

74 FLRA No. 50

NATIONAL TREASURY EMPLOYEES UNION
CHAPTER 296 AND 336
(Union)

and

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON, D.C.
(Agency)

0-NG-3729

DECISION AND ORDER
ON A NEGOTIABILITY ISSUE

September 30, 2025

Before the Authority: Colleen Duffy Kiko, Chairman,
and Anne Wagner, Member
(Member Wagner concurring)

I. Statement of the Case

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute).¹ The petition for review (petition) concerns one provision that the Agency head disapproved under § 7114(c) of the Statute.² For the following reasons, we find that the provision is contrary to management's right to assign work under § 7106(a)(2)(B) of the Statute,³ and we dismiss the petition.

¹ 5 U.S.C. § 7105(a)(2)(E).

² *Id.* § 7114(c).

³ *Id.* § 7106(a)(2)(B).

⁴ *Id.* § 7114(c).

⁵ 5 C.F.R. § 2424.23.

⁶ See Record of Post-Pet. Conference (Rec.) at 3 (Art. 11, Intro. Para.), 4 (Subsec. 1(A), First Sentence), 8 (Subsec. 2(B)(4)), 12 (Subsec. 3(D), First Sentence; Subsec. 3(E)), 13 (Subsec. 3(G), Second Sentence), 14 (Subsec. 4(A), First Sentence), 15 (Subsec. 4(F), First Sentence), 16 (Subsec. 4(F), Fourth Sentence; Subsec. 5(A)), 17 (Subsec. 5(C), First Sentence), 18 (Subsec. 5(C), Last Sentence), 20 (Subsecs. 8(B), 8(G)), 21-22 (Subsec. 9(D), Second, Third, and Fifth Sentences), 22 (§ 10, First Sentence), 22-23 (§ 10, Second Sentence), 23 (§ 11, Third Sentence).

II. Background

After the parties executed a collective-bargaining agreement, the Agency head disapproved it under § 7114(c) of the Statute.⁴ The Union then filed the petition.

Subsequently, pursuant to § 2424.23 of the Authority's Regulations, Authority representatives conducted a post-petition conference (conference) with the parties.⁵ At the conference, the Union modified the wording of various portions of the provision, and the Agency did not object to the modifications.⁶ The Agency later filed a statement of position (statement), and the Union filed a response to the Agency's statement (response). The Agency did not file a reply to the Union's response.

III. The Provision

The provision consists of eleven sections, and various sections have multiple subparts. The full provision is set forth in the appendix to this decision.⁷ For purposes of this decision, we focus on Subsection 6(B).

A. Wording

Section 6 – Altering or Terminating an Agreement

- B. Except where an employee has been hired into a remote work position -- If remote work is having an adverse impact on work operations, the employee will be notified in writing of specific concerns as soon as they are observed and in consultation with the supervisor, develop specific actions that will

⁷ See *NTEU*, 66 FLRA 584, 584 n.2 (2012) (noting that full text of proposal was set out in appendix where Authority addressed only one section of proposal in decision); *AFGE, Loc. 1938*, 66 FLRA 1038, 1039 (2012) (setting out only one section of proposal in decision and setting forth other sections of proposal in appendix).

improve the situation. Remote work conditions will be evaluated at agreed upon times, and during established performance review periods, to ensure work expectations are not hindered by the Agreement. Remote work termination may result in significant employee family hardships; therefore, managers will provide employees the opportunity to improve remote work associated performance prior to termination of an Agreement. However, no remote work agreement may be terminated with less than 90-days' notice, except where conduct is so egregious as to warrant immediate termination of the agreement. The Regional/Associate Director is empowered to reverse this decision for good cause.⁸

B. Meaning

The parties agree that Subsection 6(B) applies only to remote-work employees.⁹ As relevant here, the parties also agree that: "opportunity to improve" means something less than a performance-improvement plan but more than either a regular performance counseling or the process for telework termination in Subsection 6(A);¹⁰ "good cause" means that it is in the interests of the Agency; and "good cause" cannot be for arbitrary and capricious reasons.¹¹

C. Analysis and Conclusion: The provision is contrary to management's right to assign work.

The Agency asserts that Subsection 6(B) affects management's right to assign work under § 7106(a)(2)(B) of the Statute "by imposing opportunities to improve and time limits on terminations [of remote-work agreements] for cause, leaving the employee in their remote[-]work arrangement."¹²

The Union argues that the provision as a whole does not affect management's right to assign work.¹³ According to the Union, that management right does not involve where work is performed, unless there is a "[n]exus" between an employee's job duties and job location.¹⁴ The Union acknowledges that the Authority's decision in *NTEU* "purported to overrule" prior precedent establishing that principle.¹⁵ But the Union asserts that the U.S. Court of Appeals for the D.C. Circuit (the D.C. Circuit) vacated *NTEU* – and, thus, the "voided ruling" in *NTEU* "does not nullify" pre-*NTEU* precedent requiring a nexus.¹⁶ The Union contends that the Agency does not argue or demonstrate a nexus between employees' job duties and their job locations, and does not argue that the provision "prescribes the work that must be done while employees are engaging in . . . remote work."¹⁷

Management's right to assign work under § 7106(a)(2)(B) of the Statute encompasses the right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned.¹⁸ As the Union notes, prior to the decision in *NTEU*,¹⁹ the Authority held that proposals or provisions addressing employees' job locations affect the right to assign work *if* an agency establishes a relationship between the employees' job locations and their job duties.²⁰ Then, in *NTEU*, the Authority held that "the frequency of telework – the 'when' an eligible employee may perform his or her duties away from the duty station and 'when' that eligible employee must report to the duty station – is *inherent* to management's right to assign work."²¹ The Authority also held that it would "no longer follow cases holding otherwise."²²

⁸ Statement, Attach. 3, Art. 11 at 5-6.

⁹ Rec. at 18. In Subsection 1, the provision defines "[r]emote [w]ork" as "[a]n arrangement under which an employee is scheduled to perform work within or outside the local commuting area of an agency worksite and is not expected to report to an agency worksite on a regular and recurring basis." Statement, Attach. 3, Art. 11 at 1.

¹⁰ Rec. at 18-19.

¹¹ *Id.* at 19.

¹² Statement Br. at 7.

¹³ Resp. Br. at 13-19.

¹⁴ *Id.* at 14.

¹⁵ *Id.* at 16 n.4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Antilles Consol. Educ. Ass'n*, 73 FLRA 282, 283 (2022).

¹⁹ 71 FLRA 703, 707 (2020) (Member DuBester dissenting in part), *dec. vacated & remanded in part sub nom. NTEU v. FLRA*, 1 F.4th 1120, 1128 (D.C. Cir. 2021) (*FLRA*).

²⁰ See, e.g., *U.S. Food & Drug Admin., Detroit Dist.*, 59 FLRA 679, 682-83 (2004) (citing *U.S. Dep't of HHS, Cts. For Medicare & Medicaid Servs., Balt., Md.*, 57 FLRA 704, 707 (2002)).

²¹ 71 FLRA at 706 (emphasis added).

²² *Id.* at 707.

Subsequently, the D.C. Circuit vacated *NTEU*, in part, on the basis that the Authority had misunderstood the proposal at issue – without addressing whether the Authority had applied the correct legal standard.²³ Although the court remanded to the Authority for further proceedings,²⁴ the parties settled their negotiability dispute and the union withdrew its underlying petition in *NTEU*.

The Authority has not since clarified whether, following the D.C. Circuit’s opinion, it will continue to apply the legal principle established in *NTEU* (characterizing frequency of telework as being “inherent” to management’s right to assign work) or apply the legal principle that preceded *NTEU* (requiring a demonstrated relationship between employees’ job location and job duties). However, we need not decide that matter here because, for the reasons that follow, the instant provision affects management’s right to assign work regardless of which principle applies.

The Agency contends that some positions “are 100% in person (for example[,] Park Maintenance).”²⁵ Further, in the context of discussing Subsection 3(C) of the provision – which pertinently requires supervisors to “attempt to shift all office work to certain days, so that employees (Park Rangers, admin staff, etc.) have sufficient portable work to do from a telework location” – the Agency contends that this wording “excessively interferes with a supervisor’s right to dictate what work can be done in a particular location on a particular day.”²⁶ We find that the Agency has adequately demonstrated that at least some Agency employees’ job duties have a relationship to their job locations.

As noted above, Subsection 6(B) provides that “no remote work agreement may be terminated with less than 90-days’ notice, except where conduct is so egregious as to warrant immediate termination of the agreement.”²⁷

That explicitly prevents the Agency from requiring a remote worker to perform work in-person at the applicable Agency job site for ninety days – if no egregious employee misconduct is involved – when the Agency terminates that employee’s remote-work agreement. This essentially allows an employee to continue working remotely for ninety days *after* the Agency determines that the employee has some duties that must be performed at an Agency job site. By temporarily preventing the Agency from assigning employees duties that the Agency has determined can be performed only in-person at an Agency job site, the provision affects management’s right to assign work.²⁸ That is the case whether the frequency with which an employee reports to the applicable Agency job site is “inherent to management’s right to assign work”²⁹ or whether that right requires a demonstration of some relationship between employees’ job locations and job duties; as discussed above, the Agency has adequately demonstrated such a relationship here.

Where an agency demonstrates that a provision affects a management right under § 7106(a) of the Statute, the Authority next examines any union argument that the provision falls within an exception under § 7106(b) of the Statute.³⁰ Thus, having found that Subsection 6(B) affects management’s right to assign work, we next consider whether the Union has argued that the provision falls within an exception contained in § 7106(b).³¹ The Union makes no such argument here.³² Because Subsection 6(B) affects management’s right to assign work, and the Union has not argued that an exception to management’s rights under § 7106(b) applies, Subsection 6(B) is contrary to management’s right to assign work under § 7106(a)(2)(B) of the Statute.³³

The Union did not sever the provision.³⁴ Therefore, because Subsection 6(B) is contrary to

²³ *FLRA*, 1 F.4th at 1128.

²⁴ *Id.*

²⁵ Statement Br. at 5.

²⁶ *Id.*

²⁷ Statement, Attach. 3, Art. 11 at 6.

²⁸ See *NAGE*, Loc. R1-203, 55 FLRA 1081, 1092-93 (1999) (proposal affected management’s right to assign work by requiring agency to delay assigning work to employees).

²⁹ *NTEU*, 71 FLRA at 706 (emphasis added).

³⁰ *AFGE*, Loc. 2119, 72 FLRA 706, 708-09 (2022) (Member Abbott concurring).

³¹ See *id.* at 709.

³² Resp. Form at 3 (stating that union is not arguing that the provision concerns a matter under § 7106(b)(1), (2), or (3) of the Statute); see also generally Resp. Br. (making no arguments regarding § 7106(b)).

³³ See *AFGE*, Loc. 2058, 68 FLRA 676, 683-84 (2015) (Member Pizzella dissenting in part on other grounds) (finding provisions contrary to management’s right to assign work where Authority determined provisions did not concern permissive matters under § 7106(b)(1), and the union did not argue that the provisions constituted procedures or appropriate arrangements under § 7106(b)(2)-(3) of the Statute); *Laborer’s Int’l Union of N. Am.*, Loc. 28, 58 FLRA 605, 607 (2003) (holding that a provision was contrary to law because it affected a § 7106(a) management right, and the union did not argue that it was negotiable under § 7106(b) of the Statute).

³⁴ See 5 C.F.R. §§ 2424.22(b) (“The petition will be resolved according to how the [union] divides matters into . . . provisions. If the [union] seeks a negotiability determination on particular matters standing alone, then the [union] must submit those matters as distinct . . . provisions”), 2424.25(d) (“The [union] may, of its own accord, accomplish the severance of a previously submitted . . . provision. To accomplish severance, the [union] must identify the provision that the [union] is severing and set forth the exact wording of the newly severed portion(s).”).

management's right to assign work, the entire provision is contrary to law, and we dismiss the petition.³⁵

IV. Order

We dismiss the Union's petition.

APPENDIX³⁶

ARTICLE 11: TELEWORK AND REMOTE WORK

The intent of the Telework Enhancement Act of 2010 and the Office of Personnel Management's 2021 Guide to Telework and Remote Work in the Federal Government is to establish a framework for agencies to establish and implement a policy under which eligible employees may be authorized to telework to the extent that the arrangement does not diminish employee or organizational performance.³⁷ The Employer supports the use of alternative workplaces, including telework and remote work. Employee participation in the telework or remote work program is voluntary, except for vacancies recruited and filled as remote positions. The Employer shall not compel an employee to participate in either program.

Section 1 – General Guidelines

A teleworking employee's official duty station is the official worksite/location of the position. A remote working employee's location(s) will be designated on the employee's Remote Work Agreement and SF-50 (usually, the employee's home). Use of a workplace other than the official workplace requires approval under this Article.

- A. Core telework is telework that occurs as part of an ongoing, regularly scheduled written telework agreement.³⁸ An employee approved to telework must physically report to their official duty station at least two full workdays per bi-weekly pay period, except for rare circumstances.
- B. Situational telework is telework that is approved on a case-by-case basis, where the hours worked were NOT part of a previously approved, ongoing, and regular telework schedule. Examples of situational telework could include but are not limited to inclement weather, mass transit closures, exposure to illness, a personal matter, or special work

³⁵ See, e.g., *Fed. Educ. Ass'n, Stateside Region*, 56 FLRA 473, 475 (2000) (dismissing petition where part of unsevered provision was contrary to law).

³⁶ When the Union filed the petition, the eFiling form stripped all text formatting from the provision. Rec. at 1. Therefore, during the conference, the Authority representatives directed the Agency to submit, with its statement, a formatted copy of the provision, *id.* at 2, which the Agency did, see Statement, Attach. 3, Art. 11 (Art. 11). This appendix uses the formatting submitted by the Agency, and uses the wording as modified at the conference. See, e.g., *AFGE, Loc. 1748, Nat'l Council of Field Labor Locs.*, 73 FLRA 233, 236 n.44 (2022) (considering proposal wording as modified at conference in absence of agency objection to modification (citing *AFGE, AFL-CIO, Loc. 2361*, 57 FLRA 766, 766 n.3 (2002) (Chairman Cabaniss concurring))). Modifications to individual sentences are noted below.

³⁷ This sentence was modified at the conference. Rec. at 3.

³⁸ This sentence was modified at the conference. *Id.* at 4.

assignments, also referred to as episodic or unscheduled telework.

C. “Telework-ready” means that an employee:

1. is eligible to telework;
2. has and is currently subject to a written telework agreement;
3. is regularly scheduled to telework or approved for situational telework;
4. has sufficient portable work.

D. Remote Work. An arrangement under which an employee is scheduled to perform work within or outside the local commuting area of an agency worksite and is not expected to report to an agency worksite on a regular and recurring basis.

Section 2 – Eligibility Considerations

Considerations for telework and remote work include Position Suitability and Employee Eligibility:

A. Position Suitability for Telework

1. The extent to which key tasks and processes can be performed outside of the traditional office without jeopardizing mission requirements.
2. The extent to which needed information can be accessed, sent, or received from outside the office, with the proper technology.
3. The extent to which support requirements can be fulfilled when the job/function is being performed remotely.
4. Conditions prompting government agencies to recommend contingency procedures such as moving to an alternate worksite or dispersing the workforce.
5. Other job-specific criteria such as:
 - i. Direct handling of classified or other secure materials determined to be inappropriate for telework by management.

- ii. On-site activity that cannot be handled remotely or at an alternative worksite (e.g., face-to-face personal contacts; intake or distribution of mail; hands-on contact with machinery, equipment, or vehicles; law enforcement).

B. Position Suitability for Remote Work - In addition to the requirements established for telework in A above:

1. How the remote work arrangement is in the best interest of the agency.
2. Potential impact to the Bureau/Office and/or work unit should the arrangement be approved (or denied).
3. Whether the duties of the position are suitable for a remote work arrangement.
4. Whether the remote work arrangement is cost neutral.³⁹

C. Employee Eligibility. After ensuring that the position is suitable for telework, the supervisor must determine the employee’s eligibility to telework. To be considered eligible for telework, an employee must:

1. Demonstrates characteristics indicative of the ability to effectively work away from the official worksite. A fully successful or higher performance rating may indicate this ability.
2. The ability to work independently and without close supervision.

D. Employee Ineligibility: Employees are ineligible to telework/remote work if:

1. Their conduct has resulted in any official disciplinary action taken against them above the level of reprimand. Disciplined employees may remain ineligible to telework

³⁹ This sentence was modified at the conference. *Id.* at 8.

for one year from the effective date of the official disciplinary action.

2. They have received less than a Fully Successful performance rating at any time during the rating period or been notified in writing of less than Fully Successful performance (e.g., by receipt of a Notice of Opportunity to Demonstrate Acceptable performance).
3. Consistent with 5 U.S.C. § 6502(a)(2), they have been officially disciplined for:
 - i. being absent without permission for more than five days in any calendar year; or
 - ii. violations of subpart G of the Standards of Ethical Conduct of Employees of the Executive Branch for reviewing, downloading, or exchanging pornography, including child pornography on a federal computer or while performing Federal Government duties.
4. A supervisor may waive the ineligibility criteria in 1 and 2 above.

Section 3 – Initiating a Telework/Remote Work Agreement

- A. All employees may apply for and be considered for participation in the telework or remote work programs.
- B. An employee who wishes to telework or work remotely will initiate a request through their immediate supervisor and may do so at any time.
- C. Upon receipt of a telework or remote work request, the supervisor will evaluate both the employee and the position's suitability for participating in the program. The supervisor

will make a reasonable effort to approve a telework/remote work requests to the fullest extent provided by the employee's position. For example, the supervisor will attempt to shift all office work to certain days, so that employees (Park Rangers, admin staff, etc.) have sufficient portable work to do from a telework location.

- D. The supervisor will review the application form and will approve or disapprove the telework or remote work request within 21 calendar days, if possible.⁴⁰ If 21 days is not possible, the Employer will notify the employee via email when a decision will be issued. A decision will be issued as soon as possible, but not later than 45 days following receipt of the request.
- E. Remote work requests must be forwarded to the appropriate level for approval or disapproval in accordance with Government and Departmental policy.⁴¹
- F. There is no limit as to the number of requests that may be considered by the Employer (e.g., A park, program, or office may not limit the number of applicants for remote work).
- G. A supervisor's denial of the employee's telework may be appealed for reconsideration within 7-days of receipt of the denial with the next higher level of supervision. A decision will be issued under the same period as D above.⁴² Any disapproval may be grieved utilizing the standard grievance procedures provided in this CBA.
- H. The employee is responsible for ensuring that the identified home space (approved alternative workspace) provides a work environment that meets operational requirements for the position.
- I. A supervisor may deny an employee the opportunity to participate in a telework/remote work agreement if the workplace substantially hinders an employee's ability to meet work requirements, including the delivery of work products. A supervisor may also deny an employee's request to telework or remote

⁴⁰ This sentence was modified at the conference. *Id.* at 12.

⁴¹ This sentence was modified at the conference. *Id.*

⁴² This sentence was modified at the conference. *Id.* at 13.

work if the essential duties of the position are such that an employee's physical presence is required in the official workplace on a routine basis.

Section 4 – Impact on Work Schedules

- A. Telework and remote work agreements should have no impact on the current work schedule provisions governing covered employees, except where changes in a remote work location result in extraordinary scheduling issues.⁴³

Example: An employee who is approved under a remote work agreement and relocates from one time zone to another which excessively interferes with the remote workers ability to accomplish their duties (e.g., meetings, conference calls), may be required to adjust their schedule to accommodate the needs of the employing office.

- B. Time and attendance reporting procedures will remain the same for all employees. Teleworking employees will document days and hours spent at an alternative worksite on their time sheet. Supervisors will employ methods that provide for a reasonable assurance that employees are working when scheduled, are paid for work performed and that absences from scheduled tours of duty are accounted for consistent with employment requirements (e.g., through regular communication with the employee).
- C. During regular duty hours, absences from the alternative worksite (e.g., visits on official business to attend meetings or use of annual or sick leave) will be coordinated with and approved by the supervisor prior to the absence or at the earliest time practicable.
- D. All rules governing premium pay apply to employees at alternative worksites.
- E. Employees may be required to attend scheduled conferences, training, workshops, retreats, etc.

- F. Except for limited circumstances (i.e., an immediate or unanticipated need), the employer will give 7-days advanced notice to teleworking employees who are required to report in person on a scheduled telework day.⁴⁴ Upon request, management may consider the employee's individual circumstances and whether there are alternative means available. The employer will provide 21-days advanced notice to remote workers required to report to the office, unless the remote worker is within the local commuting area of the reporting location (then the notice period defaults to the 7 days required for teleworkers). As appropriate, a remote worker's travel will be compensated in accordance with Federal Travel Regulations and applicable caselaw.⁴⁵

Section 5 – Situational Telework

- A. Situational telework agreements will be approved in advance by the supervisor in accordance with Sections 2 and 3 above.⁴⁶
- B. Employees will notify and seek approval from supervisors prior to taking a telework day(s) pursuant to a situational telework agreement (unless the situational telework agreement specifies otherwise). Employee situations are diverse and situational telework should facilitate the broad spectrum of needs that allow employees to meet job requirements while providing alternative workplaces for approved periods of time. Employees who are injured, ill, exposed to an illness, and/or physically limited, may be able to telework while reducing the need for time away from the job. Situational telework may be a good option for the continuity of operations when an employee, who is scheduled to physically report, is unable to report to the workspace.
- C. Situational telework may sometimes be permitted for employees who are not normally eligible for core telework (e.g., a gardener or maintenance worker may be able to attend an online training course from a telework location if it is a full day event).⁴⁷ In those situations, if the employee does not have a laptop assigned, the Agency will loan a laptop to the employee, provided there is

⁴³ This sentence was modified at the conference. *Id.* at 14.

⁴⁴ This sentence was modified at the conference. *Id.* at 15.

⁴⁵ This sentence was modified at the conference. *Id.* at 16.

⁴⁶ This sentence was modified at the conference. *Id.*

⁴⁷ This sentence was modified at the conference. *Id.* at 17.

availability, and IT can prepare the equipment for use by the employee. Situational telework may be appropriate for any work that can be performed in an office to include official time in accordance with Article 43.⁴⁸

Section 6 – Altering or Terminating an Agreement

- A. If, it is determined that a telework arrangement is having an adverse impact on work operations, it may be reviewed and modified through collaborative consultation with the employee. The employee may be represented by the Union during this consultation. The employee shall be provided an opportunity to meet work operational requirements. If operational requirements cannot be met, the supervisor will document the actions taken and may terminate the telework Agreement with no less than one full pay period advance written notice, except where conduct is so egregious (e.g., viewing pornography, extended AWOL) as to warrant immediate termination of the agreement.
- B. Except where an employee has been hired into a remote work position -- If remote work is having an adverse impact on work operations, the employee will be notified in writing of specific concerns as soon as they are observed and in consultation with the supervisor, develop specific actions that will improve the situation. Remote work conditions will be evaluated at agreed upon times, and during established performance review periods, to ensure work expectations are not hindered by the Agreement. Remote work termination may result in significant employee family hardships; therefore, managers will provide employees the opportunity to improve remote work associated performance prior to termination of an Agreement. However, no remote work agreement may be terminated with less than 90-days' notice, except where conduct is so egregious as to warrant immediate termination of the agreement. The Regional/Associate Director is empowered to reverse this decision for good cause.

- C. No telework or remote work agreement will lapse automatically.
- D. Any permanent modification to a telework or remote work agreement made in accordance with this article will be completed by submitting a new telework or remote work agreement.
- E. Temporary modifications to a telework or remote work agreement may be done by mutual understanding between the employee and supervisor via NPS email.

Example 1: Employee has a telework agreement and is required to report to work on Monday each week. Employee requests a temporary modification to telework on Monday as well, so that they can be home when their child returns from school while the other parent or childcare provider is unavailable for 2 weeks.

This would not constitute dependent care, as the child is school age and capable of self-management with minimal supervision.⁴⁹

Example 2: Employee has a remote work agreement and is domiciled in Denver, Colorado, and requests to work remotely on a temporary basis from Dallas, Texas while a close relative receives recurring treatment.

- F. Temporary modifications expected to exceed, or which do exceed 6 weeks, requires a new remote work agreement and a personnel action to correct the remote workers official duty station, which may affect locality pay, even if only temporary.

Section 7 – Agreement Review Conditions

After each twelve-month period of participation in the telework/remote work program, or at the beginning of each Fiscal year, the supervisor and employee will meet for the purpose of discussing, reviewing, and updating the telework/remote work agreement. Either party may initiate the review.

⁴⁸ This sentence was modified at the conference. *Id.* at 18.

⁴⁹ In the petition, "self-management" is not hyphenated, Pet. at 5, but it is in the version of the provision submitted with the Agency's statement, Statement, Attach. 3, Art. 11 at 6.

Section 8 – Telework Readiness

- A. In the event of an office closure, delayed arrival or early dismissal, telework-ready employees already scheduled to telework that day are expected to telework the entire day.
- B. Agencies may grant weather and safety leave only when employees are prevented from safely traveling to or from, or safely performing work at, an approved location due to an act of God (e.g., an act of nature, such as a severe snowstorm, earthquake, etc.), a terrorist attack, or another condition that prevents employees from safely traveling to or from, or safely performing work, at an approved location.⁵⁰
- C. In the event the official worksite is closed due to an inclement weather event or other emergency (e.g., building fire, pandemic), telework-ready employees must telework each regularly scheduled workday during the emergency.
- D. In the event the employee is prevented from safely teleworking or remote working from the approved alternative worksite due to conditions related to the emergency (e.g., weather-related damage that makes occupying the employee's home telework site unsafe, loss of electrical power or internet service, evacuation by local authorities), the supervisor may, at their discretion, grant weather and safety leave consistent with Federal Regulations and Departmental policy.⁵¹
- E. Teleworking or remote work employees must advise their supervisors if they are prevented from working due to a disruption (e.g., electricity/internet connectivity issues, family care issues) at the alternative worksite during a government closure. Supervisors may grant weather and safety leave consistent with Federal Regulations and Departmental policy for events that disrupt or prevent work and/or that present a dangerous environment for the teleworker. Weather and safety leave may not exceed the

lesser of the duration of the event or the government closure.

- F. If there is an emergency in the alternative worksite when the employee is teleworking, and the main office is open, then the employee must either return to the main office or request appropriate leave. However, where the travel time from the alternative worksite to the main office exceeds the number of hours remaining in the workday, then, the employee may be granted other workplace and scheduling flexibilities (e.g., modifying work hours, temporary alternative work site) or administrative leave with supervisory approval.
- G. If the Employer declares or is subject to a work status change whereby the status is "Open with Option for Unscheduled Leave or Unscheduled Telework," and the employee is telework ready, then the employee will notify their supervisor if they would like to opt for unscheduled telework that day, and the supervisor shall permit telework to the maximum extent possible.⁵²

Section 9 – Equipment and Information Technology

- A. Employees who are approved to work from an alternative worksite will use a government-owned, Employer provided computer and software, configured in accordance with specifications established by the Employer.⁵³ The Employer provided equipment must not be altered or upgraded in any way (expanded memory, etc.), except by Information Technology staff, unless otherwise permitted.
- B. The Employer will also provide other technological equipment (e.g., headsets, printers, additional monitors) and other office supplies as required by the position.
- C. Provided an employee has received supervisory approval to report to an official worksite, the Employer will provide necessary equipment (e.g., a docking station, internet connectivity, monitor, power cord, printer) and space for remote workers who elect and are permitted to work at an NPS

⁵⁰ This sentence was modified at the conference. Rec. at 20.

⁵¹ In the petition, "weather-related" is not hyphenated, Pet. at 6, but it is in the version of the petition submitted with the Agency's statement, Statement, Attach. 3, Art. 11 at 7.

⁵² This sentence was modified at the conference. Rec. at 20-21.

⁵³ In the petition, "government-owned" is not hyphenated, Pet. at 6, but it is in the version of the provision submitted with the Agency's statement, Statement, Attach. 3, Art. 11 at 7.

site. If an employee elects to report to an NPS work site and has received supervisory approval, refer to FTR for applicability.

- D. If there is a problem with the hardware or software applications, the employee is required to contact their immediate supervisor and the IT Help Desk to report the problem. Support may be provided remotely during normal business hours.⁵⁴ If the problem cannot be resolved remotely, the Employer may reasonably require the employee to report to the nearest government facility within the commuting area (50 miles) for remote employees, with the means to repair, update or replace the equipment, including but not limited to the PIV card.⁵⁵ Teleworkers will report to their official work site. For remote workers, in the event a replacement is required but not available, the Employer will ship a new or temporary device to the employee via overnight mail.⁵⁶ Remote employees will be placed in administrative leave status until such time as replacement equipment is received.
- E. Employees approved for telework or remote work will be responsible for obtaining and maintaining internet access through an internet service provider at no cost to the agency. This will enable them to access the Employer's email system, reference materials, and other information necessary to ensure the capability of working "virtually" outside of the office. As necessary, employees will access the Employer's network through the Network Management Office high-capacity Virtual Private Networking (VPN) and an Internet Service Provider (ISP). VPN connectivity requires availability of a standard telephone line, cable, DSL or other internet access at the alternate worksite. Employees who are not issued a government cell phone will be provided an internet softphone or required to utilize alternative communications methods such as Teams, Email, Zoom or other technology.

- F. Employees will ensure that all Employer records and information (electronic and hard copy) are protected under the terms of the Privacy Act and NPS ADP security requirements.

- G. Employees are responsible for taking reasonable precautions in preventing any loss or damage to equipment issued to them.

Section 10 – Dependent Care

Pursuant to applicable law, rule and regulation, telework/remote work is not designed to substitute for child or other dependent care.⁵⁷ This does not preclude a telework or remote worker from having a caregiver in the home who provides care to the dependent(s) while the employee is on duty, provided the arrangement does not disrupt the employee's ability to work effectively.⁵⁸ Also, a dependent may be in the home, provided they do not require constant supervision or care (e.g., older child or adolescent) and their presence does not disrupt the employee's ability to work effectively. Allowances for temporary work-at-home and emergency work arrangements, including any approval for administrative leave, can be addressed with the immediate supervisor.

During severe weather (e.g., hurricanes, floods, tornadoes, snow, ice) or other emergencies (e.g., fires, earthquakes, power outages), the supervisor has the authority to grant employees unscheduled leave as appropriate or Weather and Safety leave consistent with OPM guidance.

Section 11 – Injury Compensation/Liability

Employees understand they are covered under the Federal Employee's Compensation Act if injured while performing official duties at the regular office or the employee's approved alternate worksite. The employee agrees to notify the supervisor promptly of any accident or injury that occurs at the alternate workplace and to complete any required forms. The Agency agrees to investigate such a report immediately.⁵⁹

The Government will not be liable for damages to an employee's personal or real property during the performance of official duties or while using Government equipment in the employee's residence, except to the extent the Government is held liable by Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claims Act.

⁵⁴ This sentence was modified at the conference. Rec. at 21-22.

⁵⁵ This sentence was modified at the conference. *Id.*

⁵⁶ This sentence was modified at the conference. *Id.* at 22.

⁵⁷ This sentence was modified at the conference. *Id.*

⁵⁸ This sentence was modified at the conference. *Id.* at 22-23.

⁵⁹ This sentence was modified at the conference. *Id.* at 23.

Member Wagner, concurring:

In my view, a party arguing that a proposal or provision addressing employees' job locations affects management's right to assign work under § 7106(a)(2)(B) of the Federal Service Labor-Management Relations Statute has the burden of demonstrating a relationship between the employees' job locations and their job duties.¹ However, for the reasons set forth in the decision, I agree that it is unnecessary to decide whether that standard must apply in this case. Therefore, and in order to form a majority and avoid an impasse in the resolution of this case, I join the decision.²

¹ See, e.g., *U.S. Food & Drug Admin., Detroit Dist.*, 59 FLRA 679, 682-83 (2004) (citing *U.S. Dep't of HHS, Ctrs. for Medicare & Medicaid Servs., Balt., Md.*, 57 FLRA 704, 707 (2002)).

² See, e.g., *AFGE, Loc. 2031*, 73 FLRA 769, 771 (2023) (Concurring Opinion of Chairman Grundmann) (joining opinion "in order to form a majority opinion and avoid an impasse in the resolution of th[e] case").