



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

FOR FLRA USE ONLY

Case No.

Date Filed

1. AGENCY AGAINST WHICH CHARGE IS BROUGHT

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

2. CHARGING PARTY

a. Name of Charging Party (include address, city, state, & ZIP)
AFGE Council 238
P.O. Box 308
7715 Crittenden Street
Philadelphia, PA 19118-4421

b. Agency Representative (include name, title, address)

Lauren Lemley
Acting Deputy Director
Office of Human Resources
Labor and Employee Relations Division
USEPA
Washington, DC 20001
tel. 202-564-1290 fax
e-mail lemley.lauren@epa.gov

b. Charging Party Representative (include name, title, address)

Gary Morton
President, AFGE Council 238
P.O. Box 308
7715 Crittenden Street
Philadelphia, PA 19118-4421

t. [REDACTED] fax
e-mail [REDACTED]

3. BASIS OF THE CHARGE

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

Please see the attached Basis of the Charge.

ULP (21-101)

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

c. Have you or anyone else raised this matter in any other procedure? No Yes If yes, where?

- | | | |
|--|---|---|
| <input type="checkbox"/> Grievance Procedure | <input type="checkbox"/> Federal Mediation and Conciliation Service | <input type="checkbox"/> Federal Service Impasses Panel |
| <input type="checkbox"/> Equal Employment Opportunity Commission | <input type="checkbox"/> Merit Systems Protection Board | <input type="checkbox"/> Office of Special Counsel |
| <input type="checkbox"/> Other Administrative or Judicial Proceeding | <input type="checkbox"/> Negotiability Appeal to FLRA | <input type="checkbox"/> Other _____ |

4. DECLARATION

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

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

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

Gary Morton, President

Gary Morton

Your Signature

1/4/2021

Type or Print Your Name

Date

3. Basis of Charge--

On or about December 23, 2020, EPA Administrator Andrew Wheeler sent an email to all employees of the United States Environmental Protection Agency, including the approximately 7,500 EPA employees represented by AFGE Council 238. Copy of the 12/23/2020 communication is attached. In this email, Wheeler falsely states that AFGE declined additional workplace flexibilities for its bargaining "in favor of issues more important to union leadership than to their members." *Such statements are a continuation of Agency mischaracterizations and falsehoods which were the subject of a previously filed 8/10/2020 ULP (copy attached).* The Agency is ignoring negotiated bargaining procedures while engaging in an illegal process of *direct dealing* with Union represented employees. Following is a timeline of Agency actions on December 23, 2020:

a) On December 23, 2020, 1:23 PM EST, AFGE Council 238 President Gary Morton was contacted via email by Lauren Lemley, EPA Acting Deputy Director, offering to amend the Master Collective Bargaining Agreement between EPA and AFGE Council 238 to delink telework from work schedules. The email also stated, "Shortly Administrator Wheeler will be sending a Mass Mailer to all EPA employees eliminating the need for non-bargaining employees to be in the office three days a week."

b) Senior EPA Labor Attorney Robert Coomber then telephoned Mr. Morton and communicated an offer from the Agency to amend the Master Agreement by delinking telework from work schedules. Mr. Coomber stated that the Union had until 3:30 PM to accept the offer.

c) Shortly thereafter, Coomber again telephoned Morton to communicate that an email had been sent to Morton indicating that the offer had been "rescinded." Mr. Coomber stated he was sorry and was "unsure why the offer was rescinded." Coomber further stated that he "did not know what was going on" and that the Agency would contact Morton "later." A 1:31 PM EST, an email was received from Coomber to Morton stating that the Agency was "rescinding our email and offer" (copy attached).

d) At 4:12 PM EST, Coomber sent an email to Morton forwarding a draft MOU purporting to amend the MCBA to delink work schedules and telework. The email recited that, "In May of this year we sought the Union's concessions on issues including official time and the grievance procedure, but we are no longer seeking the concessions." The email further stated that Administrator Wheeler will be sending a Mass Mailer to all EPA employees eliminating the need for non-bargaining employees to be in the office three days a week (copies attached).

e) Six minutes later at 4:18 PM, Administrator Andrew Wheeler sent an email to all EPA employees, as described above.

From: Message from the Administrator <messagefromtheadadministrator@epa.gov>

Sent: Wednesday, December 23, 2020 2:18 PM

To: Message from the Administrator <messagefromtheadadministrator@epa.gov>

Subject: Workplace flexibilities added

<image002.jpg>

Dear Colleagues,

I hope you and your families are staying safe and healthy as the nation continues to grapple with COVID-19. I want to commend you again for your dedication to EPA's mission, especially after the agency's quick jump to 96 percent telework starting in March.

As an Agency, we have continued to do great work for the American people while working remotely. Telework can be an effective part of a work schedule, and the prominence of telework in response to the pandemic has given us countless practical examples of how well we can connect and collaborate with one another regardless of where we are based. In recognition of this, I am revising the telework policy for non-bargaining unit employees. Once we return to normal work schedules, I am eliminating the need for non-bargaining unit employees to be in the office three days per week. For those non-bargaining unit employees on a compressed or Maxiflex schedule, this will enable those employees to be able to telework two days each week and have a compressed/flex day.

Additionally, Agency representatives have reached out to the American Federation of Government Employees (AFGE) to offer the same flexibilities for these bargaining unit employees and to ask them to sign an MOU recognizing this new flexibility. During negotiations with AFGE, EPA did offer a best and final deal, which would have given employees these additional workplace flexibilities. Unfortunately, this was rejected by AFGE as they chose to place a higher value on issues more important to union leadership than to their members, to include matters such as increasing the amount of official time that is available to union officers. Nevertheless, I want to do what's right for our workforce by expanding workplace flexibilities.

I remain incredibly proud of how hard everyone across the EPA is working to support the important and critical mission of protecting human health and the environment, while continuing to manage the impacts of the pandemic on our personal lives.

Andrew Wheeler
Administrator

From: **Lemley, Lauren** <Lemley.Lauren@epa.gov>
Date: Wed, Dec 23, 2020, 4:12 PM
Subject: Agency Offer to Delink Telework and Work Schedules
To: gw morton <gmony3631@gmail.com>
Cc: Coomber, Robert <coomber.robert@epa.gov>, Milbeck, Regina <Milbeck.Regina@epa.gov>

Gary,

Attached please find our offer to delink work schedules from telework. In May of this year we sought the Union's concessions on issues including official time and the grievance procedure, but we are no longer seeking those concessions. If you are willing to sign the attached we are willing to implement it as soon as is legally practicable.

Shortly, Administrator Wheeler will be sending a Mass Mailer to all EPA employees eliminating the need for non-bargaining employees to be in the office three days per week, and detailing the Agency's and the Union's past negotiations on this issue.

Please reach out if you would like to discuss.

Thank you,

Lauren Lemley
Office of Human Resources
Acting Deputy Director
Labor and Employee Relations Division
US Environmental Protection Agency
Phone: (202) 564-1290
Email: lemley.lauren@epa.gov

----- Forwarded message -----

From: **Coomber, Robert** <coomber.robert@epa.gov>
Date: Wed, Dec 23, 2020, 1:31 PM
Subject: RE: Agency Offer to Delink Telework and Work Schedules
To: gw morton <gmony3631@gmail.com>
Cc: Lemley, Lauren <Lemley.Lauren@epa.gov>, Milbeck, Regina <Milbeck.Regina@epa.gov>

Gary,

We are hereby rescinding our email and offer. Pardon our confusion and thank you for your understanding.

Best,

Bob

Robert D. Coomber

Senior Labor Attorney

Labor and Employee Relations Division

Desk Phone: (202) 564-0955

Cell Phone: (202) 236-4965

coomber.robert@epa.gov

From: Coomber, Robert

Sent: Wednesday, December 23, 2020 1:23 PM

To: gw morton <gmony3631@gmail.com>

Cc: Lemley, Lauren <Lemley.Lauren@epa.gov>; Milbeck, Regina <Milbeck.Regina@epa.gov>

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