

FEDERAL EDUCATION ASSOCIATION/STATESIDE REGION CLASSIFIED UNIT  
ASSOCIATION GRIEVANCE SY 2019-2020, No. 5

This grievance is being filed under Article 26 of the Master Labor Agreement (MLA) entered into by the Stateside Region of the Federal Education Association (FEA/SR) and the Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS).

Grievance:

This Association Grievance is being filed over the unilateral implementation of changes to conditions of employment resulting from the decision of the DoDEA Americas Director of Student Excellence to close DDESS schools to students due the COVID-19 pandemic. Management violated Article 7 of the MLA and committed an unfair labor practice under 5 U.S.C. § 7116(a)(1), (5), and (8) by failing to provide adequate notice of the myriad of changes to conditions of employment for education support professionals associated with the transition to a digital learning platform and by implementing those changes prior to completing its bargaining obligations under 5 U.S.C. § 7101, et seq.

Management made substantive changes to mandatory subjects of bargaining without adequate notice and without bargaining. Management failed to bargain impact and implementation when exercising management rights under 5 U.S.C. § 7106(a) in violation of Article 7 of the MLA and 5 U.S.C. § 7106(b). Management further committed an unfair labor practice under 5 U.S.C. § 7116(a)(1) by unlawfully dealing directly with bargaining unit employees on matters for which the Agency has an obligation to deal with the Union as the exclusive representative.

Management violated Article 11 of the MLA by failing to maintain a safe work environment for bargaining unit employees.

The following relief is sought for this grievance:

- Return to the status quo ante;
- That the Agency maintain a safe and healthy work environment for all bargaining unit employees;
- That the Agency desist from bad faith bargaining;
- That the Agency desist from unlawful direct dealings with bargaining unit employees;
- That the Agency negotiate, in good faith, policies and procedures covering the continued operations when school is closed to students due to a pandemic/and or emergency situation to include the benefits and protections employees are entitled to if required to work in hazardous conditions;
- Make whole relief for any reduction in pay, allowance, and/or differential that would not have occurred but for the Agency's unlawful implementation, 5 U.S.C. § 7116(a) violations, and/or MLA violations;
- Restoration of any leave that would not have been charged but for the Agency's unlawful implementation, 5 U.S.C. § 7116(a) violations, and/or MLA violations;

- Correction and/or rescission of any personnel or disciplinary action that would not have occurred but for the Agency's unlawful implementation, 5 U.S.C. § 7116(a) violations, and/or MLA violations;
- Correction and/or rescission of the placement of any bargaining unit employee in an AWOL or LWOP status that would not have occurred but for the Agency's unlawful implementation, 5 U.S.C. § 7116(a) violations, and/or MLA violations;
- Back pay, plus interest;
- Attorney fees and costs;
- Any additional appropriate relief.

Association Point of Contact is:

A handwritten signature in black ink, appearing to read "Ben Hunter", is written over a light gray rectangular background.

Signature:

Ben Hunter  
FEA-Stateside Region General Counsel  
(202) 834-3427

**Subject:** Re: Support Staff Employee Status-School Closures

**Date:** Wednesday, April 1, 2020 at 4:57:05 PM Eastern Daylight Time

**From:** Hunter, Benjamin [NEA]

**To:** Woods, Elgin, Mr., CIV, OSD/DoDEA-Americas

**CC:** Minor, Judith A. Dr. SES OSD/DoDEA, Hovanic, Stephen, Mr., CIV, OSD/DoDEA-Americas, feaddress, James, Ronald Mr. CIV OSD/DoDEA, Rogers, Dean A. Mr. CIV OSD/DoDEA, Stubbs, Angelia [FEA]

Dear Elgin:

To date, the only notice the Union has received regarding potential changes to conditions of employment for the classified bargaining unit related to the COVID-19 pandemic is the March 17, 2020 message below attaching a memorandum from the Director invoking Management Rights under 5 U.S.C. 7106(a)(2)(D) to direct or authorize bargaining unit employees to work at an alternative worksite, to include his/her home. As you are aware, Article 7 covers the specific bargaining requirements “[i]n the event that the Agency exercises its rights under 5 U.S.C. 7106(a).” The Agency has since implemented a myriad of changes to policies and procedures, not referenced in Mr. Brady’s March 17, 2020 memorandum, impacting conditions of employment.

In the context of the COVID-19 crisis, OPM has issued guidance reminding agencies invoking 5 U.S.C. 7106(a)(2)(D) that “[i]f the agency needs to act quickly due to the circumstances of the emergency, the agency is strongly encouraged to begin communicating with the appropriate union representatives as soon as possible and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest opportunity, including on a post-implementation basis.” [OPM Fact Sheet: Additional Guidance in Connection with the COVID-19 Emergency (3/20/2020)]. FEA-SR requests the Agency immediately provide Article 7 notice of all changes to conditions of employment relating to Dr. Minor’s decision to close DDESS schools to students. If such notice is not provided by Wednesday, April 8, 2020, FEA-SR will pursue the available statutory and or contractual remedies.

FEA-SR has provided management a number of unsolicited proposals to address the changes to conditions of employment that have been reported by bargaining unit employees. FEA-SR reserves the right to change or add to its proposals once the Agency’ provides specific notice per Article 7 of the MLA. FEA-SR also requests to meet and bargain at the earliest opportunity.

- The Agency will limit the hours/days the school building is open for public access to limit the need for bargaining unit employees to be physically present in the building.
- The Agency will schedule visitor appointments on an as-need basis to limit the need for bargaining unit employees to be physically present in the building.
- The Agency will coordinate delivery schedules to limit days that deliveries will be accepted to limit the need for bargaining unit employees to be physically present in the building.
- Office calls will be routed to support staff at alternative locations to avoid the need for office staff to report to the school.
- To the greatest extent possible, the Agency will conduct administrative functions at the CSO to allow school buildings to close.
- In the event a school reopens, bargaining unit employees will be provided at least 3 days’ notice.
- Any formal observations be held in abeyance.
- The use of live feed video for classroom support staff will be optional.

-The safety of the digital learning platform will be reviewed and secured. Procedures will be established in case the digital learning platform is breached. It is understood that the Agency will immediately contact the appropriate law enforcement agency if a breach occurs. The Agency will notify FEA-SR and impacted bargaining unit employees immediately after a breach occurs.

-The Agency will immediately notify FEA-SR when it learns that an employee has tested positive for COVID-19.

-The Agency will provide FEA-SR the name of the employee's duty location and indicate whether the employee has been in contact with other employees in the last 14 days.

-Absolutely no employees will be required to report to the school building if someone testing positive for COVID-19 was in the building.

-The Agency will provide paid "excused leave" for same reasons outlined under the Families First Coronavirus Response Act.

-Employees required to report to the school building will be paid at a hazard pay rate of 1.5 times their hourly rate for any work performed at the school building.

Please let me know when the Agency is available to discuss.

Sincerely,

Ben Hunter  
FEA-Stateside Region General Counsel  
Phone: (202) 834-3427  
Email: [bhunter@nea.org](mailto:bhunter@nea.org)

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On 3/17/20, 12:48 PM, "Woods, Elgin, Mr., CIV, OSD/DoDEA-Americas" <[Elgin.Woods@DODEA.EDU](mailto:Elgin.Woods@DODEA.EDU)> wrote:

Jane,

Please see the attached memorandum dated March 17, 2020, from Mr. Tom Brady, DoDEA Director in reference to DoDEA Americas Support Staff and School Closures.

If you decide to bargain appropriate arrangements related to this decision, please submit a request to bargain and any negotiable proposals to me in accordance with the negotiated agreement.

Please contact me if you have any questions.

Thanks.

Elgin

