PROFESSIONAL AVIATION SAFETY SPECIALISTS

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Founded 1977

July 21, 2023

Miguel Nieves-Mojica
Acting Executive Director
Office of Labor and Employee Relations
Federal Aviation Administration
Washington, DC 20591

RE: National Grievance – Telework

Mr. Nieves-Mojica:

This is a national grievance filed under Article 5 of the parties' collective bargaining agreement (CBA) applicable to employees in the ATO and AVS bargaining units. On July 20, 2023, a message was forwarded to all FAA employees conveying that the FAA Management Board decided the following:

> as of **October 9, 2023**, our new expectation is that those of us who regularly telework will increase our in-office presence to **at least three days per week/six days per pay period**, including **Wednesday as a core, in-person day**. Managers are expected to revise telework agreements to support the agency's operational needs and mission.

This message and its implications blatantly violate the CBAs covering employees in both ATO and AVS. Articles 37 (ATO) and 51 (AVS) provide standards and procedures that the agency is legally required to follow and apply when considering telework requests from employees. This ill-advised change to policy tramples on our contracts. Particularly offensive, establishing days identified as "core" and having a one-size-fits-all for number of days in an office is a completely new concept with regards to telework. Similarly, suggesting that existing telework agreements can be unilaterally altered or "updated" to conform with the Management Board's direction is blatantly in conflict with the CBAs. In fact, our CBAs expressly state that telework termination decisions must be based on business needs or performance, not personal reasons. The arbitrary nature of this decision does not conform with this standard. Further, telework determinations under our CBAs must be based on sound business practices, not arbitrary limitations. There is great diversity in the job duties conducted by PASS BUEs, and applying a broad-brushed telework limitation is by definition an arbitrary limitation that does not take into account that diversity.

Assuming *arguendo* that the Management Board's policy change is not in conflict with our CBAs, at a minimum implementing these new policies represents a significant change to working conditions requiring notice and triggering bargaining obligations under Article 70 of

our CBAs and the law. The concept of a core telework day does not exist in policy or in our CBAs. Moreover, a top-down imposition of the number of in-person days has never existed even prior to the COVID-19 pandemic. The Agency's posture to have fewer workplace flexibilities than existed in March of 2020 is a significant change to working conditions without bargaining. The agency's actions constitute a violation of 5 USC § 7116(a)(5).

It must also be noted that the agency's change is not consistent with the guidance issued by the Office of Management and Budget (OMB). The guidance states in part:

> Agencies are also reminded that Memorandum M-21-25, which directs agencies to rely on evidence when making decisions about agency work environments, including by: (1) seeking and considering data and information regarding the impact of personnel policies and procedures on employee engagement, mission delivery, and outcomes; (2) establishing frequent feedback mechanisms, such as pulse surveys; and (3) leveraging evaluation and decision-making processes that support regular, data-driven updates to policies and procedures as the needs of the people agencies serve and of the Federal workforce continue to evolve.

The agency has not identified or provided any data to support its unilateral decision. Moreover, the agency has not provided a feedback mechanism, such as surveys, to support this decision. If the Management Board's action was data-driven, it would not have conducted its decision-making in secrecy without communication with or input from the collective bargaining representatives of its employees. Furthermore, this rule is being implemented agency-wide despite OMB's guidance making it clear that work environment plans should be determined for each "major operating unit" and that data will be used for measuring, monitoring, and improving organizational health and organizational performance within that operating unit. The FAA disregarded this guidance when applying its rules to all lines of business without distinction despite the existence of significant differences in missions and how they operate.

Essentially, the lack of respect for the law, the parties' CBAs, and the parties' labor management relationship demonstrated by this action is startling and disappointing. As a remedy, this new policy must be immediately rescinded and not applied to PASS represented employees. Any and all employees impacted by this must be made whole.

Sincerely,

David J. Spero
National President

cc: Dennie Rose, PASS General Counsel
Stefan Sutich, PASS Deputy General Counsel