



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

February 29, 2012

MEMORANDUM FOR: James Reynolds, Deputy Director,
Employee and Labor Relations Division, AHEDA

FROM:  Russell Varnado, President, Council 222

SUBJECT: Demand to Bargain Departmental Policies and Procedures for Use of
Social Media Sites by HUD Offices and Staff
<http://hudatwork.hud.gov/features/social-media-policy.pdf>

It has come to the Union's attention that the Agency has implemented Departmental Policies and Procedures for Use of Social Media Sites by HUD Offices and Staff. This memorandum serves a notification of the Union's demand to bargain, implementation of the Departmental Policies and Procedures for Use of Social Media Sites by HUD Offices and Staff.

The implementation of the Departmental Policies and Procedures for Use of Social Media Sites by HUD Offices and Staff raises concerns to Council 222, as the exclusive representative. This action entails a change in conditions of employment of the affected bargaining unit members.

FOR THE RECORD;

The agency is required by the FSLMRS to negotiate in good faith with that labor organization over "conditions of employment." The term "conditions of employment" is defined broadly to include "personnel policies, practices, and matters...affecting working conditions." 5 U.S.C. § 7103(a)(14). See *AFGE Local 2441 v. FLRA*, 864 F.2d 178, 180 (D.C. Cir. 1988).

Management has a general obligation to bargain over terms and conditions of employment. 5 USC 7117, 7116(a)(5), 7103(a)(12). "An agency's bargaining obligation may arise in one of the following contexts: (1) during term negotiations for a collective bargaining agreement; (2) in response to union-initiated mid-term proposals; and (3) when management proposes to change existing conditions of employment." *Dept. of Air Force, Wright-Patterson AFB and AFGE Council 214*, 51 FLRA 1532, 1535 (1996).

The obligation to bargain arises upon request from the union holding exclusive recognition. See *AFGE v. FLRA*, 114 F.3d 1214, 1217-19 (D.C. Cir. 1997). The request may be oral. *Dept. of Air Force, Wright-Patterson AFB*, 56 FLRA 706, 706 (2000). The bargaining obligation is fulfilled through negotiations leading to a basic agreement, midterm bargaining, and bargaining over impact and implementation of decisions made within the ambit of management rights. The obligation is established only by statute.

To meet its obligation, management has the duty to give the exclusive bargaining representative adequate advance notice of the proposed implementation of decisions and to provide the union with an opportunity to participate in impact and implementation bargaining. The union then must act, if it is to act at all, and if the union's acts, management must, upon the union's request, maintain the status quo during negotiations, subject to some exceptions.

Even if the subject matter of a change in conditions of employment is outside the duty to bargain, an agency must bargain about the impact and implementation of a change that has more than a de minimis impact on unit employees. See *United States Army Adjutant General Publication Center, St. Louis, Missouri*, 35 FLRA 631, 634 (1990); *Department of Health and Human Services, Social Security Administration*, 24 FLRA 403 (1986) (Department of Health and Human Services).

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).

In any event, the Union offers the following preliminary proposals:

1. **Response to concerns**: HUD will respond in writing to the concerns raised by the Council prior to commencing negotiations.
2. **Introduction of new procedures**: Unit members will be provided training on procedures related to the implementation of the Departmental Policies and Procedures for Use of Social Media Sites by HUD Offices and Staff, prior to the actual start of the phased implementation.
3. **Maintenance of Status Quo**: The agency will maintain status quo until completion of bargaining.

This is a preliminary proposal 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.

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.