



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

January 19, 2012

MEMORANDUM FOR: Ruth Cook, Acting Director,
Employee and Labor Relations Division, AHEDA

FROM: Russell Varnado, President, Council 222

SUBJECT: Demand to Bargain Temporary Assignment of Work

This memorandum serves a notification of the Union's demand to bargain, Temporary Assignment of Work due to the expiration of Performance Based Contract Administration (PBCAs).

The temporary assignment of work due to the expiration of PBCAs is of acute concern to Council 222, as the exclusive representative. This action entails a change in conditions of employment of the affected bargaining unit members. Equally so I am concerned that the assignment of work places an undue burden upon the impacted member, at a time when the workload is continuing to increase, with no additional manpower to perform the increased workload.

Specifically, HUD has contracted out project-based Section 8 contract administration. For Fiscal Year 2011, HUD received permission to expend \$322 million from the Section 8 fund to cover the cost of these contracts, and to expand these contracts to include Section 202, 811, and other multifamily housing programs.¹ This represented a 10% increase from FY 2010.

The Council continues to believe that use of PBCA Contractors is not the best use of Section 8 funds, and contracts should not be extended to include vulnerable populations such as the elderly and persons with disabilities.

¹ "Provided further, That the Secretary of Housing and Urban Development may also use such amounts in the previous proviso for performance-based contract administrators for the administration of: interest reduction payments pursuant to section 236(a) of the National Housing Act (12 U.S.C. 1715z-1(a)); rent supplemental payments pursuant to section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); section 236(f)(2) rental assistance payments (12 U.S.C. 1715z-1(f)(2)); project rental assistance contracts for the elderly under section 202(c)(2) of the Housing Act of 1959 (12 U.S.C. 1701q); project rental assistance contracts for supportive housing for persons with disabilities under section 811(d)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013(d)(2)); project assistance contracts pursuant to section 202(h) of the Housing Act of 1959 (Public Law 86-372; 73 Stat. 667); and loans under section 202 of the Housing Act of 1959 (Public Law 86-372; 73 Stat. 667)" at A-11 of Fiscal Year 2011 Budget Justification, available at <http://hud.gov/offices/cfo/reports/2011>.

Consequently, the Council views this assignment of work as both a challenge and an opportunity.

We believe the PBCA contracts are not cost effective. The 2009 expenditure of \$292 million would cover all of the costs associated with 1926 full time HUD employees—pay, benefits, rents, utilities, travel, training, and more. Add to that the 400 employees currently engaged in contractor oversight, and the cost of these contracts equals the cost of 2320 HUD employees. At no time has anyone suggested that it would take more than 1400 HUD employees to do the work currently done by PBCA contractors.²

We are not alone in our assessment that the PBCA contracts are not cost-effective. A November 2009 HUD Inspector General audit found that HUD does not obtain the best value for the money spent on these contracts. The IG recommended a detailed analysis to determine the most cost-effective method for performing contract administration. The IG presented three options: two options recommended in-sourcing all or a substantial portion of the contract administration; the third option recommended re-bidding the contract, and allowing HUD employees to submit a bid for in-sourcing.³

In May 1999, HUD issued a request for proposals for contract administration services for project-based Section 8 housing assistance payments contracts for each state, and the awarded 37 PBCAs without giving the union advance notice of the decision or the opportunity to confer about the decision and its effects upon its members.

The current “temporary” assignment of work is a prelude to implementation of the same misguided decisions, which led to the original PBCAs. Unlike the past, the rules have changed. Now that a decision has been made to contract out the PBCAs, HUD has an obligation to: (1) provide the Union with advance notice of the decision to contract out; (2) confer with the Union about this decision or its effects; or (3) provide the Union with a Statement of the Work and afford it an opportunity to offer competitive approaches to performance (“bid”) on the work.⁴

The Union requests: (1) that HUD subject current temporary transfer of functions,⁵ including the PBCA contracts, to a review in accordance with OMB Circular A-76 or (2) require a small pilot program of no more than 100 full-time-equivalent HUD employees to compare both the cost and quality of the services as provided by HUD employees versus PBCAs. The pilot request was proposed in a 2007, HUD employees submitted issue paper, "Contracting Out at HUD."⁶

² See Inspector General for Audit Report Number 99-PH-163-0002 at p. 16.

³ IG Audit Report #2010-LA-0001 at pp. 1, 2, 16-19 and 28-32, respectively.

⁴ Department of Health and Human Services, National Institutes of Health and AFGE, Local 2419, 64 FLRA No. 39, 64 FLRA 266 (2009).

⁵ *Function* means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

⁶ American Federation of Government Employees, HUD Council 222, Issue Paper, Contracting Out at HUD

We recognize Management's right to decide whether to take actions listed in 5 U.S.C. 7106(a), and that right is protected from collective bargaining; however, the temporary assignment of functions, is viewed as a change in working conditions and the U.S. Department of Housing and Urban Development "must" bargain over "impact and implementation" of the decision and over appropriate arrangements for employees adversely affected by the temporary assignment of functions under succeeding sections 7106(b)(2) and (3).

Below are our preliminary proposals:

1. **Response to concerns**: HUD will respond in writing to the concerns raised by the Council prior to commencing negotiations. All responses will be in writing.
2. **Copies of Position Descriptions**: The Union shall be provided a copy of the classified position description for each impacted category of job titles, prior to commencement of bargaining.
3. **Local Bargaining**: The Local Union shall receive notifications in accordance with Article 5 of the HUD/AFGE Agreement regarding local changes that may occur to bargaining unit employees including but not limited to moves, details and reassignments.
4. **Teleworking**: There shall be no adverse impact to the telework agreements of the affected employees.
5. **Reasonable Accommodations**: There shall be no adverse impact to any reasonable accommodation of any affected employee.
6. **Annual Leave**: Annual leave previously approved shall not be rescinded as a result of this organization establishment.
7. **Bargaining Unit Status**: No employee shall be removed from the bargaining unit as a result of this temporary assignment of work.
8. **Maintenance of Status Quo**: The agency will maintain status quo until completion of bargaining.
9. **Workload Management**: Management shall implement procedures to insure that with the additional temporary assignment of work, that no member exceeds the workload of one FTE. *NFFE v. FLRA*, 412 F.3d 119 (D.C. Cir 2005); *reversing Bureau of Land Management*, 59 FLRA 951 (FLRA 2004).
10. **Selection for Assignment**: When it is determined that two or more employees are equally qualified for temporary assignment of work, it shall be assigned in the order of "least senior" employee first. *SSA Office of Hearings and Appeals*, 60 FLRA 461 (FLRA 2004).
11. **Accomplishment of Work**: Employees shall not be held responsible for the performance of work matters outside the control of employees when rating their

performance. See *Patent Office Professional Association, POPA and Dept. of Commerce, Patent & Trademark Office*, 47 FLRA 10, 24, 26–27 (1993)

12. **Incentive Pay Bonuses:** Members required to perform temporary assignment of work related to the PBCAs shall be eligible for incentive pay bonus. *Federal Deposit Insurance Corporation*, 64 FLRA 79 (FLRA 2009); *Panama Canal Commission*, 36 FLRA 555 (FLRA 1990).
13. **Reemployment of Annuitants:** Reemployment of annuitants rehired to perform temporary work associated with the PBCAs, will be included in the bargaining unit.
14. **Reassessment of SMART Elements and Standards:** Employees impacted by the assignment of work previously performed by the PBCA contractors shall have their Elements and Standards modified. Modifications shall be in accordance with the procedures for establishment of new performance plans found at Supplement 91 to the HUD/AFGE Agreement.

These are preliminary proposals only and the union reserves the right to amend, add, or delete provisions in accordance with Article 5 of the HUD/AFGE Agreement. I will notify you of the Chief Negotiator's names at a later date. Please see the attached Request For Information, as it is essential for the full and proper analysis of this matter.

Thank you in advance for your cooperation and assistance. If you have any questions about the above items, please do not hesitate to contact me at (202) 402-8033.

Delegation of Authority

This communication provides the delegation of authority to negotiate the issue of the Temporary Assignment of Work - PBCAs, under the authority of American Federation of Government Employees (“AFGE”) Council 222.

The Temporary Assignment of Work - PBCAs, and as such are negotiated under the authority of AFGE Council 222. Effective immediately, _____ is delegated the authority to negotiate the Temporary Assignment of Work - PBCAs and National Security. In this capacity the Chief Negotiator will act under the authority of the AFGE Council 222, in accordance with the Agreement between the U.S. Department of Housing and Urban Development and the American Federation of Government Employees, Council 222, and the Constitution and Bylaws, National Council of HUD Locals, Council 222.

This delegation may not be redelegated without my written approval of the President of the Council.

Respectfully,

Russell D. Varnado
President, Council 222

GROUND RULES

Negotiation Ground Rules for Collective Bargaining

Between

The U.S. Department of Housing and Urban Development

And

AFGE Council 222

On the

TEMPORARY ASSIGNMENT OF WORK - PBCAS

Temporary Assignment of Work - PBCAs

Management and labor mutually agree to the following ground rules governing the upcoming Mid-Term bargaining of the Temporary Assignment of Work - PBCAs. Both parties agree to bargain in good faith and will make every effort to reach agreement.

The Parties agree that Article 5, of the Agreement between HUD and AFGE is incorporated by reference.

The Parties agree that negotiations encompass exchanges between the parties. At a minimum, the obligation to bargain includes the requirement that a party respond to a bargaining request. AAFES, McClellan Base Exch. and AFGE Local 1857, 35 FLRA 764, 769 (1990) (ALJ Decision). Management may not decline to bargain because the union does not immediately submit proposals, as long as the union makes its interest in bargaining clear. Dept. of Justice, INS and Dept. of Justice, INS and AFGE Nat'l Border Patrol Council, 55 FLRA 892, 900-02 (1999), explained:

Acknowledging that the bargaining process involves more than the exchange of proposals is also consistent with the Statute, which requires parties to “approach negotiations with a sincere resolve to reach a collective bargaining agreement,” and to “meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays...” 5 USC 7114(b)(1),(3). Negotiations are to be more than an exchange of paper through the mail. An agency “may not” insist that the union negotiate in a particular manner. The agency may not require that the union respond to the agency’s written proposals with written proposals from the union. The obligation to negotiate contemplates meetings, not just the exchange of written materials. EPA and AFGE, 16 FLRA 602, 613 (1984) (ALJ Decision) (impact bargaining).

TEAM STRUCTURE

Spokesperson and Number of Participants

Negotiations will be conducted with one Chief Spokesperson for each side, plus up to four (4) additional Team members participating at the negotiation table. The Team shall be composed of up to three Negotiation Team members and one (1) Technical Advisor.

The Chief Negotiator for Management will be _____. The Chief Spokesperson will have full authority to negotiate and sign a supplement to the Agreement. The negotiating team will consist of:

_____ Negotiation Team Member

_____ Negotiation Team Member

_____ Negotiation Team Member

_____ Negotiation Team Technical Advisor

Temporary Assignment of Work - PBCAs

The Chief Spokesperson for the Union will be _____. The Union's Chief Spokes Person will have the authority to enter into an agreement. The Union's negotiating team will consist of:

_____ Negotiation Team Member

_____ Negotiation Team Member

_____ Negotiation Team Member

_____ Negotiation Team Technical Advisor

Management and the Union mutually agree to the following ground rules governing negotiations of the Temporary Assignment of Work - PBCAs, which begin on or about _____.

1. Authority to negotiate shall be brought to the table. The Union negotiation team shall have the authority to enter into an agreement.
2. Alternative negotiation method, such a telephonic, or video conferencing will be utilized only upon the written approval of the Council 222 President; the authority to approve such alternative is not delegated to the Chief Negotiator.
3. Each party shall designate a chief negotiator to whom all proposals will be submitted, including requests for information, and general concerns. Negotiations will be conducted by the chief negotiator for each side. Only the chief negotiator will speak for their side unless the negotiator designates a person on a specific topic.
4. Both parties will bargain in good faith and will make every effort to reach agreement.
5. Both parties acknowledge that open communications is essential to the process. Both chief negotiators should encourage members of their negotiating teams to provide input during the negotiations.
6. In the interest of reaching a new agreement as soon as possible, at the conclusion of each session, the parties will establish the date, time, and agenda for the next session.
7. Parties will agree to three (3) negotiation days, during the week of negotiations (Tuesday, Wednesday and Thursday); Monday and Friday will be travel days for members located outside of the headquarters. Additional sessions may be added by mutual agreement of the parties.
8. The parties agree to mutually agree to a start date for negotiations, neither party shall unilaterally establish or seek to enforce a start date that is not mutually agree to by the parties.
9. Contract language, which is tentatively agreed to, shall be initialed by the chief negotiator for each party and put aside. All tentative agreements reached on Articles or sub-sections of Articles are subject to change prior to final agreement on all items. Throughout the

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- negotiations, counter proposals shall be presented in written form, using legislative format for additions and deletions.
10. If the parties reach impasse on a particular article or issue, they agree to move forward with discussion of other articles and to return to the impasse articles at a later time in the negotiation process before requesting the services of a mediator.
 11. With one day's notice to the other side's chief negotiator, either party may invite specialists or subject matter experts to present and to respond to questions during negotiation sessions when pertinent topics are under discussion. Only one specialist or subject matter expert for each party may attend the negotiations at any one time. Specialists or subject matter experts who attend negotiation sessions at the request of the union will be granted administrative leave if they are scheduled to work on the date of the session. The cost of required travel to and/or from the formal negotiation sessions shall be paid for by the side requesting the attendance of the specialist or subject matter expert.
 12. Bargaining sessions shall be closed to the public. Observers shall be allowed, provided the parties mutually agree. Observers shall be non-participants. Both parties shall refrain from discussing specifics regarding ongoing negotiations outside of the negotiation area. Each team may communicate with its respective constituency. No negative personal characterizations will be made.
 13. Each party is responsible for keeping its own notes. No audio recording devices shall be used in negotiations.
 14. Each party reserves the right to caucus, as it deems necessary. Any person has the ability to call a caucus.
 15. Each side shall name their negotiating team members before the beginning of negotiations. The Union bargaining team shall be equal to the number of management team members.
 16. The Agency Head review will commence promptly at 12:01 a.m. following the last day of negotiation, unless a written agreement between the parties is arrived upon.

The ground rules are agreed to.

Management Chief Negotiator

Date:

Council 222 Delegated Chief Negotiator

Date:

Request for Information

To enable the Council to fully prepare for bargaining the Temporary Assignment of Work – PBCAs, and to enable a full and proper analysis, position formulation, discussion, understanding of this matter. Pursuant to Title 5 U.S.C. § 7114(b)(4)(A) and (B); and Articles 3, 4, 17, 18, 22 and 23 of the HUD/AFGE Agreement, the Council seeks the following information:

The terms “documentation” and “communication” shall be interpreted to the broadest extent possible and shall include, but not be limited to, documents in paper, electronic and other form.

- 1) List of each bargaining unit member by name that that will be impacted by the temporary assignment of work, by position, grade, and office.
- 2) List of each positions Fair Labor Standards Act status, impacted by the temporary assignment of work.
- 3) List of current portfolio case load for every project manager or equivalent position, by name and office.
- 4) Any and all documentation showing the level of work anticipated by the temporary assignment of work, by office and region.
- 5) Documentation showing the methodology that will be used to assign temporary work.
- 6) Documentation showing the cost associated with the temporary assignment of work, by office and region.

Particularized need:

The Union requires the requested information to enable a full and proper analysis, position formulation, discussion, understanding and negotiation of this matter. Additionally, it will be used to develop proposal and counter-proposal during the negotiation of the assignment of temporary work - PBCAs.

This information is or should be normally maintained by HUD in its regular course of business. The information should be reasonably available and accessible and is necessary for a full and proper discussion, understanding and negotiation concerning appropriate arrangements for employees adversely affected by projected budget shortfalls. There is no inconsistency with the provisions of the Privacy Act, 5 U.S.C. 552a related to the information being requested. AFGE Council 222 has established the right to such information to fulfill its representational duties towards the bargaining unit employees.

The Union requests that the above specified information be furnished within a reasonable time not to exceed fifteen (15) calendar days. If this request is denied, in whole or in part, please state in writing the name, position title, and grade of the official making the decision, and the statutory, regulatory, or contractual citation it is based upon.

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If the Agency is unable to fulfill any request in full, please fulfill it in non-objectionable part, and articulate any denial in detail and/or the Agency's interest in non-disclosure at the time that it denies the request for information. *See U.S. Department of Justice, Immigration and Naturalization Service, Northern Region, Twin Cities, Minnesota*, 51 FLRA 1467, 1473 (1996), *reconsideration denied*, 52 FLRA 1323 (1997), *aff'd*, 144 F.3d 90 (1998); *IRS-Kansas City*, 50 FLRA at 670.