

UNITED STATES OF AMERICA <b>FEDERAL LABOR RELATIONS AUTHORITY</b>  <b>CHARGE AGAINST AN AGENCY</b>	<b>FOR FLRA USE ONLY</b>  Date Filed: 11/18/2015  Case Number:
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**Charged Activity or Agency**

**Name:** DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Headquarters

**Address:** Washington, DC

**Phone No.:** (202) 402-6955 **Fax No.:** (202) 708-6232

**Charged Activity or Agency Contact Information**

**Email:** towanda.a.brooks@hud.gov

**Name:** Ms. Towanda A Brooks

**Title:** Chief Human Capital Officer

**Address:** 451 Seventh Street, SW, Washington, DC 20410

**Phone No.:** (202) 402-4275 **Fax No.:** (202) 708-6232

**Charging Party (Labor Organization or Individual)**

**Name:** AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, Council 222

**Address:** 451 Seventh Street, SW, Room 3172, Washington, D.C. 20410

**Phone No.:** (202) 402-5243 **Fax No.:**

**Charging Party Contact Information**

**Email:** james.p.flynn@hud.gov

**Name:** Mr. James P Flynn

**Title:** Chief Negotiator

**Address:** 1670 Broadway Street, 24th Floor, Denver, CO 80202

**Phone No.:** (303) 672-5421 **Fax No.:**

**5. Which subsection(s) of 5.U.S.C. 7116(a) do you believe have been violated?**

(a)(1), (a)(5)

**6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles:**

In accordance with Article 49 of the Collective Bargaining Agreement (CBA) between the U.S. Department of Housing and Urban Development (Agency) and the National Council of HUD Locals 222 (Union), on August 4, 2015, the Agency sent an official notice to the Union concerning the Agency's intent to implement a Personnel Clearinghouse Pilot policy and related Handbook 334.1. (Exhibits A, B & C). The Agency's notice, sent by Employee and Labor Relations (ELR) employee Anita Crews, specifically referenced and purported to be a notice of a mid-term change under Article 49 of the CBA. The Agency's notice stated "In accordance with Article 49 of the Collective Bargaining Agreement between HUD/AFGE, please accept this correspondence as official notification of HUD's intent to implement a new policy. As required by Section 49.03 of the HUD/AFGE Agreement the following information is provided. According to the Agency's notice, A Personnel Clearinghouse Pilot will help facilitate the lateral reassignment of HUD employees. The Clearinghouse will benefit our employees, as well as our management team. This program is designed to assist employees in obtaining other positions within the Department by way of a lateral reassignment. This Clearinghouse program will remain in effect until which time the updated Merit Staffing Handbook has been drafted and bargained. In addition, the Agency's notice stated, Unless notified, this policy will be effective no sooner than August 20, 2015.

In accordance with Article 49, Section 49.04 of the CBA, on August 17, 2015, Union Chief Negotiator James Flynn (Flynn) sent a Demand to Bargain along with the Union's preliminary proposals to the Agency, asserting its statutory and contractual rights to negotiate the impact and implementation of the Personnel Clearinghouse Pilot policy and related Handbook 334.1. (Exhibits A & D). According to Article 49, Section 49.04 of the CBA, Upon timely request from the Union, negotiations shall begin within ten (10) days from the Union's submission of its bargaining proposals, unless changed by mutual consent. (Exhibit A). Eleven (11) days after the Union's timely request for negotiations, in an email dated August 28, 2015, ELR Senior Advisor John Anderson (Anderson) advised Flynn that he would be representing the Agency in the Personnel Clearinghouse negotiations and that he would have a response to the Union's preliminary proposals no later than Tuesday of the following week; Anderson also asked for potential dates that the Union would be available to bargain the matter. (Exhibit E). On September 1, 2015, Flynn emailed Anderson to advise him that he was in Washington D.C. representing the Union on another matter and inquired if Anderson was available to meet in person to discuss scheduling the Personnel Clearinghouse negotiations. (Exhibit E). Anderson replied to Flynn's email, the two parties met and Anderson told Flynn that he would get back to him on the Agency's

availability to negotiate the week of October 19, 2015. (Exhibit E). During this same meeting, Anderson requested an extension of time for the Agency to respond to the Union's preliminary proposals and Flynn agreed to an extension of one week.

Having not heard back from Anderson regarding the Agency's availability to negotiate the week of October 19th, as well as not having received the Agency's response to the Union's preliminary proposals as assured by Anderson, Flynn emailed Anderson on September 15. (Exhibit E). Anderson responded to Flynn's email and stated that he needed to speak with the subject matter expert and would have his team's availability for October negotiations to Flynn by the next day. (Exhibit E). Having not heard back from Anderson, Flynn called and emailed him on September 21st and September 28th. (Exhibit E). On September 30th, Flynn emailed Anderson's supervisors, Tresa Rice (Rice), Director, ELR and Michael Stein (Stein), Deputy Director, ELR requesting assistance in the matter. (Exhibit F). Stein emailed Flynn back the same day and said this was the first he knew about the issue and to cc him and Rice on all further emails to Anderson. (Exhibit F). On September 30th, Anderson emailed Flynn apologizing and stating that the subject matter expert had been out of the office and that he would get back to Flynn in the next day or two. (Exhibit E). Having not heard back from Anderson as assured, on October 7th, Flynn emailed Anderson and received an automated email reply stating that Anderson would not be back in the office until October 13th.

During this same period of time, the Agency's Deputy Secretary Nani Coloretti announced the launch of the Personnel Clearinghouse Program on September 21, 2015, for Non-Bargaining Unit Employees and National Federation of Federal Employees (NFFE) Bargaining Unit Employees. (Exhibit G). The accompanying Handbook 334.1 for the aforementioned program is dated September 14, 2015. (Exhibit H). Flynn finally received two emails from Anderson on October 14th. In the first email, Anderson proposed the week of October 26th for negotiations. Flynn replied by email, stating that the Union and Agency were already scheduled for mediation on another matter that same week; Flynn requested that Anderson provide the Agency's availability to negotiate in November. (Exhibit E). The second email, received from Anderson 59 days after Flynn submitted a Demand to Bargain along with the Union's preliminary proposals to the Agency, stated: Please find management response to your proposals relevant to the Personnel Clearinghouse Policy and the related Handbook 334.1 in accordance with Article 49 of the HUD-AFGE Collective Bargaining Agreement. (Exhibit I).

Subsequent to receiving the Agency's responses on October 14th, the Union continued to request dates from Anderson on his team's availability to negotiate. The week of October 26th was again discussed as a possibility for negotiations when the scheduled mediation between the Union and Agency was cancelled by the mediator; however, travel authorization was not granted by the Agency in sufficient time for the Union Team to make travel arrangements. Anderson finally notified Flynn by

email on October 29th that the Agency team was available to negotiate the week of November 16th. (Exhibit J). Flynn notified Anderson by email on November 2nd, that the Union team was available as well and requested that Anderson provide the travel authorization code for the Union team to make travel arrangements. (Exhibit J). Having not heard back from Anderson, on November 4, 2015, Flynn emailed Anderson's supervisors Rice and Stein, requesting the travel authorization code for the Union team to travel to Washington D.C. the week of November 16th for negotiations. (Exhibit J). Flynn then called Stein as a follow-up to the email and was advised by Stein that he and Anderson had spoken earlier that day and that Anderson would be contacting Flynn regarding negotiations. (Exhibit K). Flynn then called Anderson and left a voicemail message followed-up by an email. (Exhibit L).

On November 4, 2015, Anderson sent an email notification to the Union stating: This email is to inform you that the Article 49 notification previously issued by the Employee and Labor Relations Division on August 17, 2015 regarding the Personnel Clearinghouse Pilot Policy and Handbook and the attachment thereto is formally being withdrawn by management at this time. The Department will comply with Articles 26, 27, and Supplement 137 which govern rotations, reassignments, details and lateral movement of bargaining unit employees contained in the HUD/AFGE collective bargaining agreement. Thank you for your cooperation in this regard. Happy Holidays! (Exhibit M). Please note that Anderson gave an incorrect date in his email, the correct date of the Agency's Article 49 notification was August 4, 2015 (Exhibit B).

The Agency is in violation of 5 U.S.C 7116 (a), Subsections (1) and (5). The Agency violated these Subsections by:

- A. Acting in bad faith and failing to fulfill its statutory obligation to bargain in good faith on the Personnel Clearinghouse program;
- B. After a prolonged delay, during which time the Agency commenced to engage in written dialogue with the Union regarding the Union's Demand to Bargain preliminary proposals, the Agency officially withdrew from the negotiation process;
- C. Agreeing to bargain and engaging in scheduling efforts, then withdrawing its notice of a mid-term change after the Union has submitted preliminary proposals;
- D. Implementing the Personnel Clearinghouse program for NFFE and all non-bargaining unit employees, while refusing to negotiate with AFGE.

#### Relief Requested

1. That the Agency be ordered to fulfill their statutory and contractual obligation to negotiate with the Union the impact and implementation of the Personnel Clearinghouse Pilot policy and related Handbook 334.1;

- 2. That the Agency be required to post an electronic notice of their violation of the Statute on the Homepage of the Agency s internal website HUD@Work ;
- 3. Such other relief deemed appropriate to make the Union whole.

Point of Contact for this Action:

James P. Flynn  
 AFGE Council 222  
 1670 Broadway Street, 24th Floor  
 Denver, CO 80202  
 (303)-672-5421

**7. Have you or anyone else raised this matter in any other procedure?**

No

**If yes, where?**

**8.  I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON ALL PERSONS IDENTIFIED IN BOX #3 BY:**

Email

In Person

Fax

Comm.Delivery

First Class Mail

Certified Mail

Mr. James P Flynn

**Signed:** Mr. James P Flynn

11/18/2015

**Type or Print your name**

**Your Signature**

**Date**