


# National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
AFFILIATED WITH AFL-CIO

## Council 222

March 4, 2014

MEMORANDUM FOR: Jackie Mercer-Hollie, Director, AHE  
HUD Employee and Labor Relations Division

FROM:  3-4-2014  
Perry Casper, Chief Steward  
AFGE National Council of HUD Locals No. 222

SUBJECT: Referral to Arbitration for HUD Management's Refusal to Engage  
in Local Bargaining with AFGE Regarding Multifamily Housing  
Reorganization

In accordance with Article 5, Section 5.05 and Article 34, Section 34.03 of the U.S. Department of Housing and Urban Development (HUD)-American Federation of Government Employees (AFGE) Agreement (Agreement), I am referring to arbitration the bargaining dispute concerning HUD's refusal to bargain locally appropriate arrangements for the Office of Multifamily Housing (MFH) reorganization. This includes bargaining the proposed the local MFH structure or organization and other local issues in accordance with Sections #91 and #100 of the National Multifamily Housing Reorganization and Transformation Initiative (MFRT) Supplement. Please be advised that AFGE is not trying to bargain that there will not be any MFH consolidation into the 12 regional and satellite offices. AFGE is also not trying to bargain, nor is it demanding, that all employees will be allowed to remain duty-stationed at their current local offices. AFGE recognizes that many if not most MFH employees will have to relocate or take a buyout and retire. However, AFGE's intent for Section #100 of the National MFRT Supplement was to preserve the right for the Union to bargain appropriate arrangement to allow for some employees to be considered for duty-stationing at their current offices or alternative worksites in the current commuting area full-time.

AFGE's position is that Section #100 of the National MFRT Supplement is clearly a contract requirement to bargain:

**"Nothing shall affect management's right to determine the structure or organization of the Department and nothing shall preclude the Union from negotiating appropriate arrangements for employees affected by the exercise of such management rights. Management can station MFH employees who are subject to directed reassignments or elimination of their position to their current**

duty location or can permit employees to work from an alternate worksite, which may include their current commuting area or current HUD office full-time. This provision (#147) only applies to MFRT affected employees.” (emphasis added)

Section 100 of the MFRT Supplement was fully negotiable and did not excessively interfere with the Department’s exercising its rights pursuant to 5 U.S. Code § 7106 to determine the organizational structure of Multifamily Housing (MFH) as it relates to the MFRT because it did not absolutely require that all employees be duty stationed at their current duty location or alternative worksite in the current commuting area full-time. Pursuant to the Federal Service Labor-Management Relations Statute at 5 U.S. Code §7106(b)(3) and Section 100 of the MFRT Supplement, AFGE’s local demands to bargain previously submitted provisions are within the duty to bargain since appropriate arrangements for employees adversely affected by the exercise of the Department’s aforementioned management right are mandatory not discretionary subjects of bargaining. (*National Association of Government Employees, Local R14-87, 21 FLRA 24 (1986) (KANG)*).

Please be advised that Article 2, Section 2.01(15) of the HUD-AFGE Agreement clearly defines the “Union” as the American Federation of Government Employees (AFGE), AFL-CIO and does not limit the definition of the Union to the National Council of HUD Locals No. 222. All AFGE Locals at HUD are part of AFGE (Union). Section 100 does not expressly limit appropriate-arrangements bargaining rights to AFGE National Council of HUD Locals No. 222 (Council). The Agency’s interpretation of Section 100 of the MFRT national supplement is contrary to the plain and unambiguous meaning of the language and a violation of the Statute at 5 U.S.C. § 7106(b)(3).

Section #100 of the National MFRT Supplement is, in fact, a contract requirement to bargain appropriate arrangements; it is not contractual language that precludes or expressly prohibits Locals of AFGE from bargaining locally that employees can be duty stationed at their current duty location or alternative worksite in the current commuting area full-time. Contrary to the Agency’s assertions, the language does not expressly say that the Union can bargain appropriate arrangements only in the event that the Department decides to duty station employees at their current duty location or alternative worksite in the current commuting area full-time.

Section #100 of the National MFRT Supplement cannot be used by HUD under the covered-by doctrine to refuse to negotiate with AFGE. The covered by doctrine does not apply to contract requirements to bargain. *See U.S. Department of Defense, National Guard Bureau, Adjunct General Kansas National Guard and ACT, Wichita Air Capitol Chapter, Local 74, 57 FLRA 934 (July 19, 2002)*. The U.S. Federal Labor Relations Authority (FLRA) has specifically found that for the HUD-AFGE Agreement, the covered by doctrine does not apply when the Agency is obligated to bargain contractually under Article 5 of the Agreement for mid-term bargaining when it changes employees’ conditions of employment. *See HUD and AFGE Local, 3956, Council 222, 66 FLRA 106 (September 15, 2011)*.

Please be advised that FLRA regulations at 5 CFR § 2424.2(a)(1) define the covered-by doctrine as a bargaining obligation dispute. Furthermore, the FLRA at 5 CFR § 2424.2(c)

defines a negotiability dispute as “a disagreement between an exclusive representative and an agency concerning the legality of a proposal or provision.” Pursuant to FLRA regulations at 5 CFR § 2424.2(d) and 5 CFR § 2424.30(a) and (b), the FLRA will only review a negotiability appeal filed by an exclusive representative, if there is no bargaining obligation dispute. In accordance with FLRA regulations at 5 CFR § 2424.30(b)(2), where there is a bargaining obligation dispute, the exclusive representative can file either an Unfair Labor Practice charge with the FLRA or a grievance under the negotiated grievance procedure in accordance with 5 U.S.C. § 7116(d) to resolve the bargaining obligation dispute. However, the HUD-AFGE Agreement at Article 5, Section 5.05 and Article 34, Section 34.03 procedurally allows the Council as a national bargaining party to refer a local bargaining dispute directly to arbitration.

The MFRT national supplement at Section #91 also says: “In accordance with the current collective bargaining agreement, mid-term bargaining will be conducted at the local level for any local issues not covered in this Supplement.” This language in Section #91 of the MFRT national supplement does not limit local bargaining to space issues and is consistent with Article 34 of the HUD-AFGE Agreement that provides Locals a contractual right to bargain local issues. Article 5, Sections 5.03 and 5.04, 5.04(3) of the HUD-AFGE Agreement clearly contemplate and allow for local bargaining for reorganizations.

AFGE alleges that the refusal to bargain locally appropriate arrangements with AFGE to station employees at their current duty location or alternative worksite in the current commuting area full-time and other local issues is a violation of Sections 91 and 100 of the MFRT Supplement, the HUD-AFGE Agreement at the Preamble, Article 5, Sections 5.03 and 5.04, and Article 34, and the Statute at 5 U.S.C. § 7106(b)(3). Pursuant to Article 22, Section 22.01(2) and (3) of the HUD-AFGE Agreement and the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7103(a)(9)(B) and (C), the Union reserves its right to raise in arbitration any additional violations of the HUD-AFGE Agreement, law, rule, regulation—which includes Agency handbooks, policies, and practices—related to the Agency’s refusal to bargain locally appropriate arrangements to station employees at their current duty location or alternative worksite in the current commuting area full-time and other local issues.

As noted above the Union has no wish to interfere or disrupt the reorganization of Multifamily based upon the Department’s choice of organizational structure or delay the actual implementation of the MFRT, however, following U.S. Dep’t of HHS, SSA, Baltimore, MD 39 FLRA 258, 262-63 (1991) “If the Authority later determines that proposals were negotiable, the unilateral implementation may be found to constitute bad faith and a violation of section 7116 (a)(5) of the Statute.” Actual Local Bargaining would eliminate a finding of any Bad Faith violations under this statute.

Considering that both AFGE Council #222 and the Department agree that “...labor-management relations within the Department are strengthened by participation of employees in the formulation and implementation of personnel policies and practices relating to their conditions of employment and through constructive and cooperative relationships with labor organizations” the Union is highly concerned about the Departments refusal to participate fully in all levels of bargaining and to provide the most complete and comprehensive approach to the most massive reorganization effecting employees in this Department.

Until further notice, I am AFGE's representative for this arbitration. Please advise of the Agency's representative for this arbitration case. I am prepared to meet with the Agency's representative to select an arbitrator in accordance with Article 23, Sections 23.14 and 23.15 of the HUD-AFGE Agreement. You may reach me, Perry Casper, at my office using the direct line of 971-222-2628. Thank you for your quick response.

cc: Mark Zaltman, HUD MFRT Chief Negotiator