

# United States Senate

WASHINGTON, DC 20510

September 20, 2018

The Honorable Betsy DeVos  
Secretary of Education  
United States Department of Education  
400 Maryland Avenue, SW, Room 7W301  
Washington, D.C. 20202

Dear Secretary DeVos,

We write to urge the U.S. Department of Education (the Department) to abandon its unilaterally implemented “Collective Bargaining Agreement” and to adhere to its obligation under the Federal Service Labor-Management Relations Statute (the Statute) to bargain in good faith with Department employees.<sup>1</sup> Because the employees’ union did not consent to the “agreement,” and no true bargaining took place, it is more accurately characterized as a unilaterally imposed edict from the Department. We are deeply concerned that this edict includes changes that have substantially weakened your Department’s ability to attract and retain qualified employees by imposing unnecessary restrictions on employee rights, workplace health and safety, and flexible and family-friendly alternative work schedules and telework options.<sup>2</sup> Accordingly, we strongly urge the Department to return to the negotiating table and bargain in good faith with its employees.

The Department’s edict struck all pre-decisional union involvement in Department decision-making, including regarding critical issues related to employee performance and reorganization. It also added 23 categories of non-grievable issues, including performance issues resulting from the Department’s failure to provide reasonable accommodations. In addition, it fails to recognize local union representatives and denies them the right to use official time to perform representational activities, effectively preventing union representatives from meeting their statutory duties. Strikingly, the union locals have even been evicted from their office space and their equipment has been confiscated by the Department. In attacking employees’ rights, the edict undermines your Department’s mission to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The Federal Labor Relations Authority (FLRA) has investigated this matter and advised the Department that it failed to bargain in good faith with employees’ representative, in violation

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<sup>1</sup> See 5 U.S.C. § 7114(a)(4); 5 U.S.C. § 7102(2).

<sup>2</sup> See Erich Wagner, *These Agencies Have Lost the Most Workers Under Trump*, GOVERNMENT EXECUTIVE (Aug. 15, 2018), available at <https://www.govexec.com/management/2018/08/these-agencies-have-lost-most-workers-under-trump/150577/> (“ . . . on a percentage basis, the Education Department has the lost the most employees during the Trump administration, as nearly 13 percent of its workforce has left the department.”) This result should trouble you and spur honest reflection.

of the Statute.<sup>3</sup> Therefore, in agreement with the June 26, 2018 letter of our colleagues Representatives Robert C. “Bobby” Scott and Elijah E. Cummings, we request that you address this violation of law by (1) withdrawing the edict unilaterally implemented on March 12, 2018; (2) instructing your staff to return to the bargaining table with the employees’ union to bargain a new agreement; and, (3) adhering to the 2013 Collective Bargaining Agreement during the duration of the negotiations, including with respect to telework.

It appears that the Department’s recalcitrant posture toward bargaining with its employees mirrors – or is at least consistent with – the Executive Orders issued by the President on May 25, 2018. On August 25, 2018, a federal court struck down the core provisions of those Executive Orders because they illegally interfered with the duty to bargain.<sup>4</sup> Any reliance on these unlawful and invalid provisions is therefore misplaced. It is difficult to avoid the conclusion that this Administration as a whole does not take seriously its bargaining obligations under the Statute, evidenced by the issuance of the illegal, anti-bargaining Executive Orders together with the growing prevalence of bad faith bargaining behavior across federal agencies.

We also understand that the Department refused the union’s request to bargain over the drastic, unsubstantiated reduction in telework for the workforce. The severe reduction in telework has led to a sharp increase in the number of employees leaving the Department either through retirement or resignation.

It is in the best interest of the U.S. Department of Education to have a positive and constructive relationship with its workforce. Therefore, we urge you to return to the negotiating table to work in good faith with the employees’ union to reach a fair and equitable contract, and to adhere to the 2013 collective bargaining agreement until negotiations are complete.

Additionally, we request that, no later than October 5, 2018, the Department provide answers to the following questions:

1. What actions has the Department taken to resolve outstanding grievances and/or unfair labor practice charges filed against the Department by the union?
2. How many employees have left employment between May 1, 2018 and September 30, 2018? Please provide a list identifying the employees by job title, department and reason for leaving (retirement, resignation, etc).
3. Which steps does the Department plan to take or not take prospectively in order to ensure that the agency complies with the August 25, 2018 decision of the United States District

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<sup>3</sup> Erica L. Green, *Education Dept. Illegally Curbed Workers’ Union Protections, Mediators Suggest*, N.Y. TIMES (Jun. 24, 2018), available at <https://www.nytimes.com/2018/07/24/us/politics/labor-rules-education-department-betsy-devos.html>.

<sup>4</sup> *Am. Fed’n of Gov’t Employees, AFL-CIO v. Trump*, Case No. 18-cv-1261, slip op. at 119 (D.D.C. Aug. 25, 2018); *id.* at 88 (“various aspects of the Orders . . . violate the statutorily protected duty to bargain. This violation is most easily perceived as an illegitimate attempt to take four categories of otherwise negotiable matters off the bargaining table.”).

Court for the District of Columbia in *Am. Fed'n of Gov't Employees, AFL-CIO v. Trump*, Case No. 18-cv-1261 by modifying or eliminating unilaterally implemented contract provisions that are similar to the provisions found unlawful by the District Court?

4. Please provide all communications occurring since January of 2017 between yourself, a member of your Senior Staff, or any official representing the Department in bargaining, and any individual or entity not employed by the Department (including any employee of the Executive Office of the President of the United States), but not including any labor organization (as defined by 5 U.S.C. § 7103(a)(4)), that relate in any way to bargaining with Department employees.

Thank you for your attention to this request. If you have any questions, please contact [John DElia@help.senate.gov](mailto:John_DElia@help.senate.gov), [Kathryn Irwin@harris.senate.gov](mailto:Kathryn_Irwin@harris.senate.gov), and [Samuel Weinstock@warren.senate.gov](mailto:Samuel_Weinstock@warren.senate.gov). We look forward to hearing from you.

Sincerely,



Patty Murray  
United States Senator



Kamala D. Harris  
United States Senator



Elizabeth Warren  
United States Senator