, the signatories to the MOU, who indicated "temporarily" means for a limited time. The Agency could easily have rebutted the evidence presented by the Union and demonstrated that the cessation of telework was actually a suspension, that is, temporary in nature, if, in fact, that was the case. Despite ample opportunities to do so between the time of the suspension and through the hearing, however, the Agency did not. The approach of "take our word for it," is insufficient in light of the evidence presented.

The Agency also argues that because the parties agreed to eliminate Article 41, Section 11 in the November 2024 MOU, the Agency was not required "to provide any notice to the Union regarding its decision to suspend telework, let alone provide any explanations regarding the Agency's operational needs or the length of the suspension." While it is true that Article 41, Section 11, was struck from the National Agreement, the Agency's argument that it owes no information to the Union in regard to the length or conditions of the "suspension" is erroneous. The Agency and the Union are parties to a collective bargaining agreement. It is the Agency's and the Union's responsibility to comply with the terms of the Agreement. It is the Union's responsibility to police the administration of the agreement to ensure the Agency is complying

with its terms. Because the Agency has failed to provide any credible explanation concerning the purported temporary nature of the Agency's action to stop telework for thousands of employees, the Agency leaves the Arbitrator in the position of determining whether the "suspension" is temporary based solely on the Agency's actions, which include: an initial declaration by the Agency that it was eliminating telework and reference to the PM in January 2025; the Agency's communication to all employees on January 31, 2025 indicating telework would soon end; the Agency's use of the word "suspend" rather than "eliminate" in March 2025 (while continuing to reference the PM and not specifying when or under what conditions the Agency intended to resume telework, if any); the Agency's March 2025 press release informing the public that most employees would be working five days a week in person; the Agency's April 8, 2025 response to this grievance which, in part, strangely asserted "this grievance is an unconstitutional usurpation of the exclusive executive powers vested in the President"[3]; and the Agency's decision or inability to provide any temporal limitations related to its decision to stop telework for thousands of employees. (Jt. Ex. 4). The weight of the evidence, therefore, leads the Arbitrator to conclude that the Agency violated its commitment to maintain levels of telework, as delineated in Article 41, Section 3, and that the Agency's actions were not temporary, as that word is commonly defined and understood, and therefore not permitted by Article 41, Section 5.C.[4]

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[3] The last portion of the Agency's grievance response asserted:
Finally, I note that under 5 U.S.C. § 7106(a), nothing shall affect the authority of any management official of any agency, in accordance with applicable laws, "to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted." (emphasis added). The Agency's decision to allow for the return of bargaining unit employees to help process mission-critical work is both an operational need and a valid exercise of agency-management's rights to increase in-office presence for frontline work. 5 U.S.C. § 7106(a). Preserving the management authority of officials is essential to the constitutional structure and agency operations, and AFGE's assertion that management could not manage its operations constitutes an impermissible interference on the Agency's statutorily created management rights under Section 7106(a).2 [2 The Agency submits that this grievance is an unconstitutional usurpation of the exclusive executive powers vested in the President under the following clauses: Article II, § 2 of the United States Constitution; and the Constitution's separation of powers.]. (Jt. Ex. 4). The Agency did not advance any constitutional claim at hearing.

[4] As for the Union's argument that the Agency did not have an operational need to suspend telework because, in part, the public service crisis to which the Agency referred at hearing was in existence prior to the November 2024 MOU, and because the customer service issues referenced by the Agency are actually the result of a structural understaffing that has occurred for many years, the Arbitrator is unconvinced. Article 41, Section 5.C includes the following second sentence: "**Management has sole discretion** to temporarily change, reduce, or suspend approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs." (emphasis added) (Jt. Ex.). The Arbitrator credits the testimony

The Agency also argues, in part, that the Union cannot demonstrate the Agency eliminated the telework program in violation of Article 41 because telework for some bargaining unit members working in OHO and the Office of Financial Policy and Program Integrity was not stopped. Additionally, the Agency asserts, it continues to allow some bargaining unit members to engage in episodic telework and that the Agency provides telework as a reasonable accommodation for certain bargaining unit members. The Agency's argument, however, misses the point. To demonstrate a violation of the Agreement, the Union must establish that the Agency failed to abide by its commitment in Article 41 Section 3, "Each Deputy Commissioner will adhere to the current number of telework days, eligible positions, and percentage of employees permitted to telework as of the date of this agreement until October 25, 2029"; and that the Agency was not permitted to do so pursuant to Article 41, Section 5.C. because the cessation of telework did not "temporarily change, reduce, or suspend" telework for affected bargaining unit employees. Here, for the reasons previously discussed, it is clear the Agency violated Article 41, Section 3 and a preponderance of the evidence establishes the Agency's actions did not constitute a temporary suspension.

The Agency further contends that examination of the production statistics as well as the testimony of Taylor, Watley, and Evans, demonstrate that the cessation of telework has improved Agency performance. This, however, is not the question before the Arbitrator. The question before this Arbitrator is whether or not the Agency violated its Article 41 commitment.

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of the Agency's chief negotiator, Patinella, concerning the language initially awarded by FSIP and included in the 2019 National Agreement: "Management has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee(s), office, component, or agency wide due to operational needs." (Un. Ex. 15). As previously discussed, Patinella testified the language evolved to a lower standard, from operational exigency (the term included prior to the 2005 agreement) to operational emergency (the term included in the 2005 agreement) to operational need (the term included in the 2019 agreement). Patinella also testified in part that the term operational need "was intentionally not defined. The parties had a clear understanding of what it meant and it's management's call to determine what an operational need is if they want to take a certain action." (9/18/25 Tr. 250:3-10). When asked "What is the significance of the term sole discretion in this section of the agreement?", Patinella responded: "That means we made it very clear, the parties made it very clear, it's management's call, it's not a joint decision, it's not the employee's decision, it's the decision of management and it could be at any one of the levels identified in the language." (9/18/25 Tr. 243:1-5). The record demonstrates the parties did not alter "Management has sole discretion" or the reference to "operational needs" in the November 2024 MOU. Thus, while the November 2024 MOU committed the Agency to maintain existing levels of telework, with the exception of "temporarily changing, reducing, or suspending" telework, the November 2024 MOU did not alter Management's sole discretion to make those temporary alterations due to operational needs.

Consideration of whether or not violating the National Agreement had a positive effect on production statistics is not a legitimate defense or an appropriate consideration for the Arbitrator when determining if a violation occurred. Here again, the evidence establishes that the Agency, through its actions, clearly violated Article 41.

D. The Agency repudiated Article 41 of the National Agreement

Having found the Agency violated Article 41 of the National Agreement, the Arbitrator now considers the Union's assertion that the actions of the Agency constituted a repudiation of the National Agreement in contravention of 5 U.S.C. § 7116 (a)(1) and (5). The Federal Labor Relations Authority ("FLRA" or "Authority") utilizes a two-prong test to analyze allegations of repudiation:

> (1)The nature and scope of the alleged breach of an agreement (i.e., was the breach clear and patent?); and (2) the nature of the agreement provision allegedly breached (i.e., did the provision go to the heart of the parties' agreement?). The examination of either element may involve an inquiry into the meaning of the agreement provision allegedly breached. However, for the reasons that follow, it is not always necessary to determine the precise meaning of the provision in order to analyze an allegation of repudiation.
>
> Specifically, with regard to the first element, it is necessary to show that a respondent's action constituted "a clear and patent breach of the terms of the agreement[.]" Conelius v. Nutt, 472 U.S. at 664 (citation omitted). In those situations where the meaning of a particular agreement term is unclear, acting in accordance with a reasonable interpretation of that term, even if it is not the only reasonable interpretation, does not constitute a clear and patent breach of the terms of the agreement. Cf. e.tg., Crest Litho, Inc., 308 NLRB 108, 110 (1992) (NLRB will not find a violation "if the record shows that 'an employer has a sound arguable basis for ascribing a particular meaning to his contract and his action is in accordance with the terms of the contract as he construes it.'") (citing Vickers, Inc., 153 NLRB 561, 570 (1965)). With regard to the second element, if a provision is not of a nature that goes to the heart of the parties' collective bargaining agreement, then it is not necessary to determine the meaning of the provision because, even if the respondent breached the parties' agreement, that breach would not amount to a repudiation.

Dep't of the Air Force, 375th Mission Support Squadron, Scott AFB, 51 F.L.R.A. 858 (1996).

As previously discussed, the parties amended Article 41 of the 2019 National Agreement through their execution of the November 2024 MOU. The Agency agreed, as part of that MOU, to maintain the levels of telework. The Agency retained the ability to temporarily suspend, reduce, or change telework pursuant to conditions specified in Article 41, Section 5.C. However, for the

reasons previously discussed, the Agency's actions violated Article 41. The Arbitrator concludes the Agency's actions did not comport with any reasonable interpretation of "temporarily suspend." These actions include the Agency's assertion that "temporarily" can mean "indefinite," and the Agency's inability to or choice to not provide any explanation as to the length of time or conditions that would accompany a rescission of its actions to cease telework for thousands of bargaining unit members; the Agency's inconsistent descriptions of its action, from "eliminate" to "suspend"; and former Acting Commissioner Dudek's assurances identifying 90 days as the time period in which certain actions would provide relief to field offices (which is now long past). Further, the Agency referenced the January 2025 PM concerning return to in-person work on multiple occasions. Thus, the Agency's actions constitute a clear and patent breach of Article 41 of the National Agreement.

Concerning the second prong of the analysis, the nature of the provision breached, the Arbitrator concludes the violation of Article 41, Section 3, goes to the heart of the parties' agreement. In November 2024, the Agency and the Union agreed to modify provisions of Article 41. In doing so, the Agency agreed to maintain the levels of telework, absent specific conditions (including the ability to temporarily suspend telework based on operational needs). The Agency's breach of its commitment, which meant thousands of employees were mandated to forego approved telework and return indefinitely to full-time in-person work, clearly went to the heart of the parties' agreement. This conclusion is supported by the testimony of both parties' signatories to the MOU, Couture and former Commissioner O'Malley. Therefore, because the Agency's violation of Article 41 constituted a clear and patent breach that went to the heart of the agreement, the Arbitrator concludes the Agency repudiated Article 41 in violation of 5 U.S.C. § 7116 (a)(1) and (5).

E. Remedy

Having concluded the Agency violated the parties' National Agreement and repudiated Article 41 in violation of 5 U.S.C. § 7116 (a)(1) and (5), the Arbitrator must now consider what is the appropriate remedy. The Union requested remedies include an order to the status quo ante, an order that the Agency cease and desist from future violations of the National Agreement, notice posting, and that the Arbitrator retain remedial jurisdiction. Concerning remedy, the Agency argues in part that "any potential award that directs the Agency to lift its suspension of telework for AFGE bargaining unit employees would excessively interfere with management's rights to

assign work and direct employees under 5 U.S.C. § 7106." (Agency Brief at 34). In support of its position, the Agency asserts in part:

> Even if it were assumed that the frequency of telework is not inherent to management's right to assign work, the Agency has nonetheless demonstrated a clear relationship between employees' job locations and duties based on the Agency's critical need to provide in-person service to the American public. If the Arbitrator were to issue an award restoring telework for AFGE bargaining unit employees, Agency management would also be improperly foreclosed from providing in-person supervision to bargaining unit employees to direct, monitor, and evaluate their work. Accordingly, the Arbitrator should not order the Agency to restore the prior frequency of telework because it would excessively interfere with management's right to assign work and to direct employees under 5 U.S.C. § 7106.

(Agency Brief at 38).

In considering the Agency's position, the Arbitrator notes that several of the FLRA decisions cited by the Agency are in reference to negotiability determinations related to telework, not the enforcement of existing collective bargaining agreements. However, even if the Agency were not required to bargain over the levels of telework, the Agency voluntarily agreed to do so when it executed the November 2024 MOU. Per the Agency's statutory rights, as encompassed in §7106 (b), the Agency may, at its election, negotiate "on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work." (Jt. Ex. 1). Here, the Agency chose to negotiate over the means of performing work when it negotiated changes to Article 41, Telework. In doing so, and by virtue of the MOU executed by Couture on behalf of the Union and former Commissioner O'Malley on behalf of the Agency, the Agency committed itself to maintain existing levels of telework, subject to certain conditions, including the ability to make case-by-case decisions concerning individual employees ("Management also has sole discretion to change, reduce, or suspend approved telework day(s) for any employee due to the employee's performance") and retained "sole discretion to ***temporarily*** change, reduce, or suspend approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs." (emphasis added) (Jt. Ex. 1). The Agency's argument, that a return to the status quo ante, a status quo ante which gives effect to the parties National Agreement, is unlawful, is, therefore, not

persuasive. The Agency retains the same rights and abilities to assign work as it has had since the implementation of the November 2024 MOU.

The Arbitrator is mindful of the critical work of the Agency and the mission of the Agency to provide service to the American public. The Agency, however, made a binding commitment to maintain the levels of telework present in November 2024, absent certain conditions outlined in Article 41, Section 5.C. The Agency is bound by its commitment until October 25, 2029, unless there is a mutual agreement between the Agency and the Union to reopen the National Agreement. There is, therefore, no justification for this Arbitrator to deny the Union's request for an order to status quo ante to remedy said violation. In addition to the order to status quo ante, the Arbitrator further orders the Agency to cease and desist from violating Article 41 of the National Agreement and, as is customary in matters involving a violation of statute, to post a notice of said violation.

CONCLUSION

The Arbitrator considered all of the evidence and arguments made by both parties. The Arbitrator, however, may not have repeated every item of documentary evidence, nor may she have repeated completely all of the arguments presented in the respective briefs.

AWARD

Having heard the evidence and arguments of the parties, the Arbitrator awards as follows:

1. The grievance is sustained.
2. The Agency violated and repudiated the 2019 National Agreement and 5 U.S.C. § 7116 (a)(1) and (5) when it stopped telework for certain AFGE bargaining unit employees beginning in March 2025.

ORDER OF REMEDY

1. The Agency is ordered to restore the status quo ante, restoring telework to the pre-March 16, 2025 levels.

2. The Agency must cease and desist from violating Article 41 of the National Agreement.

3. The Agency is required to post a notice at all workplaces for thirty (30) days upon receipt of this Decision and Award and to electronically disseminate the notice by emailing a copy of the notice to all bargaining unit employees. The notice must include:

> In March 2025, the Agency stopped telework for certain AFGE bargaining unit employees. In doing so, the Agency violated Article 41 of the National Agreement. Pursuant a grievance filed and pursued to Arbitration by the SSA General Committee, American Federation of Government Employees, the Agency was found to have repudiated the National Agreement and committed an Unfair Labor Practice in violation of § 7116
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> **(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; and
> **(5)** to refuse to consult or negotiate in good faith with a labor organization as required by this chapter.

In addition to posting this Notice, the Agency is ordered to:

Restore the status quo ante, restoring telework to the pre-March 16, 2025 levels;

Cease and desist from violating Article 41 of the National Agreement.

RETENTION OF JURISDICTION

The Arbitrator retains jurisdiction over this matter for sixty (60) days for the exclusive purpose of resolving any issue(s) pertaining to the order of remedy in this matter. A request to the Arbitrator to extend the time period of jurisdiction or to exercise jurisdiction shall be made in writing to the Arbitrator with a copy to the other party, and the request shall state the issue(s) in dispute. It is within the discretion of the Arbitrator to determine whether the issue(s) presented by the party or parties is within the jurisdiction of this provision pertaining to the retention of the Arbitrator's jurisdiction.

March 11, 2026
Alexandria, VA

Sarah Miller Espinosa, J.D.
Arbitrator

AFFIRMATION

I, Sarah Miller Espinosa, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Decision and Award.

March 11, 2026
Alexandria, VA

Sarah Miller Espinosa, J.D.