

Congress of the United States
House of Representatives
Washington, D.C. 20515

June 26, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave, S.W.
Washington, DC 20202

Dear Secretary DeVos:

We are investigating reports of sudden and troubling actions by political appointees at the Department of Education to suspend ongoing collective bargaining negotiations with the union representing employees at the Department, to cancel all previously scheduled negotiation sessions, and to unilaterally force onto these employees a new collective bargaining agreement that was neither bargained for nor agreed to by the Department's workforce.

The reports raise serious questions about whether Trump Administration officials are complying with laws requiring them to conduct negotiations in "good faith" with the employees who dedicate their careers to promoting education in our nation. The law requires both the agency and union to negotiate in good faith, which includes the following obligations:

- (1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
- (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment; and
- (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays.¹

It is our understanding that the Department and the union have taken the following steps over the past year and a half:

- Between October 2016 and December 2017, the Department and the union had been engaging in preliminary negotiations to establish ground rules, pursuant to the Article 5 of the previous collective bargaining agreement, which required that chief negotiators for both the agency and the union meet at Department headquarters in Washington, D.C. During this time, the parties had come to agreement on certain terms and proposals, modified others, and withdrew still others.

¹ 5 U.S.C. §7114 (a)-(b).

- However, in December 2017, the Department declared that the parties were at an impasse and provided the union with what it deemed its Last, Best and Final Offer.
- On February 8, 2018, the Department notified the union that it intended to unilaterally implement a contract.
- On February 14, 2018, the Department cancelled all remaining bargaining sessions that the parties had previously scheduled.
- On that day, February 14, 2018, the union submitted a demand to bargain to the Department, but the Department refused to bargain.
- On March 9, 2018, the Department notified the union that it would unilaterally implement its terms.²
- The union submitted the Department's terms to a ratification vote by the employees, and the vote failed, but the Department implemented these terms anyway.

The Department made significant changes to the collective bargaining agreement that had been in place previously and reduced the number of articles from 44 to 8. For example, the new contract severely restricted the amount of "official time" union leaders may spend on labor relations, required union officials to turn in agency equipment including laptops and cellphones, and evicted union officials from agency office space.³ These changes obstruct employees in need of their union's services and representation.

In addition, the Department promoted the false impression that the union endorsed and is a party to the agreement, despite the fact that the terms were dictated by Department management without the consent of the workforce. For example, the cover page of the terms bears the logo of the union—which was used without its consent—and the terms dictated by the Department falsely claim that "the Employer and the Union agree" when in fact there is no such agreement.⁴

We request that you remedy this troubling situation by directing Department officials to immediately: (1) withdraw the terms covering the American Federation of Government Employees (AFGE) Council 252 that the Department unilaterally implemented in March; (2) resume bargaining with AFGE; and (3) abide by the terms of the expired collective bargaining agreement for the duration of negotiations.

² Memorandum from Samantha Cutler, Department of Education, to Claudette Young, American Federation of Government Employees, *Implementation of New Collective Bargaining Agreement* (Mar. 9, 2018).

³ *Id.*; see also Arts. 4-5 of "Collective Bargaining Agreement" (Mar. 12, 2018).

⁴ Art. 2 of "Collective Bargaining Agreement" (Mar. 12, 2018).

In addition, in order to investigate these matters further, we request that you produce by July 12, 2018, the following documents:

- (1) all documents referring or relating to the statutory or regulatory and factual basis for the Department's suspension of bargaining with AFGE Council 252:
 - a. over a new collective bargaining agreement, and
 - b. over the contract that was unilaterally implemented despite AFGE Council 252's requests to bargain;
- (2) all communications, including emails, letters, memoranda, and guidance, between you and Department personnel regarding collective bargaining with AFGE Local 252 that occurred between February 7, 2017, and the present;
- (3) all communications, including emails, letters, memoranda, and guidance, between you or other Department personnel and any individuals in the White House, the Office of Management and Budget, the Office of Personnel Management, or the Federal Labor Relations Authority regarding collective bargaining with federal employee unions, including but not limited to AFGE Council 252, that occurred between February 7, 2017, and the present; and
- (4) all communications, including emails, letters, and memoranda, between you or other Department personnel and any persons or parties outside the federal government regarding collective bargaining with federal employee unions, including but not limited to AFGE Council 252, that occurred between February 7, 2017, and the present.

Finally, we request a briefing from the Department officials responsible for these matters by this same date, July 12, 2018.

Thank you for your prompt attention to this request.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Ranking Member
Committee on Education and the Workforce

ELIJAH E. CUMMINGS
Ranking Member
Committee on Oversight and Government
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