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LEGISLATIVE ACTION ALERT

In victory for unions, judge overturns key parts of Trump executive orders

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Unions representing federal workers on August 25, 2018 declared victory in what they have described as an assault by the [Trump](#) administration after a federal judge struck down key provisions of a set of executive orders aimed at making it easier to fire employees and weaken their representation.

The ruling, by U.S. District Judge Ketanji Brown Jackson in Washington, was a setback to the White House's efforts to rein in federal unions, which have retained significant power over working conditions even as private-sector unions are in decline.

"It's a big win for us," said David Borer, general counsel for the [American Federation of Government Employees](#). With 750,000 members, the AFGE was the largest of about a dozen unions to sue the administration to block the new rules affecting 2.1 million civil servants. The AFGE and the other plaintiffs plan to demand that the administration immediately reverse the new rules, which were issued just before Memorial Day and had begun to take effect in several agencies.

In a 122-page decision, Jackson - nominated to the bench by President Barack Obama in 2013 - took issue with key elements of each order and immediately barred the administration from enacting them. "They're going to have to unwind

what they've already done," Borer said. The White House on Saturday referred questions to the Justice Department, which said in a statement it is reviewing the decision and considering its next steps. The three executive orders had sought to broaden President Donald Trump's get-tough approach to a federal bureaucracy he has called unaccountable and wasteful.

The rules restricted the use of "official time" - on-duty time that union officials can spend representing their members in grievances and on other issues. The new rules limited the issues that could be bargained over in union negotiations. And they rolled back the rights of workers deemed to be poor performers to appeal disciplinary action against them. Jackson found that the president lacks the authority to impose many of the measures, which she said interfered with the right to good-faith collective bargaining that Congress laid out for civil servants in 1978.

In her decision, the judge wrote: "While . . . the President has the authority to issue executive orders that carry the force of law with respect to federal labor relations, no such orders can operate to eviscerate the right to bargain collectively as envisioned" in the federal labor-management relations statute. Under the statute, she added, "the collective bargaining process is not a cutthroat death match." For decades, the

unions, which are large donors to congressional Democrats, have had vast power in the federal workforce, with a voice in almost every workplace issue except pay, which is set by Congress.

The judge's ruling could create chaos in many federal agencies, where the Trump administration had begun implementing the new rules, expelling union officials from dozens of offices where they had worked for years inside agencies and using the rules to restrict the workplace issues over which the unions could bargain. The government had not historically charged the unions rent, but with the new rules, agencies began to demand such payments. The unions declined to pay and were in various stages of vacating the offices when the judge issued her order. Many union representatives had been told to return to their old jobs as the administration began to limit official time - and at least one official has been served with notice of termination for refusing to do so, AFGE officials said.

"The judge rightly found that the president is not above the law and cannot, through these blatantly anti-union and anti-worker executive orders, eviscerate employee rights," Tony Reardon, president of the [National Treasury Employees Union](#), which represents 150,000 federal workers said in a statement.

The orders had required federal agencies to reduce the time given to poor performers or employees found to be involved in misconduct to show improvement or fight their cases, cutting it from 120 to 30 days. They also limited a worker's route to appeal a poor performance evaluation.

Perhaps the most contentious provision was one limiting what union officials could do on behalf of their members while on the clock at their government jobs, which the White House and congressional [Republicans](#) have consistently derided as "taxpayer-funded union time." House Republicans have introduced numerous bills to

eliminate what is called official time, but those efforts have failed to gain traction. The unions defend official time as valuable time spent defending their members against improper treatment by management.

One of the executive orders had capped official time at 25 percent of an employee's time on the job. Jackson, who was vetted as a possible replacement for the late Supreme Court Justice [Antonin Scalia](#), agreed with most of the unions' arguments, including that official time is a right protected by Congress.

"Congress undertook to guarantee federal employees the statutory right to engage in good-faith collective bargaining," she wrote, saying that that right "safeguards the public interest." Jackson also struck down rules limiting the kinds of issues on which unions could negotiate in collective bargaining. She left a few elements of the new rules in place. She upheld a provision giving an agency the ability to use its discretion in firing or disciplining an employee without having to go through a number of graduated, often-drawn out steps. The judge also upheld the right of agencies unilaterally to impose a contract if it is clear that the union has delayed negotiations in bad faith.

A test case of management's right to impose a contract without completing bargaining came in March, when the Education Department did so after a year of bitter negotiations fell apart. Management and the union accused each other of refusing to come to the table. The agency announced an "agreement" it said reflected its final offer.

The union contends that it had not negotiated any provisions - and says the imposition of the contract was illegal. The AFGE filed an unfair-labor-practice complaint with the Federal Labor Relations Authority and was recently advised that mediators concluded that the agency had acted in bad faith and in violation of federal law.