



Gary Morton  
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Ms. Janet McCabe  
Deputy Administrator  
U.S. Environmental Protection Agency  
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Dear Deputy Administrator McCabe,

The American Federation of Government Employees (AFGE) Council 238 is committed to working with you to rebuild and improve the relationship between the Agency, AFGE, and its members. As I am sure you are aware, the Union and its bargaining unit employees faced relentless attacks under the Trump and Pruitt and Wheeler Administrations, including but not limited to the unilateral imposition of an anti-worker contract, sudden and significant loss of employee rights, and pointed attacks at its Unions. While change is often difficult, I feel obliged to tell you the transition to the union-partnering Biden Administration has not been as smooth as I had hoped. Agency Labor Employee Relation (LER) representatives continue to employ tactics they used during the Trump Administration.[1] This has impacted many areas, but importantly at the moment, the lack of cooperation on the part of the Agency's LER representatives has impacted the Union's ability to participate in the Agency's vitally important Return to the Office (RTO) plans.

As you are likely aware, during the last administration, EPA's Unions worked tirelessly to ensure that employees were safe and were able to protect themselves from being brought into offices pre-maturely. This was not a small feat, and in the process, the Unions developed enormous understanding of the needs of our workforce when so many were forced to work remotely to keep themselves and their communities safe. During that time, employees were at the mercy of the administration's unilateral office re-opening plans and unions were able to bargain about them only after the plans were made and many times in fact implemented.

After the start of the Biden Administration, in February, EPA presented its COVID-19 Workplace Safety Plan to the Unions - again developed without Union input. With the change in administrations and understanding the value of union participation, AFGE, along with all of the EPA unions, should be participating in a pre-decisional manner with the Agency as we move forward.

To that end, on February 21, 2021, I emailed EPA requesting AFGE Council 238 have a seat on the Agency's COVID-19 Coordination Team in developing EPA's Workplace Safety Plans. On February 25, 2021, EPA repeated the prior approach that the Unions' role comes in after the Agency has made its plans and not in participating in their development, stating that "...the Union has a vital role to play in evaluating the agency's safety plan through pre-decisional involvement and bargaining any negotiable aspects of the plan once issued and if appropriate." EPA understood but wholly rejected the Union's request: "If the Union were on the Team it would draft the plan, then engage in pre-decisional





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involvement on a plan it drafted, then negotiate against itself to implement the plan it wrote. That would kinda put the bargaining relationship on its head.”

This position is flawed in many ways, including that it runs counter to the approach set forth by the Biden Administration and echoed by current Agency leaders like yourself. Ideally, a plan that is jointly drafted through pre-decisional involvement would not necessarily need to be negotiated. The only matters the Unions would be compelled to negotiate would be outstanding issues for which there was no agreement.

EPA also uses the fact that five unions represent it's employees to say the process would somehow get unwieldy: “If AFGE gets a spot, then our other five unions should arguably get spots on the team. The team is not huge. Adding another six members would get unwieldy fast.” Frankly, the size of the team is of no concern to AFGE. It is AFGE Council 238’s view that each of EPA’s Unions should have a seat on the COVID-19 Coordination Team and be actively involved in the pre-decisional drafting process.

EPA presented to AFGE Council 238 that the Agency was considering establishing its own EPA Labor COVID Coalition (ELCC). We expressed at the time our concern that the ELCC is not being established as a true pre-decisional body but rather as a place to direct the unions to talk but have no real influence on development of Agency policy (this would be consistent with EPA’s statements that allowing pre-decisional involvement from the unions would turn the relationship on its head). To date it is our understanding that the Agency has not shared documents or plans with the unions participating in the ELCC. However, it is essential for making a workplace that is safe and fair for EPA employees that development of Agency COVID-19 return to the workplace policy be worked out with AFGE and the other EPA unions and in a pre-decisional manner as we move forward.

Given the short timeframe for the submittal of the Agency’s draft RTO Plan, AFGE is willing to participate on the ELCC in a pre-decisional stature if the ELCC charter explicitly reflects the following::

A firm commitment that all of EPA’s unions will be permitted to true pre-decisional involvement in the drafting of the reentry and post-reentry plans through ELCC participation. This includes an open and honest exchange of pre-decisional information and active editing of draft documents;[2]

A direct communication line to you if the Unions observe EPA management representatives not observing the pre-decisional involvement rules, stalling, or being evasive in communicating information;

The Agency’s commitment to the ELCC meeting daily between now and the submittal of both the draft and final plans; and,

Participation by Union representatives will be on official time, both for preparation and participation in the ELCC.

Specifically, AFGE Council 238 would require the following specific revisions to the ELCC Charter prior to agreeing to participate, listed below (changes underlined):

Section 1 Preamble





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#1 The Environmental Protection Agency (EPA), American Federation of Government Employees (AFGE), the National Treasury Employees Union (NTEU), the Engineers and Scientists of California (ESC), the National Association of Government Employees Local R5-55 (NAGE R4), the National Association of Government Employees Local R1-240 (NAGE Narragansett), and the National Association of Independent Labor (NAIL) recognize that cooperation, collaboration and pre-decisional involvement between management and bargaining unit employees elected representatives is necessary to accomplish EPA's mission effectively. The COVID 19 pandemic clarified the need for cooperation between management and Labor.

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#3. The ELCC has three central purposes: Ensures pre-decisional involvement of all the Agency's Unions in the drafting of plans concerning COVID-19; ensures EPA employee's safety; and ensures that employees have adequate resources and support from management to continue to accomplish the Agency's mission to protect human health and the environment under the unprecedented conditions of the COVID-19 pandemic.

#### Section 2 ELCC Composition

#1 The Coalition will consist of up to 14 members including the co-chairs: Up to 7 from the Unions (2 members from AFGE and at least one member from each of the other unions); and up to seven members from management..."

#3 "...Guests or observers will be unlimited..."

#### Section 3 ELCC Goals

#6 Collaboratively draft reentry and post-reentry plans.

#### Section 4 ELCC Meetings and Procedures

#1 The ELCC will meet daily with each meeting lasting for however long the co-chairs agree is necessary to cover the issues raised on the agenda..."

#4 The Co-Chairs will agree on standing agenda items to be discussed at each meeting.

#10 If no consensus is reached, the ELCC may seek the services of a facilitator, forward the issue to a delegated working group (consisting of both Union and Agency representatives), or determine that consensus is not going to occur.

#### Section 7 Implementation

#4 The ELCC Charter will last through the end of the national emergency concerning the coronavirus disease 2019 (COVID 19) pandemic and the full implementation of reentry and post-reentry plans. It may be renewed by mutual agreement of the parties.

I assure you AFGE Council 238 remains committed to working with EPA leadership to rebuild a relationship of mutual respect and trust, shared goals for the benefit of our employees, and constructive robust debate on areas of disagreement. I look forward to working with you moving forward. If you



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have any questions or concerns, please feel free to reach out to me at [afgec238@gmail.com](mailto:afgec238@gmail.com), 267-344-6916, and/or Joyce Howell, [howell.joyce@epa.gov](mailto:howell.joyce@epa.gov), 215-814-2644, and Justin Chen, [chen.justin@epa.gov](mailto:chen.justin@epa.gov), 214-665-2273, my delegated alternate contacts for this issue.

Sincerely,

Gary Morton, President  
AFGE Council 238

cc: Michael Regan, EPA Administrator

Robert Coomber, EPA LER  
Zakiya Davis, NAGE R4  
Tim Seidman, NTEU

Mark Sims, ESC  
Leslie Mills, NAGE Narragansett  
Leah Oliver, NAIL  
AFGE Council 238 Local Presidents

[1] It must be brought to your attention that a few anti-employee LER personnel remain in place as decision-makers. These individuals have been reluctant to adapt to the goals and guidance of the Biden Administration. For example, it was extremely disappointing that AFGE had to enlist the assistance of a Federal Mediator in order to have LER representatives obey President Biden's Executive Order 14003.

[2] The Office of Personnel Management (OPM) Memorandum for the Heads of Executive Department and Agencies (M-21-25) dated June 10, 2021 does not prohibit the Agency from sharing draft documents. While the memorandum states the documents described in it are not intended for publication or release by the agency, it does not prohibit the sharing of said documents, positions and themes with the people who actually make up the EPA.

