Exhibit 1

FEDERAL MEDIATION & CONCILIATION SERVICE
IN THE MATTER OF ARBITRATION
BETWEEN

AFGE, NATIONAL VETERANS AFFAIRS COUNCIL *Union,* *v.* **DEPARTMENT OF VETERANS AFFAIRS** *Agency*	)	**FMCS No.: 170929-55253** **Reduced Per Diem for VBA Training**

BEFORE

Stephen Crable, Neutral Arbitrator

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I.
STATEMENT OF THE CASE

This arbitration involves a dispute between the American Federation of Government Employees, National Veterans Administration Council ("AFGE" or "Union") and the Department of Veterans Affairs, Veterans Benefits Administration ("VBA", "Department" or "Employer") alleging that the Department violated the Master Agreement ("Agreement") between the Department and Union when it unilaterally reduced the per diem for meals and incidental expenses, payable to employees on extended training assignment, to 55% of the amount authorized by the General Services Administration. The Union grieved the VBA's action, and the parties used the services of the Federal Mediation and Conciliation Service to select Stephen Crable as the Neutral Arbitrator. The Arbitrator held a hearing in this matter on September 24, 2018 in Washington, DC. Both parties appeared through counsel, offered sworn testimony and exhibits, submitted stipulated facts and made arguments. The parties filed written briefs on November 9, 2018.

II.
STATEMENT OF THE ISSUE

Whether the Department violated the Master Agreement and/or federal law when it reduced the per diem rates per policy for bargaining unit employees traveling to Challenge Training, and, if so, what shall the remedy be?

III.
POSITION OF THE PARTIES

A. Union

The Union argues the Department violated Article 37, Section 3A, of the Agreement, past practice and related provisions of the Agreement when it unilaterally cut, to 55% of GSA rates, the per diem rates paid to bargaining unit employees on extended training. In particular, this cut effected the per diem paid to employees taking "Challenge Training". Challenge Training typically lasts from 4-6 weeks, requires employee travel and is required of all employees new to the Veterans Benefits Administration.

Article 37, Section 3A requires the VBA to pay all expenses in connection with Challenge Training as well as other types of extended training mandated by the Department. For many years, the Department followed the longstanding practice of paying eligible employees 100% of the per diem rate determined by the GSA. The per diem rates set by GSA, after extensive research and analysis, vary from city to city consistent with cost of living in a given city.

The action that triggered this dispute occurred when the Department unilaterally began using a per diem rate for Challenge Training that was significantly less than the per diem rate set by the GSA. Rather than using the GSA rate, the Department conducted a cursory survey attempting to determine the cost of meals in different cities around the country. Based on this survey, the Department determined that reimbursing its employees at 55% of GSA rates was sufficient to cover its employees' meal expenses at the locations they travelled for VBA business. In the case of Baltimore and Denver, the locations where most of the VBA's Challenge Training is held, the per diem reimbursement for a full day fell from $69 to $42 for training in Baltimore and from $69 to $39 for training in Denver.

According to the Union, this reduction in per diem was not required by federal law, as argued by the Department. The unilateral change resulted from a change in VBA policy. Where VBA regulations conflict with the Agreement, Article 2, Section 2 of the Agreement specifically provides that the Agreement, not Department's regulations, prevail. Accordingly, the Union argues the grievance should be granted.

Separate and independent from the requirements of Article 37, the Union argues the Department's conduct violates federal law and Master Agreement provisions concerning bargaining obligations. The reduction of the per diem rates is a change in conditions of employment that requires official notification and bargaining with the Union. To implement the changes without notice and bargaining with the Union, as the Department undoubtedly did here, is a violation of the Federal Service Labor-Management Relations Statute (the "Statute"), §7114(a)(4)[1], which requires the VBA to bargain in good faith with the Union and the Master Agreement, Article 49 Section 4 (requiring reasonable advance notice of changes to conditions of employment) and

[1] The failure to bargain in good faith as required by this section is made an unfair labor practice under 5 U.S.C. §7116(a)(1) and (5).

Article 47 (prescribing the process to be followed for changes to conditions of employment that carry a bargaining obligation during the term of the Agreement).

The remedy the Union seeks for the Department's unilateral change in per diem, in violation of the Agreement and Federal law, is an award ordering the Department to cease and desist from the illegal reductions in per diem and ordering a return to the status quo ante, before the illegal reductions. While the FLRA has held that the Back Pay Act's waiver of sovereign immunity does not extend to reimbursement of unjustifiably withheld per diem payments, a status quo ante remedy in these circumstances does not require the Arbitrator to award money damages to the affected employees. The federal travel regulation (FTR) itself provides a mechanism for challenging improperly withheld per diem allowances. As a remedy for the violations here, the Arbitrator should order the Agency to process and consider applications from affected employees consistent with the interpretation of the Master Agreement and applicable law as articulated by the Arbitrator in his award in this case.

B. Department

The Department argues that it did not violate the Agreement, practice or any law or regulation by reducing the per diem it pays to employees while travelling to attend Challenge Training or any other extended training. After surveying the cost for meals and incidental in different localities, the Department determined that 55% of GSA approved rates for meal is the proper per diem to pay VBA employees attending extended training including Challenge Training in Baltimore and Denver. Pursuant to federal law and the doctrine of management rights, the Department was required to reduce the per diem it paid employees during Challenge Training.

While the Department paid 100% of GSA rates for a number of years, it was unaware of federal law, 41 C.F.R. 301-7, 12(b) (1993) that requires it to reduce per diem where meals and lodgings can be secured at a reduced cost. When the Department learned of this federal requirement, it reviewed the cost for procuring meals in various cities where its employees travel. The VBA's review, using an online travel program, determined that meals and incidentals could, with minor adjustments, be procured for 55% of the GSA rates at all localities to which VBA employees travelled. Since the Department's previous practice for paying 100% of GSA per diem rates was inconsistent with federal law, the Department argues there can be no binding past practice.

Article 37, Section 3A requires the VBA to reimburse employee for all travel

expenses when travelling for training required by the Department. The Department travel policy satisfied the VBA's obligation to pay such expenses. Unlike other provisions of the Agreement that specifically reference per diem, Article 37, Section 3 doesn't even mention and obligation to pay per diem. After the VBA determined the cost of meals and incidentals in the cities to which its employees travel, it set per diem at 55% of the rate determined by GSA for the relevant cities. This level of reimbursement satisfied the Department's obligations under federal law and Article 3, Section 37, Section 3A of the Agreement. Based on the foregoing, the Department concludes the grievance is without merit and should be denied in its entirety.

The Department argues that it did not violate its duty to bargain under the Agreement and/or the FLRA when it reduced the per diem rate in August 2017. The Department argues it did not have a substantive obligation to bargain over the decision to reduce per diem as this decision was within management's rights. Management's rights are outlined in 5 U.S.C. § 7106(a) and they include, among other things, the right to "determine the mission, budget, organization, number of employees, and internal security practices of the agency" as well as the right "to assign work."

The Department concludes that its decision to reduce per diem involved Department decisions regarding budget, mission and assignment of work. All of these subjects are management rights, not subject to bargaining. When a federal agency makes a change implicating a management right, the duty to bargain is limited to the procedures that management observes to exercise its authority and the appropriate arrangements for adversely affected employees. 5 U.S.C. § 7106(b)(2)-(3).

The Department argues no remedy is needed since the Union failed to prove a violation of the Agreement or law. If the Arbitrator concludes that the Department should have bargained with the Union, any remedy should be limited to the procedures that management uses to exercise its authority and the appropriate arrangements for adversely affected employees. 5 U.S.C. § 7106(b)(2)-(3).

The Department argues that an order to return to status quo ante is not an appropriate remedy. FLRA decisions have outlined the specific findings that must be met in imposing a status quo ante order. The applicable findings are: (1) whether, and when, notice was given to the union by the agency concerning the action or change decided upon; (2) whether, and when, the union requested bargaining on the procedures to be observed by the agency in implementing such action or change and/or concerning

appropriate arrangements for employees adversely affected by such action or change; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligations under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to what degree, a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. The Department argues that these considerations overwhelmingly favor the Department and persuasively show that a status quo ante order is not appropriate in this case.

Finally, the Department concludes that a monetary award is both inappropriate, given the facts of this case, and not legally supportable. The Union cannot recover per diem as a legal monetary remedy as there is no statute explicitly authorizing such a remedy. The most logical place to look for a statute authorizing the recovery of lost monies because of a personnel action is the Back Pay Act. However, the Authority has held that reimbursements of per diem is not considered "pay" within the meaning of the Back Pay Act. Thus, the Union's request for reimbursement of per diem and payment of attorney fees should be denied.

IV.
EXCERPTS FROM THE AGREEMENT

ARTICLE 2 – GOVERNING LAWS AND REGULATIONS

Section 1 – Relationship to Laws and Regulations

In the administration of all matters covered by this Agreement, officials and employees shall be governed by applicable federal statutes. They will also be governed by government-wide regulations existing at the time this Agreement was approved.

Section 2 – Department Regulations

Where any Department regulation conflicts with this Agreement and/or a Supplemental Agreement, the Agreement shall govern.

ARTICLE 37 – TRAINING AND CAREER DEVELOPMENT

Section 3 – Training Costs

A. The Department will pay all expenses, including tuition and travel, in connection with training required by the Department to perform the duties of an employee's current position or a position to which an employee has been assigned.

ARTICLE 47 – Mid-Term Bargaining

Section 1 – General

A. The purpose of this article is to establish a complete and orderly process to govern mid-term negotiations at all levels. The parties are encouraged to use an IBB approach in all mid-term negotiations and will ensure that negotiators ae trained in this approach prior to the inception of bargaining.

B. Recognizing that the Master Agreement cannot cover all aspects or provide definitive language on each subject addressed, it is understood that mid-term agreements at all levels may include substantive bargaining on all subjects cover in the Master Agreement, so long as they do not conflict, interfere with, or impair implementation of the Master Agreement. However, matters that are excluded from mid-term bargaining will be identified within each article.

C. As appropriate, the Union may initiate mid-term bargaining at all levels on matters affecting the working conditions of bargaining unit employees.

Section 2 – National

A. The Department will forward all proposed changes for which there is a bargaining obligation to the President of the NVAC or designee(s)….

B. If either party initiates a demand to bargain, briefings will occur within 20 workdays of the demand to bargain….

* * *

E. If the parties are unable to reach agreement, negations will proceed to face-to-face bargaining. When traditional bargaining is used, the Union's written proposals(s) will be submitted prior to bargaining. The parties retain the right to modify, withdraw, or add to any interest, concerns, or proposals they may have discussed or exchanged earlier.

* * *

VETERANS BENEFITS ADMINISTRATION POLICY

VBA Policy August 10, 2017
Travel Program Advisory
Reduced M&IE Per Diem Rate on Extended Stay Travel

1. Effective immediately, Veterans Benefits Administration (VBA) will reduce meals and incidental expenses (M&IE) per diem rate for employees on detail assignment or

training with extended stays.

2. Extended stay is defined as 30 days or more and the temporary duty travel (TDY) location is farther than 50 miles from both the employee's permanent duty station and residence.

3. The reduced M&IE per diem rate is a flat rate equal to 55% of the General Services Administration (GSA) established M&IE per diem rate.

Authority:

VA Financial Policies and Procedures , Volume XIV, Chapter 1, paragraph 010101 Travel Approval, Training and Authorization, C.7., states that VA will reduce the traveler's Meals and Incidental Expenses (M&IE) per diem rate to a flat rate when the travel assignment involves extended stays and the traveler is able to obtain lodging and/or meals at lower costs. The flat rate is equal to 55 percent of the M&IE per diem rate.

In accordance with the VA Financial Policies and Procedures , Volume XIV, Chapter 2, paragraph 020204.01 Reduction in Per Diem – Extended Stays:

A. VA reduces the traveler's M&IE per diem rate to a flat rate when the travel assignment involves extended stays and the traveler is able to obtain lodging and/or meals at lower costs. The flat rate is equal to 55 percent of the M&IE per diem rate. VA expects travelers to stay in weekly or monthly rentals (e.g., apartments, extended stay hotels) during extended assignments, whenever possible. Prior to travel, approving officials must indicate on the travel authorization that the traveler's M&IE per diem rate has been reduced to a flat rate. Extended stays lasting a year or more have tax consequences.

B. If the employee's travel assignment is continuous for more than 30 days (i.e., no return trips home are authorized), approving officials will reduce the M&IE allowance to no more than 55 percent of the full M&IE locality rate, unless a different reduced rate can be fully justified. Under unusual situations, the reduced rate may be increased or decrease by the approving official depending upon the conditions and necessary cost that will be incurred by the traveler. The reduced rate will be established based on the conditions that exist when the travel is performed. For example, if a traveler is forced to incur unusual lodging and/or meal costs due to the assignment, the rate will be based on cost date provided. The established rate will be shown on the travel authorization.

Questions:

If you have any questions regarding this advisory, please send them to our Travel Mailbox….

GENERAL SERVICES ADMINISTRATION
CODE OF FEDERAL REGULATIONS

41 C.F.R. 301-7, 12(b)

§301–7.12 Reductions in maximum per diem rates when appropriate.

An agency may, in individual cases or situations, authorize a reduced per diem rate under certain circumstances, such as when lodgings and/or meals are obtained by the employee at a reduced cost or furnished to the employee at no cost or a nominal cost by the Government; or when for some other reason the per diem costs to be incurred by the employee can be determined in advance. In exercising its responsibilities outlined in §301–7.2(b), the agency should consider any known factors that will cause the traveler's per diem expenses in a specific situation to be less than the applicable maximum rates prescribed under §301–7.3. If it can be determined in advance of the travel that such factors are present, the agency should authorize a reduced rate that is commensurate with the known expense levels. Such reduced rate authorized on the travel authorization shall be the per diem rate payable on the travel voucher without receipts and/or itemization by the employee….

GENERAL SERVICES ADMINISTRATION
FEDERAL TRAVEL REGULATIONS, GENERAL GUIDES TEMPORARY DUTY, 63 FR 15950-01

Subpart C—Reduced Per Diem

Section 301-11.200 Under what circumstances may my agency prescribe a reduced per diem rate lower than the prescribed maximum?

Under the following circumstances:

(a) When your agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate; and

(b) The lowest authorized per diem rate must be stated in your travel authorization in advance of your travel.

V.
BACKGROUND

The Veterans Benefits Administration or VBA is the group within the Veterans Administration responsible for determining the benefits that may be payable to a veteran. Veterans Services Representatives ("VSRs") are the Department employees responsible

for receiving claims, gathering information and reviewing records so that a veteran's eligibility for disability or pension benefits can be determined. The task of determining the eligibility for, type and amount of benefits payable to a veteran is a complex task.

In order to ensure that VSRs are qualified to properly perform their jobs, VBA requires new employees to attend Challenge Training. This training last 4-6 weeks on average and longer if the employee will be doing quality control or supervisory work. Challenge Training typically requires extended travel outside an employee's normal work location. The training is offered seven times a year, and the classes consist of 100-150 employees. Training is held in one of two locations, Baltimore, Maryland or Denver, Colorado.

Once a VSR is scheduled for Challenge Training, the employee receives a letter from the Training Academy notifying the employee of the dates and location for the training. This travel package advises the employee of the departure and return dates, the per diem rates, the Hotel name and address, parking rate and numerous other details needed by the employee. The employee works with Finance to schedule air travel. The hotel where the employee will stay during Challenge Training is selected by the Agency. The employee has no discretion regarding the hotel selected. It doesn't appear that the hotels used for Challenge Training have kitchenettes but there does appear to be a requirement that at least one micro wave oven available on each floor of the hotel where employees are staying

Prior to August 10, 2017, a VBA employee attending Challenge Training was paid expenses at the per diem rate set by the GSA. GSA sets the reimbursement rates for meals and incidentals in various cities by compiling an extensive survey of sit down, chain type restaurants (Applebee's, Chili's, etc.). The meal rates GSA sets differ from one city to another based on the cost of living in different locations. Until August 10, 2017, the VBA reimbursed employees attending Challenge Training 100% of the GSA rate. The GSA meal and incidental rate for Baltimore and Denver was the same, $69 per full day.

Effective August 10, 2017, the VBA announced a Travel Program Advisory entitled "Reduced M&IE Per Diem Rate on Extended Stays Travel." Among other changes, the Advisory announced that it would henceforth reimburse meal and incidental expenses for extended stay travel to 55% of the GSA per diem rate for the applicable geographic location. The Agency justified this change in practice as required by federal

law, GSA and Agency regulations. After a minor adjustment to the 55% rate due to incidentals, the Agency reduced the per diem allowance for Challenge Training from $69 per day to $39 per day in Denver and from $69 per day to $43 per day in Baltimore.

VI.
DISCUSSION AND OPINION

A. Alleged Violations of the Agreement

1. Article 37, Section 3

Article 37, Section 3 of the Agreement addresses the payment of travel expenses to employees attending Department mandated training. This provision obligates the Department to "pay *all expenses*, including tuition and travel, in connection with training required by the Department to perform the duties of an employee's current position or a position to which an employee has been assigned." *(emphasis supplied)*. It is undisputed that Challenge Training is training that is required to perform the duties of VSRs and other bargaining unit positions. Challenge Training lasts 4-6 weeks and typically requires extended travel outside an employee's normal work location. Currently, all Challenge Training is held in Baltimore or Denver. Hence, Article 37, Section 3 requires the Department to pay "all expenses" incurred by employees attending Challenge Training.

Prior to August 10, 2017, the Department followed the undisputed practice of interpreting *"all expenses"* for employees attending Challenge Training to include payment of the full per diem rate specified by GSA for the training location. On August 10, the Department changed this longstanding practice by cutting the per diem rate by 55%. It did so without bargaining with the Union. The Department gave the Union notice of the changed practice simultaneously with the implementation of the change. When the Department unilaterally reduced the per diem it paid employees attending Challenge Training, it breached the longstanding practice of interpreting *"all expenses"* to include paying the full GSA per diem rate to such employees. Accordingly, the Department violated Article 37, Section 3 of the Agreement by reimbursing employees at a reduced per diem rate rather than the GSA specified rate.

The Department argues that Federal law and regulations required the Department to reduce the per diem paid to its employees for Challenge Training. The VBA further

reasons that a past practice can't override federal law or regulations and concludes that federal law nullifies the Department's practice of reimbursing the effected employees for the full GSA per diem amounts. While the Arbitrator agrees with the former proposition, he does not agree with the latter. VBA's conclusion that the law automatically required a reduction in the GSA per diem is not supported by the law or the regulations on which it relies. While applicable federal law and regulations specify that a federal agency may reduce the per diem rates it pays under certain circumstances, federal law does not require it to do so.[2]

2. Article 47

Article 47 of the Agreement outlines the procedures to be followed in making mid-term changes to the local or Master Agreements. The Department acknowledges that it did not bargain with the Union over the reduction in per diem rates. While the Department argues that it has no obligation to bargain over per diem rates, the relevant FLRA decisional law undercuts this argument. Article 47 prescribes a mid-term bargaining process that outlines the procedures that must be followed before making applicable changes. For the reasons amply reflected in the record, but not summarized here, the Department failed to comply with the procedures outlines in Article 47. The Department defenses regarding negotiability and management rights are rejected. *Dep't of the Interior and AFGE Local 723*, 68 FLRA 734, 737 (2015). The Department's arguments raising mission, budget, work assignment and other management rights considerations are speculative and not supported by any persuasive record evidence. Accordingly, the Department's failure to bargain with the Union regarding the changes in per diem violate Article 47 of Agreement.

B. Violation of Federal Law §7116(a)(1) and (5)

The conclusion that the Department violated Article 37, Section 3 of the Agreement by unilaterally reducing the per rate is based on well-established arbitral principles of contract interpretation and past practice. However, the record supporting

[2] **Subpart C—Reduced Per Diem. Section 301-11.200 Under what circumstances *may* my agency prescribe a reduced per diem rate lower than the prescribed maximum?** Under the following circumstances: (a) When your agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate; ….

these findings also supports the conclusion that the Department's unilateral change in per diem rates violated the federal labor relations statute. In *Dep't of the Interior and AFGE Local 723*, 68 FLRA 734, 737 (2015) ("*Dep't of Interior"*), the Federal Labor Relations Authority found that the *Dep't of Interior* violated the applicable provisions of the FLRA when the *Dep't of Interior* unilaterally changed the past practice of paying the full per diem rates set by the GSA. In so ruling, the Authority rejected practice, management rights, budget, mission and assignment of work arguments that parallel the ones the Department makes in this case. As more fully discussed in the FLRA's *Dep't of Interior* decision, these arguments were not persuasive in that case and are no more persuasive in this case. The Department violated federal law when it unilaterally changed, without bargaining, the past practice of paying employees attending Challenge Training per diem at the full rate specified by the GSA.[3]

In an attempt to pull itself up by its bootstraps, the Department adopted an internal policy that reduced per diem rates by 55% and cited its own financial regulations and procedures as justification for doing so. Absent a federal law mandate for its actions, the Department's policy must be measured against Article 2, Section 2 of the Agreement. Article 2, Section 2 dictates that where a Department regulation conflicts with the Agreement, the Agreement shall govern. Accordingly, the Department's reliance on its own policy as justification for unilateral actions serves as no defense for its violations of Article 37, Section 3 and the associated practice.

Even assuming arguendo that the Department had prevailed on its argument that federal law required the Department to change its practice of using full GSA per diem rates, its methodology for reducing per diem expenses does not appear to comply with the law and regulations on which it relies. Federal regulations specify that an agency "may, in *individual cases or situations*, authorize a reduced per diem rate under certain circumstances… [*if*] the per diem costs to be incurred by the employee *can be determined in advance*." *(emphasis supplied)*. In this case, the Department reduced the per diem rates by 55%, across the board, for cities as diverse as Camp Pendleton and Seattle; Fort Hood and Baltimore; Fort Carson and San Diego. If the cost for M&IE's, determined in advance, in multiple cities, at different hotels and in different locations within a city were objectively determined by *individual cases or situations,* it seems doubtful that the reduction of GSA per diem rates would have been by exactly the same percentage in all relevant cities.

[3] As noted above in VI.A.2, the Department's failure to bargain with the Union over reducing the per diem rates also violates Article 47 of Agreement.

Moreover, the Department's method of determining the per diem costs "in advance" used an online travel site, www.budgetyourtrip.com, aggregates and averages the cost for meals in any given city by relying on the data generated by travelers who voluntarily reported the cost of their trips. The reliability of this data base and methodology is, at best, questionable. The meal expenses reported for any given city can be based on the experience of a small number of travelers, or even a single traveler. The web site depends on travelers reporting all their expenses incurred and doing so accurately. The web site apparently is a general planning tool for what a traveler might spend as opposed to a predicter of actual meal expenses. Given these reliability questions, the Department's decision to replace GSA rates[4] with the less accurate and reliable rates determined by Department, the reduced rates don't appear to meet the regulatory requirements for reducing per diem.

B. Remedy for Violation of the Agreement

In order to remedy the Department's violation of the Article 37, Section 3 of the Agreement, the Arbitrator directs the Department to immediately beginning paying the full applicable GSA per diem rates for employees attending Challenge Training, and, to cease and desist from further violations of Article 37, Section 3 of the Agreement.[5] Regarding Article 47, the Department must comply with the procedures outlined in this Article if it wishes to make mid-term modifications to the Agreement.

C. Remedy for Violation of §7116(a)(1) and (5)

The Arbitrator concludes that a restoration of the status quo ante is the appropriate remedy for the Department's violation of federal law. This conclusion is supported by the record and is consistent with the 5 factors outlined in *Federal Prison System, Correctional Institution, Petersburg, VA and American Federation of Government Employees,*

[4] Unlike the BudgetYourTrips website, the GSA rates are based on comprehensive investigation and research.

[5] In ordering the Department to comply with Article 37, Section 3 of the Agreement, the Arbitrator is merely issuing a remedy that is commonly used to correct simple contract violations. While the Arbitrator doesn't conclude that the findings required by the FLRA in issuing a status quo ante remedy are applicable to the contractual remedy ordered in this matter, if the Arbitrator's conclusion is erroneous, the record in this case, as fully discussed in Section VI.B of this decision, pertains equally to the remedy for the Article 37, Section 3 contract violation.

Local 2052, 8 FLRA 604 (1982) *(hereafter "FCI").* In *FCI*, the FLRA outlined the following considerations for determining whether a status quo ante remedy is appropriate: (1) whether, and when, the agency gave notice concerning the action or change; (2) whether, and when, the union requested impact-and-implementation bargaining regarding the action or change; (3) the willfulness of the agency's conduct in failing to properly bargain under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to what degree, an status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations.

In the present matter, these factors support the imposition of a status quo ante remedy. The Department failed to provide advance notice of the change to the Union and implemented the policy at issue *effective immediately*. The Union promptly filed a grievance and sought bargaining in accordance Article 47 of the Master Agreement and federal statutes. The Department made no effort to determine, in advance, what its bargaining obligations might be. The impact on the bargaining unit employees of the change is significant since the newly reduced per diem dropped by 55%. The daily rate fell from $69 per day to $39 per day in Denver and from $69 per day to $43 per day in Baltimore. For employees facing 4-6 weeks of training, staying in hotels away from home, the impact on what, when and how the employee ate was significant. Finally, returning to the status quo ante would not disrupt or impair the efficiency and effectiveness of Department's operations.[6] The Department paid full per diem amounts to bargaining unit employees for years without disrupting its mission, and, there is no persuasive cost, staffing or budgetary information in the record to support the Department' assertion of the negative impact on the Department's mission from a status quo ante remedy,

In addition to the foregoing remedy, the Department is ordered to post notices and advise its employees of the Department's violation of federal law in the manner proscribed by law and FLRA practice.

VII.
AWARD

[6] The mere assertion of a disruption cannot form the basis for a denial of a status quo ante remedy. The FLRA requires agencies to establish the case for disruption through record evidence. *See DOD, DCA, Peterson AFB and AFGE Local 1867*, 61 FLRA 688, 694-95 (2006) ("In this regard, it is well established that in rendering a decision on this factor, the Authority requires a respondent's argument to be "based on record evidence." (quoting Army and Air Force Exchange Service, Waco Distribution Center, Waco, Tex., 53 FLRA 749, 763 (1997)).

The grievance is granted. The Department violated the Master Agreement and federal law when it reduced the per diem rates per policy for bargaining unit employees traveling to Challenge Training. The Department is ordered to immediately beginning paying the full applicable GSA per diem rates to employees attending Challenge Training, and, to immediately cease and desist from further violations of Article 37, Section 3 of the Agreement and federal law. The Department is ordered to initiate mid-term bargaining as provided by Article 47 if it wishes to change the per diem rates for Challenge Training. Additionally, the Department is directed to immediately restore the status quo ante and to post notices and advise its employees of the Department's violation of federal law in the manner proscribed by law and FLRA practice.

Date: November 26, 2018

Stephen Crable
Neutral Arbitrator

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