



NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

MEMORANDUM

TO: Local Presidents **DATE:** January 28, 2021

FROM: National VA Council

SUBJECT: Executive Order 14003: *Protecting the Federal Workforce* (January 22, 2021)

On January 22, 2021, President Biden issued Executive Order 14003, *Protecting the Federal Workforce* (“Biden Order”). In large part, the Biden Order revoked many of the controversial, anti-union executive actions issued under the Trump Administration.

This Memorandum includes a summary of the Biden Order as well as preliminary guidance and helpful information for Local Presidents. Further information and guidance will be distributed as needed.

Summary of Biden Order

The Biden Order established a government-wide policy to “protect, empower, and rebuild the career Federal workforce” and “encourage union organizing and collective bargaining.”

It revoked the following executive actions:

- Executive Order 13836 of May 25, 2018, *Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining*
- Executive Order 13837 of May 25, 2018, *Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use*
- Executive Order 13839 of May 25, 2018, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles*
- Executive Order 13957 of October 21, 2020, *Creating Schedule F in the Excepted Service*
- Presidential Memorandum of October 11, 2019, *Executive Orders 13836, 13837, and 13839*

It further directed agencies to “review and identify existing agency actions related to or arising from” the Executive Orders 13836, 13837, and 13839 and to “as soon as practicable, suspend, revise, or rescind” these agency actions. The Biden Order identified a number of relevant “agency actions.”

The Biden Order also directed OPM to publish a proposed rule to suspend, revise, or rescind the final rule entitled “Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and Adverse Actions,” dated October 16, 2020. This final rule, 85 Fed. Reg. 65940, codified certain provisions from Executive Order 13839 in the Code of Federal Regulations.

As for future bargaining, the Biden Order instructed agencies to negotiate over the permissive subjects set forth in 5 U.S.C. §7106(b)(1). Lastly, it instructed OPM to develop a report with recommendations to promote a \$15.00/hour minimum wage for federal employees.

Guidance to Locals

At the national level, NVAC submitted a demand to bargain concerning the Biden Order and its resulting impact on conditions of employment for AFGE bargaining unit employees. We will fight to return to the status quo as set forth in our 2011 Master Agreement, which remains in effect.

At the local level, **NVAC encourages Locals to submit a demand to bargain** with the responsible management official(s) at your facility. Certain matters may be negotiated nationally, but the situation differs for each Local. Historically, each Local had unique arrangements for office space, equipment, technology, and official time. Further, each Local had its own past practices and local supplemental agreements. It is important to submit a local demand to bargain to address any matters not resolved at the national level. If you chose to submit a demand to bargain, we have drafted a template for you to use. The AFGE Field Services & Education Department (“FSED”) also released preliminary bargaining guidance concerning the Biden Order. Additional bargaining guidance from FSED is forthcoming.

National Grievance – 12/10/19

In December 2019, NVAC filed a National Grievance against the VA for its unlawful implementation of the Executive Orders. On January 22, 2021, we received a partial arbitration award on two of our claims, including our claim that the VA repudiated Article 51 of the 2011 Master Agreement when it refused to provide cost-free office space, equipment, and technology to AFGE union representatives.

The arbitrator awarded a “make-whole” remedy, including ordering the VA to do the following:

- reimburse the Union for out-of-pocket expenses related to office space and equipment;
- return Union representatives to their VA office space and return VA-provided equipment; and,
- post notices signed by the Secretary acknowledging its obligations under the law.

This arbitration award is not yet final. While the Biden Order revoked Executive Order 13837, it did not order agencies to reimburse union representatives for the cost of office space and equipment. That is why NVAC filed and pursued this National Grievance. We take this opportunity to remind Locals to retain documentation for any out-of-pocket costs associated with office space, equipment, and technology.

Questions and Next Steps

NVAC will do everything in its power to restore our collective bargaining rights and return to the status quo under the 2011 Master Agreement. Even in a new Administration, this will take time to accomplish. Further information and guidance will be distributed as it becomes available.

Please maintain contact with your NVAC District Representatives. If you have questions in the meantime, please contact the NVAC Legal Team at nvacattorney@afge.org. Thank you.