




National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

May 30, 2014

MEMORANDUM FOR: Marcie Upton, Human Resources Specialist
Employee and Labor Relations Division

FROM: 
Ricardo Miranda, Assistant Chief Steward
AFGE National Council of HUD Locals No. 222

SUBJECT: Fiscal Year (FY) 2014 Quality Step Increases (QSIs)
Demand to Bargain and Preliminary Bargaining Proposals

Pursuant to Article 5, Section 5.02(2) of the HUD-AFGE Agreement, this memorandum constitutes the AFGE National Council of HUD Locals No. 222's (Council or AFGE Council 222) demand to bargain in response to your May 20, 2014 notification to the Council regarding Fiscal Year (FY) 2014 Quality Step Increases (QSIs). The below proposals are preliminary bargaining proposals and are not to be considered all of the proposals that the Council can submit. A complete list of proposals may be presented prior to and at the time of bargaining in accordance with Article 5, Section 5.02(2) and (13) of the HUD-AFGE Agreement and past practice.

The Council recommends that the Department provide QSIs to at least 1,000 employees if it truly wants to increase employee morale. We estimate that QSIs for 1,000 employees would cost management less than \$4.58 million dollars¹, which represents 0.35% of the agency's \$1.3 billion FY 2014 salary and expense budget—clearly a *de minimis* budgetary impact. Please be advised that the Council's position is that the U.S. Office of Personnel Management (OPM) and U.S. Office of Management and Budget (OMB) guidance on budgetary limits on awards paid during FY 2014 to FY 2010 levels in the memorandum dated November 1, 2013 is a policy recommendation that is not based on an Executive Order nor government-wide regulations. Therefore, in accordance with U.S. Federal Labor Relations Authority (FLRA) case law, agency discretion is negotiable unless a statute provides sole and exclusive discretion to an agency. *See IMAAW, Franklin Lodge No. 2135, 50 FLRA 677, 681 (1995) (IAAW), enforced sub nom. U.S. Department of the Treasury, Bureau of Engraving and*

¹ This estimate is based on a FY 2014 step increase of \$3,670 for a General Schedule 14 employee going from a Step 9 to 10 in the New York-Newark-Bridgeport locality pay area, which has the highest locality pay in the AFGE bargaining unit, multiplied by 1,000, with a fringe benefit of 25%. This pro-forma cost projection assumes the highest cost for all bargaining-unit employees.

Printing v. FLRA, 88 F.3d 1279 (D.C. Cir. 1996). **The Department providing a mere 72 QSIs given that hundreds if not thousands of employees received Outstanding ratings in FY 2013 will probably get employees upset and cause further morale problems.** This is especially so if employees believe that the 72 QSIs were distributed subjectively based on supervisors' personal favoritism.

Fixed rates, dollar amounts, and scales for incentive and performance awards including QSIs are negotiable as they do not violate management's right to assign work, direct employees, budget, nor set pay scales. See *NAGE, Local R1-203 and U.S. Department of Interior, U.S. Fish and Wildlife Service, Hadley, MA*, 55 FLRA 1081 (November 29, 1999); *NTEU and U.S. Department of Commerce, Patent and Trademark Office*, 52 FLRA 1265 (March 15, 1997); *AFGE Local 3836 and FEMA*, 31 FLRA 921 (March 23, 1988); *NTEU and IRS*, 27 FLRA 132 (May 29, 1987); and *NTEU v. FLRA*, 793 F.2d 371 (D.C. Circuit Court of Appeals, June 20, 1986).

Preliminary Bargaining Proposals

1. Information Provided to Council on FY 2014 Performance Awards: Prior to or during mid-term bargaining for FY 2014 QSIs, management shall provide the Council's Chief Negotiator a list of FY 2014 performance awards already received by each AFGE bargaining-unit employee by employee name, grade level, and dollar amount as awards are not covered by the Privacy Act in accordance with OPM regulations at 5 CFR § 293.311(a)(4).
2. Alternative Cash Awards: As an alternative to providing 72 Quality Step Increases (QSIs) in FY 2014, management shall provide additional cash awards to all AFGE bargaining-unit employees who received Outstanding/Level 5 ratings in FY 2013. The cash award provided to each bargaining-unit employee shall be based on the total dollar value of the 72 QSIs divided by the total number of bargaining-unit employees who received Outstanding ratings in FY 2013 or at least \$150 per employee, whichever is greater. Within five (5) workdays of the request, Management shall provide to the Union (Council and Locals) the total dollar value of the 72 QSIs (including fringe benefits), the names of employees, and dollar amount awarded to each bargaining-unit employee.
3. Method of Distribution of QSIs: If management is committed to providing 72 QSIs, then the Department shall choose the 72 bargaining-unit employees based on additional objective criteria beyond the receipt of an Outstanding rating in FY 2013. The Department will devise a scoring system and rate and rank all bargaining-unit employees based on the additional objective criteria. The bargaining-unit employees with the top 72 scores shall receive the QSIs. Two of the objective criteria to be used for the scoring system shall be seniority (Federal Service Computation Date) and consistency in receiving Outstanding ratings in the past (e.g., 3 consecutive years).
4. Fair and Equitable Objective Criteria for QSIs: The objective criteria used to select the 72 bargaining-unit employees for QSIs shall be fair and equitable and will not be arbitrary or capricious.

5. Information Provided to Union on Proposed Distribution of QSIs: The Department will provide the Union (Council and Locals) the objective criteria used to create the scoring system and the actual rating and ranking of employees prior to selecting the 72 bargaining-unit employees and awarding the QSIs.
6. Reopener Clause for Objective Criteria for Proposed Distribution of QSIs: Within 10 days of receipt of the objective criteria used to create the scoring system and the actual rating and ranking of bargaining-unit employees who will receive the 72 QSIs, if the Council's bargaining team believes that the objective criteria are not fair and equitable or are arbitrary or capricious, the Council may bargain alternative or additional objective criteria prior to awarding the QSIs to bargaining-unit employees.
7. Equitable Geographical Distribution of QSIs: The 72 QSIs shall be equitably distributed between AFGE bargaining-unit employees in Headquarters (HQ) and Regional/Field Offices proportionate to the number of bargaining-unit employees who work in HQ vs. Regional/Field Offices.
8. Supplement Not Precedential: In awarding these 72 QSIs to AFGE bargaining-unit employees in FY 2014, this shall not be precedential and will not alter the terms of Article 11 of the HUD-AFGE Agreement, any HUD-AFGE Supplement on incentive/performance awards, nor the successor collective bargaining agreement.

These are preliminary bargaining proposals. The Council may submit additional proposals. Please authorize travel and per diem for three Council negotiators to begin negotiations within 10 calendar days of submission of these preliminary bargaining proposals in accordance with Article 5, Section 5.02(3) and (6) of the HUD-AFGE Council 222 Agreement. Thank you in advance.

I will be the Council's Chief Negotiator. If you have any questions or concerns, please contact me at (787) 274-5896 or by email at Ricardo.Miranda@hud.gov.

cc: Jerry Gross
Eddie Eitches
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