

United States Senate

WASHINGTON, DC 20510

November 1, 2018

The Honorable Margaret Weichert
Acting Director
U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Acting Director Weichert:

We write to express our serious concerns that agencies in the Executive Branch are seemingly ignoring the court order issued by United States District Court for the District of Columbia on August 25, 2018, in regard to Executive Orders 13836, 13837, and 13839 (EOs). In that ruling, the Court expressly enjoined the “President’s subordinates from implementing or giving effect” to the invalidated provisions of those EOs. Despite this order, agencies have been slow in rolling back their implementation efforts and have continued to stonewall during collective bargaining negotiations in order to achieve the effects of the invalidated provisions.

On August 29, 2018, the Office of Personnel Management (OPM) issued a brief, one-page memorandum titled “Updated Guidance Relating to Enjoinment of Certain Provisions of Executive Orders 13836, 13837, and 13839.” In this memorandum, OPM notified the heads of federal agencies that it was rescinding portions of previous guidance memorandums related to the invalidated sections of the EOs. In addition, the memorandum issued new guidance urging agencies to “determine proper compliance measures based on the Order.”

This guidance did not address specifically what agencies should do about any illegal actions already taken to implement the invalidated sections of the EOs. Since this time, it has become clear that agencies have failed to adhere to your office’s guidance, and continued with implementation of the invalidated EOs by either resuming their previous efforts or by engaging in bad-faith negotiating tactics during collective bargaining negotiations.

Reports from agencies, including the Department of Health and Human Services (HHS), the Environmental Protection Agency, the Social Security Administration (SSA), and the Department of Veterans Affairs, demonstrate that these agencies have engaged in tactics during collective bargaining negotiations that amount to clear examples of bad-faith bargaining, which is one of the very factors that drove the Court’s decision. For example, HHS and SSA sought the services of a mediator before the bargaining process had even reached an impasse.

The goal of these strategies appears to be to advance provisions in the invalidated portions of the EOs, such as arbitrary limits on official time. In one such proposal, an agency sought to

eliminate 37 of the 47 articles in the existing collective bargaining agreement, including articles regarding telework, alternative work schedules, occupational health and safety, and reasonable accommodations for employees with disabilities. In another, an agency insisted on renegotiating a previously negotiated agreement. These instances bring into serious doubt the agencies' compliance with the Court's order.

Due to the proliferation of unlawful action occurring with respect to federal labor relations laws, we respectfully request the following information:

1. What actions are being taken by OPM to restore the status quo ante at agencies where the invalidated provisions of the Executive Orders were imposed before the August 25, 2018 court order?
2. An updated timeline of the actions planned by OPM to bring federal agencies into compliance with the court order.
3. Given agencies' non-compliance with your office's previous guidance, will you be issuing new, specific guidance to agencies on how they should proceed to comply with the court order?
 - a. If so, what will this new guidance contain, what is the status of such guidance, and how is it being formulated?
 - b. If not, please provide your justification for not taking further action to end any unlawful tactics being used by agencies in collective bargaining negotiations.
4. How much oversight, if any, has OPM performed to ensure agency compliance with the Civil Service Reform Act of 1978?
 - a. If any oversight has been performed, please provide a detailed explanation of the efforts.
5. Describe the efforts that OPM has performed to ensure agency compliance with Executive Orders 13836, 13837, and 13839.

We take our duty to conduct oversight of federal agencies very seriously. In order to ensure good labor relations within the Executive Branch, and to avoid labor strife, it is of paramount importance that agencies engage in good-faith collective bargaining and adhere to the relevant civil service statutes. As such, we respectfully request a response to these questions by November 16, 2018.

Sincerely,



BRIAN SCHATZ
United States Senator



CHRIS VAN HOLLEN
United States Senator



TAMMY BALDWIN
United States Senator



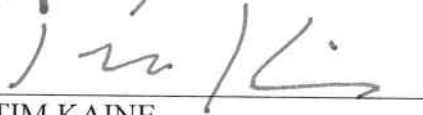
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United States Senator



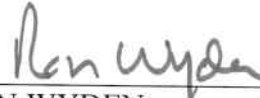
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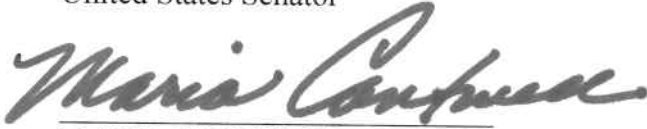
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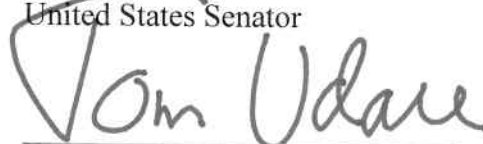
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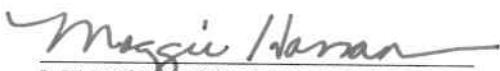
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