September 6, 2023

MEMORANDUM FOR: Lori Michalski, Chief Human Capital Officer

Sonya Gaither, Director of Employee & Labor Relations, Office of the Chief Human Capital Officer

FROM: Salvatore Viola, President, AFGE Council 222

SUBJECT: Unfair Labor Practice Grievance of the Parties: Handbook 2200.1, Chapter 13 Space Design Standards Negotiations

Pursuant to Article 51, Sections 51.01(2), 51.01(3), 51.04, and 51.15 of the 2015 HUD-AFGE Collective Bargaining Agreement (CBA) and the Federal Service Labor-Management Relations Statute (Statute) at 5 U.S.C. § 7103(a)(9)(B) and (C), § 7121(b)(1)(C)(i), and § 7116(a) and (d), AFGE National Council 222 of HUD Locals (Council 222 or Union) files this Unfair Labor Practice Grievance of the Parties (ULP-GOP) against the Department of Housing and Urban Development (HUD or the Agency) concerning the Agency’s contract violations and bad faith practices during the HUD–Union negotiations over the implementation of a revision to Handbook 2200.1, Chapter 13, Space Design Standards.

**Background**

On June 26, 2023, the Agency issued an Article 49 notice of a change in conditions of employment related to the implementation of a proposed revision of Handbook 2200.1, Chapter 13, Space Design Standards. Management provided the Union with a copy of the current Chapter 13 and a draft of the proposed revision at that time. Within the fifteen days allowed under Article 49, Section 49.04, the Union sent its demand to bargain and its preliminary bargaining proposals on July 10, 2023.

In its July 10 memo, the Union also noted some failures in the Article 49 notice, including the Agency’s failure to provide the actual proposed policies related to space sharing, including how HUD would decide whether to use hoteling or hot desking in any given location and how or when an employee might reserve a hotel-type workstation. The Union identified additional problems with the Agency’s Article 49 notice in a July 11, 2023, memo, which included failures to provide a rationale for implementing any particular space sharing method and information about a requisite reservation system for hoteling, as well as contract violations in the proposed revision to Chapter 13. Management did not respond to these memoranda at all.

Bargaining began on July 24, 2023. The Union provided its U-1 (first round) proposals to the Agency at 8:18 a.m., before negotiations were to commence at 9:00 a.m. After bargaining had begun—in fact, after HUD’s Management team had provided a presentation to the Union—HUD announced that it had sent the incorrect version of the proposed revision to the Union, and delivered the correct version of its proposed revision of Chapter 13 on July 24 at 12:51 p.m. The Union protested that the new draft was significantly different than the previous version, and therefore required a corrected Article 49 notice and the fifteen days permitted under Section 49.04 for the Union to respond. The Agency insisted that their new Chapter 13 represented only “new or modified information provided by the other party,” pursuant to Section 49.06(i), and that the Union was limited to submitting new proposals only insofar as they were based on the information that differed from the Agency’s original submission. Thus, HUD agreed to grant the Union only four business days to review the new document and required the Parties to reconvene on July 31.

This ULP-GOP is based on the Agency’s actions on and subsequent to July 24, 2023. The Agency may claim that some of the violations mentioned below, such failure to provide the actual proposed policies related to space sharing, date from the Agency’s June 26 notice. The June 26 notice, however, was superseded by the Agency’s July 24 issuance of a new proposed change, which properly should have included a complete Article 49 notice and restarted all timelines. Furthermore, these are continuing violations as the Agency has continued to fail to produce the actual proposed policies and other proposed changes. A continuing failure to provide sufficiently specific and definitive information regarding the actual changes proposed—in other words, an omission—cannot be tied to a particular date the way committing an action may be. Under Article 51, Section 51.06, a continuing violation may be grieved at any time.

**Violations of the CBA**

1. HUD violated Article 49, Section 49.03(4), by failing to provide an Article 49 notice that identified each and all proposed changes to current policies and practices, including the “nature, scope, and rationale for the proposed change” and “a copy of the statement of the proposed new policy or practice.”

* HUD failed to provide a proper Article 49 notice when it delivered the July 24 version of Chapter 13. The July 24 version of Chapter 13 was not merely “new or modified information,” such as a clarification of information previously provided, but an actual revision to key sections and changes to definitions that completely changed the meaning of the document as a whole. The Agency did not identify each and all proposed changes to current policies and practices in that July 24 document.
* HUD did not provide the nature or scope of its specific policies related to reserving workspace until its M-3 counterproposal of August 31, when it proposed to the Union that employees could reserve workspace one pay period in advance, and that all hoteling workstations would be available to all employees of a specific field location or HQ program office. Management has still failed to provide other specific policies, such as whether there are limits to who may reserve certain conference rooms, limits on the number of reservations an employee can hold, how to reserve conference space more than two weeks in advance, and cancellation policies.
* HUD also failed to provide, and has yet to provide, the nature, scope, and rationale for key changes to practices such as identifying one’s workstation. The Agency has not clearly identified the process for reserving shared workstations, initially suggesting use of a commercial space management system, Nuvolo, in a July 19 response to the Union’s request for information, but on August 28 in M-2 mentioned using SharePoint. HUD has provided only Nuvolo’s advertising language, which used as yet undefined terms (wayfinding, neighborhoods) and no details about how SharePoint might be utilized.
* HUD failed to provide, and has yet to provide, the nature, scope, and rationale for a new means of handling telephone calls when employees do not have permanently assigned workspaces with corresponding desk phones. In its August 1 M-1 counterproposal, HUD mentioned utilizing a soft phone application, but as yet provided no details about how it would work.

2. HUD violated Article 49, Section 49.04(1), by refusing to grant the Union fifteen days to submit preliminary proposals related to the July 24 version of the proposed Chapter 13. Section 49.06(i), on which the Agency relied in denying the Union’s request for fifteen days to respond, states:

(i) Either party may submit new proposals on the first day of negotiations. Parties may submit new proposals based on new or modified information provided by the other party. Once negotiations begin, a party shall not submit new proposals but may modify its initial proposals and/or submit counter-proposals until agreement has been reached.

While this section limits the submission of new proposals to the new or modified information provided by the other party, it does not address the time granted for the submission of those new proposals. Thus, while the Agency was correct in stating that the Union was limited to submitting new proposals that related to the new information, it was incorrect in forcing the Union to prepare the new proposals in less than one week. Section 49.04(1) governs the time permitted for the Union to respond to Management’s proposed changes: “Upon receipt of Management's notice of proposed change(s), the Union may submit a demand to bargain over the change(s) within fifteen (15) days by submitting preliminary proposals. All proposals shall be related to the impact of the proposed change(s).” Thus, on July 24, Management notified the Union of proposed changes and the Union properly demanded 15 days to submit its preliminary proposals related to the latest changes.

3. HUD violated Article 57, Section 57.04(3)(b) as amended by Supplement 35, by proposing—and continuing to insist throughout bargaining—that the Agency can provide less than 52.5 square feet for each employee workstation. That section, as amended, reads:

(b) The utilization rate for office space including conference rooms, break rooms, etc., shall be 175 square feet or the maximum allowed by GSA. Management shall determine specific offices’ space requirements based on the planned maximum occupancy pattern of that location. Management shall provide sufficient workstations/cubicles (or private offices if applicable) to accommodate the planned maximum occupancy pattern. The amount of workspace for employees shall be approximately 30-35% of the utilization rate. If a bargaining unit employee requires privacy as an essential part of their position, private office space will be provided.

Thirty per cent—the minimum that can be allocated to employees—of 175 square feet per employee is 52.5 square feet. The Agency has relied on its unsupported claim that “workspace,” unlike “workstation” was intended to include “circulation space” or the aisles and walkways around workstations, and not just the workstations themselves. This fallacy is demonstrated by the definition of “workspace” as “individual work areas . . . typically private offices or workstations” in the 2016 version of Chapter 13. Although Management may remove the initial proposed references to square footage from Chapter 13, Management has continually refused to acknowledge that the amount of space allocated to each bargaining unit employee’s workspace must be at least 52.5 square feet for workstations/cubicles (more for private offices). The Agency’s argument that circulation space is included in the allocation of 30–35% of the utilization rate for employee workspace would render this formula meaningless; the Agency could create aisles and walkways of any width, thereby reducing employee workspace far below 52.5 square feet—as they have attempted to do in the current negotiations. It is also arbitrary and subjective for management to have calculated employee workstation sizes to be somehow less than between 52.5 and 61.25 square feet (30-35% of the utilization rate), especially as nobody expects employees to work in aisles or walkways.

The Agency implemented the current version of its space management handbook, Handbook 2200.1, Chapter 13, in March 2016, only eight months after the current CBA was signed. It contains three definitions that are relevant to this discussion:

Usable Square Feet (USF): The square footage used exclusively by the tenant, including the main workstation and collaboration areas, special space, and circulation within the tenant space. It does not include building common areas. [Special space is support space such as meeting rooms, break rooms, and storage space.]

Utilization Rate (UR): The amount of USF, defined above, divided by total number of employees (includes FTEs and contractors).

Workspace: Individual work areas (including desk sharing, hot-desking, or hoteling), typically private offices or workstations as further defined below. [The “further definitions below” are tables and lists specifying the sizes of private offices based on job titles.]

These definitions, taken together with the Section 57.04(3)(b) standard, provide the following critical points of information:

(1) The usable square feet is a total figure that includes circulation space.

(2) The utilization rate is a per capita figure based on the usable square feet. It, too, includes circulation space.

(3) Workspace, as defined by the Agency, is a term that applies only to an employee’s “individual work area.”

(4) Under the terms of Section 57.04(3)(b), the utilization rate of 175 square feet per person does include circulation space, collaboration areas, and special space; however, 30­–35% of that 175 square feet per person is dedicated to “individual work areas,” i.e., workspace. Circulation space, and special space that is not part of individual work areas, is included in the remaining 65–70% of the utilization rate.

 The fact that the Agency incorporated these definitions into its own policy handbook only months after completing term contract negotiations with the Union clearly shows that the Agency, as well as the Union, understood that the term workspace applied only to individual workstations and private offices. It did not refer to—as HUD has currently attempted to force the Union to accept—“the total area within an office that houses employees’ workstations” including the aisles and walkways and whatever else lies within that “total area” housing employee workstations. Under the CBA and the established definitions of these terms, individual workspace (other than private offices) must be between at least 52.5 and 62.25 square feet per person, while circulation space and special space would come out of the remaining 113.75–122.5 square feet per person from the 175-square-foot utilization rate.

Contracts are typically interpreted based on the plain meaning of the clear and unambiguous language used. Management is attempting to redefine workspace based on an indirect inference from Section 57.04(3)(b), “The amount of workspace for employees shall be approximately 30-35% of the utilization rate,” taking it out of context and reading it independently of the Parties’ shared understanding of the terms, as established by the 2016 version of Chapter 13. Neither that statement nor that entire Section 57.04(3)(b) includes the terms “circulation space” or “aisles” between employee workspace or workstations. The Union has term negotiators from the 2015 collective bargaining agreement negotiations who dispute the Agency’s alleged negotiator Mr. Schimmenti’s supposed recollection of the discussion and meaning of this language in Section 57.04(3)(b) of the Agreement. The Agency’s inclusion of the definitions quoted above in its subsequently issued 2016 Handbook supports the position of the Union’s term negotiators. The Agency has attempted to impose a new interpretation of the language in Section 57.04(3)(b) that is contrary both to the plain meaning of the language and to the Parties’ shared understanding during the 2015 CBA term negotiations.

4. HUD violated Article 6, Section 6.01, which requires that “Employees shall be treated fairly and equitably in the administration of this Agreement and in policies and practices concerning conditions of employment.” By insisting that some employees use hot desks, which will be smaller than reserved or permanently assigned workstations and which will lack the typical furnishings of a workstation/office (external monitors, keyboards, and mice), HUD is treating those employees in an inequitable and unfair manner that can affect their productivity and performance. It is unfair and inequitable to refuse to treat all employees reporting to work in a HUD office in the same manner.

**Unfair Labor Practices**

HUD committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(5) by failing to consult or negotiate in good faith with the Union. The Agency failed to provide information about all the proposed changes that is specific enough for the Union to have a reasonable opportunity to request bargaining. For example, the Agency did not provide its “new” version of the revised Chapter 13 until after bargaining began and denied the Union adequate time to review the new version and prepare relevant bargaining proposals and it failed to identify all the changes from the initial version of the proposed revision. To date, the Agency has not provided adequate information about a reservation system for hoteling and has not provided sufficient information about soft phone applications. In accordance with Federal Labor Relations Authority (FLRA) case law, proper and adequate notification to a union “must be sufficiently specific or definitive regarding the actual change contemplated so as to adequately provide the union with a reasonable opportunity to request bargaining. *See*, for example, *Internal Revenue Service (District, Region and National Office Unit and Service Center Unit)*, 10 FLRA 326, 327 (1982) (Member Applewhaite dissenting as to other matters).” *U.S. Department of the Air Force and AFGE Local 1592*, 41 FLRA 690, 698 (1991).

Management has yet to answer the Union’s questions about how and when or how frequently maximum occupancy patterns will be updated; why a 90% occupancy rate would trigger implementation of space sharing in a location; differences between teaming, conference, meeting, and huddle rooms; and information about whether headphones/microphones will be provided to go with soft phone applications. This bad faith bargaining due to the Agency’s lack of proper and adequate notification regarding specific, detailed information on the actual changes contemplated to implement space sharing policies did not allow the Union to formulate bargaining proposals on the employee workstation reservation system and other issues mentioned above.

By slowly releasing bits and pieces of information relevant to the implementation of space sharing, the Agency has unnecessarily delayed and lengthened negotiations. By failing to provide all the relevant information at once, the Agency is forcing the Parties to engage in multiple negotiations, further delaying the opportunity to reach a conclusive agreement.

The Agency further engaged in bad faith practices by reversing its position repeatedly on key issues such as by saying in person that hot desks are for visitors, not employees, but in writing indicating that employees may need to use the smaller, poorly equipped hot desks; and stating in one meeting that workspace does include aisles and circulation space, but in another meeting that workspace includes only the individual workstation. Meanwhile, the Agency has attempted to unilaterally revise the definition of “workspace,” pretending that the Parties never meant the term to be limited to just the employee’s immediate cubicle or workstation, despite a 2016 Agency Handbook that used the latter definition.

**Meeting**

AFGE Council 222 is not requesting a meeting to discuss this Grievance of the Parties. Therefore, in accordance with Article 51, Section 51.15(3) of the HUD-AFGE Agreement, please provide your response within 30 days to AFGE Council 222 President Salvatore Viola (salafge@outlook.com), and Bargaining Co-Chairs Jerry Gross (jerry.gross@hud.gov) and Ricardo Miranda (ricardo.miranda@hud.gov).

**Remedies Requested**

To resolve this Unfair Labor Practice Grievance of the Parties, AFGE Council 222 requests the following equitable relief remedies from HUD Management:

1. A written commitment from HUD that the Agency will comply with all statutory and contractual obligations; that it will not seek to force the Union to waive any rights; and that it will take steps to provide all information necessary for bargaining prior to engaging in negotiations.
2. A written commitment from HUD to engage in good faith bargaining going forward, including ensuring that all notices of proposed changes include all of the information required by Article 49.
3. A written commitment from HUD that the Agency accepts the definition of “workspace” as defined in the 2016 Handbook 2200.1, Chapter 13; the minimum size of any and all bargaining unit employee workstations under the 2015 HUD-AFGE Agreement, Article 57, as amended by Supplement 35, as at least 52.5 to 61.25 square feet, except for private offices, which are at least 120 square feet; and the obligation to treat all employees fairly and equitably pursuant to Article 6.
4. A written statement(s) of all the implementation details mentioned above and identified during negotiations that Management has failed to furnish to the Union to date, and an agreement to permit the Union 15 days to respond to each specific notice of a change in accordance with Article 49 of the CBA.
5. Payment of all arbitration fees and expenses in accordance with Article 52, Section 52.04 of the HUD-AFGE Agreement should the Union have to pursue arbitration for denial of this Grievance of the Parties.
6. Payment of the Union’s attorneys’ fees should the Union have to invoke and pursue arbitration for denial of this Grievance of the Parties pursuant to the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(ii) if any AFGE bargaining-unit employee loses any pay, allowances, or differentials as a result of the matters covered by this ULP-GOP.
7. Any other remedy available to the fullest extent of the law, rule, regulation, HUD-AFGE Agreement, policy, past practice, or arbitrator’s award. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes in remedies requested.
8. A written agreement, signed by the Agency, that incorporates the above provisions.

Exhibits

The following exhibits are provided in support of this ULP-GOP:

1. 2016 Handbook 2200.1, Chapter 13, Space Standards.

2. July 24, 2023, email exchange regarding Agency’s delivery of new Chapter 13.

3. July 24, 2023, Handbook 2200.1, Chapter 13, Space Standards.

4. CBA Article 57, as amended by Supplement 35.

5. Union-Management Counterproposals Document, as of September 6, 2023.