



Consumer Financial Protection Bureau
NTEU Chapter 335

DATE: October 13, 2022

MEMORANDUM FOR: Sonya White, Deputy General Counsel, Legal Division, appointed designee for Seth Frotman, General Counsel

CC: Ari Taragin, Lead, Labor and Employee Relations, Office of Human Capital and Nicole Heiser, Assistant General Counsel for Law and Ethics, Legal Division

FROM: Nelle Rohlich, Chief Steward, NTEU Chapter 335; Ben Konop, Steward, NTEU Chapter 335; and Becky Coleman

SUBJECT: Violation of CBA and Unfair Labor Practice – Failure to Bargain in Good Faith Regarding the Justification for and Frequency of New Mandatory Semi-Annual Training Requirements

In accordance with the Collective Bargaining Agreement (“CBA”), Article 43, Section 6, the National Treasury Employees Union (“Union”), Chapter 335 hereby files this institutional and mass grievance against the Consumer Financial Protection Bureau (“CFPB or Bureau”). The Union alleges a violation of the August 2022 Remote, Telework, and Hybrid Program Article (Remote Work Article or Article) of the Collective Bargaining Agreement (CBA), Article 8, Health and Safety, of the CBA, and an unfair labor practice in violation of 5 U.S.C. § 7116, et seq, and any other applicable statutes, regulations, policies, laws, or authorities.

I. FACTS

On September 14, 2022, the Office of Enforcement (ENF) announced to bargaining unit employees (BUEs) that ENF would be imposing mandatory, in-person trainings of all BUEs at least twice a year at headquarters, beginning in 2023. This is the first time in the Bureau’s 11-year history that ENF has required mandatory, in-person attendance for a training. ENF did not give any reason for (1) why it was imposing these new training requirements; or (2) why all BUEs must attend the trainings in person. The only explanation (given later) was a conclusory statement that mandatory, in-person trainings serve a “business need.”

Since the COVID pandemic began, ENF staff have successfully worked remotely, including successfully participating in remote trainings.¹

¹ It is well documented that remote work and flexibility has had benefits for many workers, including benefits for marginalized groups including minorities and women. See, e.g.

At the same time ENF imposed mandatory in-person trainings, it also denied all ENF BUEs eligibility for a Remote Work Location Designation under the Remote Work Article.² CFPB Next (the Agreement) required ENF had to give reasons why each position was ineligible for remote work. The first reason ENF listed to justify the designation for each position as ineligible for remote was “[a]ttendance at in-person training twice a year at HQ.” Thus, the brand-new, twice-annual in-person training requirements was used as the basis for denying remote work eligibility.

The Remote Work Article requires management to designate determine BUEs’ eligibility for various Work Location Designations “based on the duties of the employee’s position and the extent to which those duties can be effectively performed remotely without disruption to mission, staffing or workload requirements, consistent with the provisions of this article.” Remote Work Article, § 4(A). The Article identifies four examples of job duties that would require an employee to perform their duties in-person at a Bureau Facility or nearby location: (1) compliance with the Privacy Act, security, or health/safety requirements that cannot adequately be addressed at an alternate worksite; (2) responsibility for building security or operations; (3) work requiring Bureau facilities or equipment that cannot be made available at an alternate worksite, like machinery or high-volume printing; or (4) face-to-face contact.³ The Article, § 5(E).

Thus, under the Remote Work Article, ENF must justify its unprecedented requirement for mandatory in-person trainings and explain why the BUEs cannot effectively attend the trainings from an alternate worksite. The bare assertion that ENF for the first time in its history, and after 3 years of successfully administering remote or hybrid training—has suddenly discovered an overwhelming “business need” for mandatory, in-person training, is no reason at all. Among other things, ENF must provide empirical, verifiable evidence that the remote trainings conducted over the last three years have been less effective than previous, in-person trainings. During negotiations over the Agreement, NTEU specifically asked the Bureau whether management intended training to fall under the face-to-face contact requirement, and the Bureau responded that it expected in-person trainings to be rare in a hybrid work environment.

<https://www.latimes.com/opinion/story/2022-04-03/work-from-home-race-office>. Further, numerous studies have also shown that on-line learning is just as effective as in-person training, and more recent studies indicate on-line learning may be more effective. See, e.g. https://www.researchgate.net/publication/3230239_Corporate_software_training_is_Web-based_training_as_effective_as_instructor-led_training and <https://www.novoed.com/resources/blog/one-year-on-how-remote-work-made-corporate-learning-work-better/>.

² The Union also challenges ENF’s designation of BUEs as telework primary rather than remote, but will address that issue in a separate grievance.

³ During the afternoon bargaining session on June 29, 2002, the bargaining teams discussed face-to-face contact because the Union wanted clarification on what job duties and positions would require face-to-face contact. In that session, management representatives specifically noted they expected in-person trainings to be rare in a hybrid environment.

On the CFPB Next Wiki page, the Bureau says the purpose of the Remote Work Article is to create “a hybrid remote-friendly workplace that promotes fairness, equity, and efficiency of Bureau operations.”⁴ And while the Article envisions that BUEs who are designated as eligible for 100% Telework may “occasionally” need to perform work at a Bureau location, it also recognizes that such needs only arise on an “ad hoc” basis.⁵ Pre-planned, ongoing trainings that can easily be made available at an alternate worksite—as ENF has done for 11 years—don’t meet this standard.

ENF BUEs have successfully attended fully virtual trainings for nearly three years during the COVID-19 pandemic and regularly attended hybrid trainings prior to that. ENF has not attempted to demonstrate that in-person trainings are necessary or provided any evidence that remote trainings have been less effective than in-person sessions. ENF can’t require BUEs to attend in-person trainings that can just as easily be offered virtually or in a hybrid fashion.

Additionally, under CBA Article 8, Health and Safety, the Bureau is required to “provide and maintain safe and healthful working conditions for all employees and [provide] places of employment that are free from recognized hazards.” ENF hasn’t explained how it can force hundreds of BUEs to travel and attend in-person events, during an ongoing pandemic, in windowless basement rooms while also providing the required “safe and healthful working conditions.” ENF is requiring BUE members with compromised immune systems, high-risk conditions, or who live with or care for elderly, immunocompromised, or high-risk family members to take serious and unnecessary risks.

II. REQUESTED REMEDY

To remedy these violations, NTEU requests ENF immediately rescind any requirement for BUEs to report to HQ for in-person work unless the duties to be performed comply with the requirements of Section 4(A). NTEU further requests that any mandatory training be offered as a hybrid with BUEs permitted to participate from an alternate worksite. NTEU also seeks as any other remedies that may be imposed consistent with law, rule or regulation.

⁴ See

https://team.cfpb.local/wiki/images/4/49/All_Staff_Lunch_%26_Learn_091322_for_distribution.pdf

⁵ The Cambridge English Dictionary defines “ad hoc” as “made or happening only for a particular purpose or need, not planned before it happens” and the Merriam-Webster Dictionary defines it as “formed or used for specific or immediate problems or needs.” See <https://dictionary.cambridge.org/us/dictionary/english/ad-hoc> and <https://www.merriam-webster.com/dictionary/ad%20hoc>.