



DATE: July 8, 2022

MEMORANDUM FOR: Salvatore T. Viola, President, AFGE National Council 222 of HUD Locals

FROM: D'Andra Hankinson, Deputy Director, Employee & Labor Relations Division

A handwritten signature in black ink that reads "D. Hankinson".

SUBJECT: Response to AFGE Grievance of the Parties Dated June 8, 2022 regarding Remote Work Eligibility

This is in response to AFGE's June 8, 2022 Grievance of the Parties (GOP or Grievance) relating to remote work eligibility. AFGE falsely claims that HUD violated the HUD/AFGE collective bargaining agreement (CBA) and Labor Statute by preemptively excluding broad groups of AFGE bargaining unit employees (BUEs or employees) from remote work eligibility without "appropriate consideration of the employees' duties, assignments, and functions and without addressing how those determinations would specifically affect the Department's business needs." The remedies requested in the GOP are: (1) immediate consideration (or reconsideration) and approval of BUEs' requests for remote work in accordance with National Supplement 33, and a written response within the timeframes specified by and in accordance with the provisions of Supplement 33; (2) adjustment of BUEs' duties to allow for participation in remote work pursuant to Section 16 of National Supplement 33, if applicable and appropriate; (3) immediate approval of BUEs for 8 days per pay period of telework pending approval of employees' remote work requests; (4) Management shall send an Unfair Labor Practice (ULP) email posting to all AFGE BUEs in the national consolidated BU as well as do physical postings on all bulletin boards at all HUD Offices represented by AFGE Council 222 that the Department will not repudiate National Supplement 33 for remote work eligibility and implementation; (5) payment of all arbitration fees and expenses in accordance with section 52.04 of the CBA should the Union have to pursue arbitration for denial of the GOP; (6) payment of the Union's attorneys' fees should the Union have to invoke and pursue arbitration for denial of the GOP; and (7) any other remedy available to the fullest extent of the law, rule, regulation, CBA, policy, past practice, or arbitrator's award. The Agency denies the allegations in the grievance and rejects it on the following grounds.

### **1. Grievance Exclusion under Section 51.05(15) of the CBA**

This grievance is denied on the basis that it is excluded from the negotiated grievance procedures under section 51.05(15) of the CBA because it involves the same individual and factual situation as contained in an individual grievance. AFGE has submitted over 50 individual grievances involving the same factual situation, i.e., employees' ineligibility for remote work. See attachments for examples.

The Union, in its GOP, repudiates the Parties' negotiated provision in section 51.05(15) of the CBA by carving out an exclusion for "any individual employee who has already filed or files an individual grievance beginning on May 24, 2024 (*sic*), after the Office of Chief Human Capital Officer (OCHCO) sent an email on that same day entitled 'Flexiplace Updates' stating: 'Nothing precludes employees from submitting a request for a different Flexiplace option (i.e., telework, remote work) than the one identified in the notification letter.'" The Parties' clear intent in negotiating the exclusion in section

51.05(15) was to disallow duplicative grievances of the same issue involved in an individual grievance. The Union's filing of a GOP and claiming that it excludes any individual grievance filed in the future would make it impossible to determine which individuals would be entitled to any remedy granted for the GOP, since it is unknown who may file an individual grievance in the future (and be excluded under the Union's provision.)

Further, allowing this new right under the CBA would allow employees to file multiple grievances if they did not prevail in this GOP. If this GOP is not sustained and no remedies are awarded, an employee could subsequently file an individual grievance based on the same facts if the Agency accepts the Union's assertion of its new right since the Union claims this GOP does not include individual grievances filed in the future. The Agency does not agree to this new contractual right and interpretation of Article 51, whose clear intent was to allow the Union a single forum for grieving or appealing an issue.

Additionally, the Union claims on page 2 that it is excluding from this GOP employees who filed or will file an individual grievance, but on page 8 claims it reserves the right to grieve any violation, misinterpretation, or misapplication of any provision of the CBA, law, rule or regulation concerning AFGE BUEs' eligibility and ability to work remotely. These claims are contradictory and the Agency asserts that this GOP is excluded from the negotiated grievance procedures pursuant to section 51.05(15) of the CBA.

The June 8, 2022 GOP is denied on the basis that it is excluded from the negotiated grievance process pursuant to section 51.05(15) of the CBA and the issues included therein are neither grievable nor arbitrable.

Although this GOP is excluded from the negotiated grievance process, the Agency will also address the following issues raised in the GOP.

**2. AFGE Claim that Articles 51 and 52 do not prohibit changes to the violations of the CBA, law, rule or regulation alleged for the subject matter being grieved**

On pages 8 and 9 of the GOP, AFGE states that no provision in Article 51 or Article 52 of the Agreement expressly prohibits the Union from changing violations of the CBA, law, rule, or regulation alleged for the subject matter being grieved. It appears to be asserting the right to file this GOP and later identify violations; however, this is an unreasonable and illogical interpretation of the CBA. It would be impossible for the Agency to respond to violations of laws, rules, regulations and CBA provisions which the Union refuses to identify. The Agency disagrees with this interpretation and does not agree to waive its right to be informed of the laws, rules, regulations and CBA provisions it is being accused of violating. The Agency reserves the right to address all alleged violations of the CBA, laws, rules and regulations.

**3. Denial of Remote Work without "appropriate consideration of the employees' duties, assignments, and functions"**

The Union states that Management preemptively excluded broad groups of BUEs from remote work without "appropriate consideration of the employees' duties, assignments, and functions"; however, it fails to provide any evidence that Management did not make those considerations. The Union makes the erroneous assumption that because a position was not deemed eligible for remote work that Management

did not consider employees' duties, assignments, and functions in making the determination. In accordance with section 14 of Supplement 33, Management based Flexiplace eligibility (and most employees were approved for a Flexiplace arrangement of either remote work or expanded telework) on objective, equitable guidelines, function-based criteria, and not arbitrary and capricious reasons; and the Union does not provide evidence to the contrary.

#### **4. Agency did not engage in Bad Faith by allowing employees to apply for Remote Work**

The Union alleges that the Agency acted in bad faith by "allowing bargaining unit employees to apply for remote work" after employees had been notified of eligibility determinations. However, sections 21 and 25 of Supplement 33 permit employees to apply for remote work.

Section 14 of Supplement 33 provides that HUD shall notify employees of their eligibility to participate in a Flexiplace arrangement upon their application for a Flexiplace arrangement. Management notified employees of their eligibility for a Flexiplace arrangement (i.e., either telework or remote work) when it sent employees eligibility notices and when it either approved or disapproved employee requests for Flexiplace arrangements in DocuSign.

Further, the Union states in the GOP on page 2 that "Deputy Secretary Todman agreed with me that all employees should be allowed to apply for remote work...." However, the next paragraph states that the Agency acted in bad faith by allowing them to apply for remote work. Just because the Agency determines a position is not eligible for remote work does not equate to acting in bad faith. The Union does not provide evidence of bad faith, which would allow the Agency to more directly address the allegation; nonetheless, the Agency denies acting in bad faith.

#### **5. Agency did not violate 5 U.S.C. Section 7116(a)(1) and (5) and Supplement 33 during or after bargaining**

The Union alleges the Agency violated the Labor Statute sections 7116(a)(1) and (5) and Supplement 33 "due to its bad faith, surface bargaining and repudiation." The Union fails to provide any evidence that the Agency violated the Labor Statute or Supplement 33 by "surface bargaining and repudiation." The Union claims that by making remote work eligibility determinations that the Agency engaged in surface bargaining and repudiation; however, the Parties did not negotiate any provision that took away Management's right to determine business needs in order to meet the mission.

The Agency denies that its negotiators executed Supplement 33 knowing that Management had no intention of approving the vast majority of employees for remote work, and the Union provides no evidence to support its allegation.

Regarding the alleged violation of section 14 of Supplement 33, the Union appears to equate "Flexiplace arrangement" to "remote work." Flexiplace arrangements include both telework and remote work. Section 14 states that "All HUD positions and employees should normally be eligible to participate in a Flexiplace arrangement in accordance with Agency Policy, applicable regulations, and the CBA." It doesn't state that all HUD positions and employee should normally be eligible to participate in "remote work." In fact, most employees applying for Flexiplace arrangements were approved for a Flexiplace arrangement, either expanded telework or remote work.

Regarding the alleged violation of section 34 of Supplement 33, section 34 states that “Any decision by Management to deny, modify, or terminate a remote work arrangement must be based on business needs, misconduct, or performance, not arbitrary or capricious reasons.” Just because Management denied remote work requests doesn’t mean that the denials weren’t based on a business need, misconduct or performance.

Regarding the alleged violation of section 6.01 of the CBA, the second sentence of section 6.01 states that employees shall be treated fairly and equitably in the administration of the CBA and in policies and practices concerning conditions of employment. The Union does not provide any evidence that employees were not treated fairly and equitably in the Flexiplace application process. Under HUD’s previous Telework Policy, employees were only eligible for up to 3 days a week of telework, along with the requirement that employees had to be in the office at least 2 days a week. Under many Flexiplace arrangement approvals, employees may now telework up to 8 days per pay period and only have to be in the office at least 2 days per pay period. Management has provided expanded workplace flexibilities for most employees and it is unreasonable to assert that it did not treat employees fairly and equitably in greatly expanding workplace flexibilities merely because it did not approve the maximum level of flexibilities possible for all employees.

Similarly, the Union does not provide any evidence to support its position that denying remote work eligibility while expanding telework violates Article 6, Article 59 or the Preamble of the CBA, or that in doing so Management is “being disrespectful, not constructive, not cooperative, not collaborative, undermining employee morale, and denying BUEs the opportunity to formulate and implement policies and practices regarding their conditions of employment” and the Agency denies those unsupported allegations. In fact, the Preamble to the CBA states that “The Department and Union affirm the public interest demands, the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of Government.” By greatly expanding workplace flexibilities through its Flexiplace Policy, Management believes it has acted consistent with the Preamble as well as Articles 6 and 50. It is expanding employee workplace flexibilities while affirming public interest demands and maintaining efficient operations of Government.

The Union erroneously claims that use of a template gave managers a means of generating wholesale denials of remote work eligibility, and that OCHCO and the Department repudiated Supplement 33, sections 14 and 34, and section 6.01 of the CBA. However, Supplement 33 and section 6.01 of the CBA do not dictate that different verbiage must be used in notifying employees of their Flexiplace arrangement eligibility; and it does not logically follow that any denials were not based on business needs, misconduct, or performance, pursuant to section 34 of Supplement 33. In fact, Management officials often use uniform procedures, templates, etc. as a means of ensuring employees are treated fairly and equitably. The Union’s argument that organization-wide denials of remote work treats employees inequitably and unfairly is illogical in that it is stating that treating everyone the same (i.e., many receiving the same decision), is not treating them equitably. By definition, giving equal treatment to everyone is equitable. AFGE fails to provide evidence supporting its theory that use of uniform procedures, templates, etc. equated to Management failing to base denials on business needs, misconduct, or performance. In fact, Flexiplace eligibility determinations, which included for most employees the opportunity for increased telework, were based on objective, equitable guidelines, function-based criteria, and were not arbitrary and capricious.

## **6. “Covered by” Position**

The Union states that the only way that it would have been willing to discuss hoteling and hot desking, a “covered by” policy, was in exchange for the Department’s agreement to implement on a permanent basis remote work. AFGE never shared that position and the Agency never agreed during negotiations to negotiate hoteling and hot desking in exchange for every employee being approved for remote work. In fact, AFGE agreed to negotiate Article 18 (Telework) in order to allow expansion of the previous HUD Telework Policy which limited telework to up to 3 days per week, requiring employees to be in the office at least 2 days per week. The Agency negotiated expansion of telework, under the Flexiplace Policy, as a means of affording many employees the opportunity for increased telework, as well as a means of reducing HUD’s carbon footprint and waste of taxpayer dollars by utilizing space sharing arrangements for employees not working in the office at least 6 days per pay period.

On page 8 of the GOP, AFGE claims that it is an unfair labor practice to insist on bargaining to impasse a matter already covered by a CBA. However, the Agency did not insist on bargaining to impasse any proposal, as the Parties reached agreement on implementation of HUD’s Flexiplace Policy. AFGE could have claimed “covered by” and refused to renegotiate provisions of HUD’s previous Telework Policy and employees could have remained subject to the limitation of only up to 3 days of telework per week/2 days in the office per week; but it agreed to re-negotiate HUD’s Telework Policy. The Union states it would not have given up the policy of each employee having a permanently assigned workstation or office without the assurance that it would gain a greater employee benefit – and it did, in fact, gain a great employee benefit of remote work or expanded telework for most employees.

## **7. Ineligibility Determinations**

The Union claims on page 9 of the GOP that Management violated section 14 of Supplement 33, which states that “If an employee is determined to be ineligible, Management shall, at the time the determination is made, provide the employee in writing with the reason(s) for ineligibility.” The ineligibility in this provision is in reference to Flexiplace, not remote work, as evidenced by the language in the surrounding sentences of this provision. However, the Union does not include examples of where an employee was determined ineligible for any Flexiplace arrangement, i.e., remote work or telework. In fact, most employees are being approved for a Flexiplace arrangement, so they are not being deemed ineligible. Thus, the provision would not apply, for instance, where an employee is eligible for expanded telework, which is a Flexiplace arrangement. The Union’s assertion that Management failed to comply with section 14 of Supplement 33 by not basing Flexiplace arrangement eligibility on “objective, equitable guidelines, function-based criteria”, and by not complying with the requirement that Management “shall not be arbitrary and capricious” is not supported by any evidence because it fails to provide examples of employees being denied participation in a Flexiplace arrangement (which includes telework).

## **8. Continuation of Emergency Pandemic Conditions of Employment**

Just as the Union states in many of the individual grievances regarding remote work eligibility, it argues in this GOP that because employees performed remotely during the height of the pandemic while all HUD staff and many customers were working remotely, that those conditions should continue. COVID-19 vaccines, boosters, and safety protocols are now available to protect individuals from serious illness and death from COVID-19 and individuals are no longer required to isolate in order to avoid the risk of serious illness or death from COVID-19. While HUD may have excused the requirements of

some position duties while it implemented mandatory telework for the purpose of protecting its employees from COVID-19, employees' job duties and working conditions did not permanently change. For some positions, Management believes there is a business need for individuals to regularly be in offices and resume some in-person meetings and collaborations, which build and maintain effective relationships with colleagues, customers, and stakeholders, and ensure efficient operations. In-person collaboration and team building are important in improving and maintaining effective communications, especially with those that are new to an office. Broader and more efficient information sharing and collaboration tends to happen most efficiently through in-person communications as opposed to remotely, and constitutes a business need for some in-office presence.

The Union cites section 5, subsection 9, of Supplement 34, amending Article 18 of the CBA, which provides that "Communication levels and the methods of communication between employees and supervisors are expected to remain the same whether an employee is working in the office or teleworking," as a basis for the claim that decisions regarding remote work or telework should not be based on communications. However, sitting around a conference table reviewing materials or white board collaborations in-person as part of an assignment is obviously not the same as calling a person on the phone to discuss an assignment, and the Union is misapplying the Parties' understanding and intent of that provision. The same provision goes further to state that "The communication requirements of the manager will be discussed with employee (*sic*) and identified in the telework application and agreement." The second sentence clearly maintains Management's ability to set expectations of communication requirements, and Management did not negotiate away its ability to do so, including the requirement for employees to sometimes perform their duties in the office and in-person.

Similarly, the Union states Management violated 5 U.S.C. Section 6503(a)(3) (Telework Enhancement Act of 2010) and section 10 of Supplement 33 which provides that "Management shall ensure that all participants in Flexiplace programs shall be treated the same as non-participating (in-office) employees for purposes of...work requirements or other acts involving managerial discretion." The Union's position is unclear. The Union seems to imply that the provision establishes that all remote workers can perform their duties the same as any in-office workers, which is obviously not the case. This provision is about equitable treatment, requiring that employees be treated the same, not that all positions are the same and conducive to remote work. The provision does not take away Management's right to assign work, including determining where work is to be performed.

## **9. Bases for Remote Work Denials**

AFGE references one remote work denial where the reason for denial was "...we concluded that regular in-person collaboration, site visits, and meetings for building and sustaining relations are essential to our duties." AFGE concludes that the reason provided violates sections 14 and 34 of Supplement 33. However, just because AFGE doesn't agree with Management's reason and explanation for denying remote work does not equate to a violation of sections 14 and 34 of Supplement 33.

The Union states that Management violated section 16 of Supplement 33 which provides that "Management may consider adjustment of employee duties to allow for participation in remote work." However, that provision does not require Management to modify all employee job duties so that employees will be approved for remote work.

The Union has not provided evidence of its assertion that the Agency has violated the CBA, any agreement between the Parties or any law, rule or regulation, and the Agency denies the allegations made in the GOP. The Agency reserves the right to make further arguments in its defense of the allegations in this GOP should this matter go to arbitration.

If the Union is not satisfied with this decision, it may invoke arbitration in accordance with the provisions of Article 52 of the CBA. If arbitration is invoked, the Union should notify Sonya Gaither, Director, ELRD.

Attachments

# Employee Grievance

## U.S. Department of Housing and Urban Development

Employees must use this form to file grievances at steps 2 and 3 of the grievance procedure. Use of this form is optional at step 1.

Check one of the boxes:  Step 1     Step 2     Step 3

Name of Grievant: James Miner	Office Code: FHEO	Duty Phone: 971-222-2615 or 202-826-9870
Name of Union Representative (if any): Brenda Payette <President AFGE Local 3917 Jason Triplett VP, AFGE Local 3917	Office Code:	Duty Phone: 206-220-5201 703-629-5637

Briefly describe the incident-causing grievance. Include date, time, and place, management officials involved, if any:

Pursuant to the HUD-AFGE Collective Bargaining Agreement, Article 51, including but not limited to Sections 51.01, 51.06, 51.08, and 51.13, I (James Miner) am filing this grievance against the Department of Housing and Urban Development. I am designating AFGE Local 3917 as my representative.

On 05/19/2022, I submitted my request for remote work through Docusign to Han Lee, Branch Chief Region 10 FHEO Manager. See attachment 1.

On 06/08/2022, I received a response from Carlos Osegueda. See attachment 2. The reason given for the denial was "Your position was not approved as a remote work (100% telework) eligible position. Should the determination for your position change, you will be informed." See attachment 2.

The denial of my request was based on a determination that I was eligible for only 100% telework. On 06/08/2022 email from Carlos Osegueda on behalf of Amy M Frisk, Acting Executive Director for Field Operations FHEO sent an email that stated, "Upon completion of an initial assessment of the positions within our program office, we have determined that your position is eligible for the option of: routine telework. This is the maximum flexibility your position is eligible for at this time." See attachment 2. The earlier determination that I was not eligible for remote work failed to provide me with any specific reasons related to my duties and responsibilities for my ineligibility.

Identify the article(s) or section(s) of the master agreement / local supplement, law or regulation alleged to have been violated:

By issuing both its recent denial of my request and the earlier determination about my eligibility, Management did not base its decision on objective guidelines, function-based criteria, or business needs. Instead, this was an arbitrary decision based on managerial personal preference. Management thus violated National Supplement 33, Implementation of the Department of Housing and Urban Development's (HUD's) Proposed Flexiplace Policy, to the HUD-AFGE Collective Bargaining Agreement Sections 14 and 34.

Supplement 33, Section 14, states:

Eligibility. All HUD positions and employees should normally be eligible to participate in a Flexiplace arrangement in accordance with Agency Policy, applicable regulations, and the CBA . . . The Parties agree that Flexiplace eligibility is based on objective, equitable guidelines, function-based criteria, and shall not be arbitrary and capricious . . . If an

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date:  X James Miner 6/24/2022	Acknowledgement of receipt by Management (if personally delivered) Signature & Date: X
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date:  X



employee is determined to be ineligible, Management shall, at the time the determination is made, provide the employee in writing with the reason(s) for ineligibility.

Section 14, contrary to HUD's actions, starts with a presumption of eligibility and requires Management to make decisions based on individual situations, i.e., using function-based criteria. The fact that management made its decision without consideration of my individual duties and situation shows that the determination is, by its very nature, arbitrary and capricious.

Supplement 33, Section 34, provides:

Basis for Denial, Modification, or Termination of Remote Work Arrangement. Any decision by Management to deny, modify, or terminate a remote work arrangement must be based on business needs, misconduct, or performance, not arbitrary or capricious reasons. Management shall provide the denial/modification/termination and the reason for the action in writing. Management shall not terminate, modify, or deny a remote work arrangement as a form of punishment or managerial personal preference.

Like Section 14, Section 34 prohibits Management from denying remote work requests for arbitrary and capricious reasons. It also prohibits Management from basing remote work eligibility determinations on managerial personal preferences. Instead, it requires Management to make its decisions based on business needs, misconduct, or performance.

These two sections together require Management to apply objective, business needs-based criteria specifically related to the functions that I personally and individually perform. Management failed to apply such criteria in response to my request and failed to provide written reasons for denying my request that were objective, based on business needs, related to the functions that I perform.

The response did not provide a business reason for the denial of my request. Management's lack of any objective, business need-based reason for denying my request is especially obvious because I successfully worked remotely for over two years during the COVID-19 pandemic. While working remotely during the pandemic, I was able to perform all my duties effectively for more than two years, as shown by the fact that I received a performance appraisal of Fully successful in 2021. See attachment 3. None of my duties either then or now require me to be in a HUD office to perform them effectively. See Attachment 4. Management's decision failed to identify the agency's business needs specific to my position and the functions that I perform. Management failed to identify any specific task, duty, or assignment that can be performed only in the HUD office. Therefore, Management's decision was subjective, arbitrary, and based on managerial preference rather than on equitable and objective guidelines and business needs in violation of Supplement 33, Sections 14 and 34.

My specific duties, however, do not require in-person collaboration or meetings. For over two years, I collaborated effectively and successfully with any people necessary and attended all meetings while working remotely under "mandatory telework" and "maximum telework" conditions due to the COVID-19 pandemic. I was able to use technology such as Microsoft Teams in order to establish and maintain necessary business relationships.

Supplement 34, Section 5, amending Article 18, Section 18.04. Subsection (9) provides, "Communication levels and the methods of communication between employees and supervisors are expected to remain the same whether an employee is working in the office or teleworking." Thus, decisions regarding in-office and remote work or telework should not be based on communications; I am able to communicate equally effectively with other personnel and customers regardless of whether it is by phone, virtual meetings, or in person. Before the pandemic, on the days that I worked in the HUD office, I rarely engaged in any in-person collaboration or meetings; my interactions with colleagues and/or customers was almost exclusively by email and telephone. I interact with others by email and/or telephone whether I am in the HUD office or

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date:  X <i>James Miner</i> 6/24/2022	Acknowledgement of receipt by Management (if personally delivered) Signature & Date:  X
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date:  X

working from an alternative or remote worksite. I work independently and do not collaborate with others whether I am in the HUD office or working from an alternative or remote worksite.

In summary, my successful performance of all of my duties, responsibilities, and assignments from my remote (home) worksite for over two years demonstrates that Management's denial of my request is arbitrary and capricious in violation of Supplement 33 and the HUD-AFGE Agreement.

In accordance with Article 51, Section 51.01(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 and I reserve the right to grieve and raise any violation, misinterpretation, or misapplication of any provision of the HUD-AFGE Agreement, law, rule or regulation concerning my request to work remotely in any step of the grievance procedure and/or arbitration. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes to the violations of the collective bargaining agreement, law, rule, or regulation alleged for the subject matter being grieved.

Meeting: I do not request a meeting with the Deciding Official under Section 51.13.

Identify the remedy you seek:

To resolve this grievance, I request from the following equitable relief remedies:

(1) Immediate reconsideration and approval of my request for remote work in accordance with Supplements 33 and 34, and a written response within the timeframes specified by and in accordance with the provisions of Supplement 33. In accordance with Supplement 33, Section 29, I request immediate approval of 9 days per pay period of telework pending approval of my remote work request.

(2) 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.

(3) Payment of the Union's attorneys' fees should the Union have to invoke and pursue arbitration for denial of this grievance pursuant to the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(ii) if I lose any pay, allowances, or differentials as a result of Management's failure to allow me to work remotely.

(4) 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.

These remedies are reasonably and proportionally related to the Supplement 33, HUD-AFGE Agreement, and statutory violations cited above and do not excessively interfere with the management rights provisions in 5 U.S.C. § 7106(a) in accordance with U.S. Department of Justice Federal Bureau of Prisons and AFGE Local 817 Council of Prison Locals #33, 70 FLRA 398 (2018) (DOJ). The remedies merely seek Management's compliance with Supplement 33, the HUD-AFGE Agreement, and statutory provisions cited above. Alternatively, should an arbitrator award the Union's remedies requested above and the Department files exception(s) with the Federal Labor Relations Authority (FLRA), the Union requests that the FLRA reconsider its existing case law precedent in DOJ and revert back to the abrogation test for arbitrators' authority to fashion remedies to enforce appropriate-arrangement provisions negotiated pursuant to 5 U.S.C. § 7106(b)(3) even if it affects management's rights at § 7106(a) [Environmental Protection Agency and AFGE Council 238, 65 FLRA 113 (2010)], and re-establish the broader discretion of arbitrators to fashion remedies even if it affects management's rights [Federal Deposit Insurance Corporation and NTEU Chapter 273, 65 FLRA 102 (2010)].

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date:  X <i>James Miner</i> 6/24/2022	Acknowledgement of receipt by Management (if personally delivered) Signature & Date:  X
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date:  X

# Employee Grievance

## U.S. Department of Housing and Urban Development

Employees must use this form to file grievances at steps 2 and 3 of the grievance procedure. Use of this form is optional at step 1.

Check one of the boxes:  Step 1  Step 2  Step 3

Name of Grievant: Farrah T. Ward	Office Code: FHEO	Duty Phone: 360-728-5102
Name of Union Representative (if any): Jason Triplett, AFGE Local 3917	Office Code:	Duty Phone: 703-629-5637

Briefly describe the incident-causing grievance. Include date, time, and place, management officials involved, if any:

On May 19, 2022, I (Farrah Ward) submitted my request for remote work or telework to Han Lee, Enforcement Branch Chief for HUD Region X. Submitted via DocuSign, see the fully-executed Flexiplace Application and Agreement (Attachment A). On June 8, 2022, I received a response from Han Lee, Enforcement Branch Chief for HUD Region X; see Attachment A. The reason given for the denial was "Per HQ Determination, employee's position not eligible for full remote work;" see Attachments A and B2. At the same time, the designated Flexiplace Coordinator has not yet signed the official disapproval; see Attachments A and B1.

The denial of my request was based on an earlier determination that I was eligible for only routine telework. On June 8, 2022, the Office of Fair Housing and Equal Opportunity sent an email (see Attachment B2) that stated, "At this time, your position was not approved as a remote work-eligible position...if you have not already done so, please feel free to submit a routine telework application to your supervisor." This earlier determination that I was not eligible for remote work failed to provide me with any specific reasons related to my duties and responsibilities for my ineligibility.

Identify the article(s) or section(s) of the master agreement / local supplement, law or regulation alleged to have been violated:

See Supplement 33 (Attachment C1) and the 2021 Year End Performance Report (Attachment C2)

Identify the remedy you seek:

To resolve this grievance, I request from the following equitable relief remedies:

- (1) Immediate reconsideration and approval of my request for remote work in accordance with Supplements 33 and 34, and a written response within the timeframes specified by and in accordance with the provisions of Supplement 33. In accordance with Supplement 33, Section 29, I request immediate approval of 7 days per pay period of telework pending approval of my remote work request.
- (2) 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.
- (3) Payment of the Union's attorneys' fees should the Union have to invoke and pursue arbitration for denial of this grievance pursuant to the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(ii) if I lose any pay, allowances, or differentials as a result of Management's failure to allow me to work remotely.
- (4) 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.

These remedies are reasonably and proportionally related to the Supplement 33, HUD-AFGE Agreement, and statutory violations cited above and do not excessively interfere with the management rights provisions in 5 U.S.C. § 7106(a) in accordance with U.S. Department of Justice Federal Bureau of Prisons and AFGE Local 817 Council of Prison Locals #33, 70 FLRA 398 (2018) (DOJ). The remedies merely seek Management's compliance with Supplement 33, the HUD-

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date: <i>Farrah T. Ward</i> 06/24/2022 X	Acknowledgement of receipt by Management (if personally delivered) Signature & Date: X
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date: X

AFGE Agreement, and statutory provisions cited above. Alternatively, should an arbitrator award the Union's remedies requested above and the Department files exception(s) with the Federal Labor Relations Authority (FLRA), the Union requests that the FLRA reconsider its existing case law precedent in DOJ and revert back to the abrogation test for arbitrators' authority to fashion remedies to enforce appropriate-arrangement provisions negotiated pursuant to 5 U.S.C. § 7106(b)(3) even if it affects management's rights at § 7106(a) [Environmental Protection Agency and AFGE Council 238, 65 FLRA 113 (2010)], and re-establish the broader discretion of arbitrators to fashion remedies even if it affects management's rights [Federal Deposit Insurance Corporation and NTEU Chapter 273, 65 FLRA 102 (2010)].

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date:  X	Acknowledgement of receipt by Management (if personally delivered) Signature & Date:  X
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date:  X

# Employee Grievance

U.S. Department of Housing and Urban Development

Employees must use this form to file grievances at steps 2 and 3 of the grievance procedure. Use of this form is optional at step 1.

Check one of the boxes:  Step 1     Step 2     Step 3

Name of Grievant: Tara A. Waterlander	Office Code:	Duty Phone:
Name of Union Representative (if any): Tobey Zimmer	Office Code:	Duty Phone: 202-402-6230

Briefly describe the incident-causing grievance. Include date, time, and place, management officials involved, if any:  
See memo and attachments

Identify the article(s) or section(s) of the master agreement / local supplement, law or regulation alleged to have been violated:  
Sections 51.01, 51.06, 51.08, and 51.13; Supplement 33 and 34; all other applicable sections of the CBA, laws, or regulations

Identify the remedy you seek:  
See memo and attachments

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date:  X <i>Tara Waterlander</i> 6/27/2022	Acknowledgement of receipt by Management (if personally delivered) Signature & Date:  X
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date:  X



**American Federation of Government Employees  
Local 476**

*Affiliated with AFL-CIO*

451 7th Street, SW, Suite 3142  
Washington, DC 20410

[www.afge476.org](http://www.afge476.org)

Cynthia Fisher Carter  
President  
Regional Vice President, Council 222

Phone: 202-402-2915  
Fax: 202-485-9447  
E-mail: [cynthia.f.carter@hud.gov](mailto:cynthia.f.carter@hud.gov)

June 29, 2022

MEMORANDUM FOR: Keith Johnson,  
Employee and Labor Relations Division

FROM: Tobey Zimmer, PhD, Steward  
AFGE Local 476

SUBJECT: Step 1 Grievance and RFI: Remote Work Denial

**Employee Step 1 Grievance**

**Grievant:** Tara Waterlander

**Organization:** FHEO Enforcement, PSCD **Email:** [Tara.Waterlander@hud.gov](mailto:Tara.Waterlander@hud.gov)

**Union representative, if any:** Local 476

**Representative's email:** [Tobey.J.Zimmer@hud.gov](mailto:Tobey.J.Zimmer@hud.gov), [Cynthia.F.Carter@hud.gov](mailto:Cynthia.F.Carter@hud.gov),  
[Ashaki.Robinson@hud.gov](mailto:Ashaki.Robinson@hud.gov), [Antonio.A.Carraway@hud.gov](mailto:Antonio.A.Carraway@hud.gov)

Pursuant to the HUD-AFGE Collective Bargaining Agreement, Article 51, including but not limited to Sections 51.01, 51.06, 51.08, and 51.13, I am filing this grievance against the Department of Housing and Urban Development. I am designating AFGE Local 476 as my representative.

On 5/19/2022, I submitted my request for remote work to Gregory H. Crespo Director, Program Standards and Compliance. See attachment 1. On 6/15/2022, I received a response from Gregory H. Crespo Director, Program Standards and Compliance that denied my request. See attachment 1. The reason given for the denial was "At this time, your position was not approved as a remote work (100% telework) eligible position. Should the determination for your position change, you will be informed. Please feel free to submit a routine telework application."

The denial of my request was based on an earlier determination that I was eligible for only routine telework. On 5/24/2022, the Office of Fair Housing and Equal Opportunity sent an email that stated "Upon completion of an initial assessment of the positions within our program office, we have determined that every position in Fair Housing and Equal Opportunity is eligible for the

option of: routine telework. This is the maximum flexibility your position is eligible for at this time.” See attachment 2. The earlier determination that I was not eligible for remote work failed to provide me with any specific reasons related to my duties and responsibilities for my ineligibility.

By issuing both its recent denial of my request and the earlier determination about my eligibility, Management did not base its decision on objective guidelines, function-based criteria, or business needs. Instead, this was an arbitrary decision based on managerial personal preference. Management thus violated National Supplement 33, Implementation of the Department of Housing and Urban Development’s (HUD’s) Proposed Flexiplace Policy, to the HUD-AFGE Collective Bargaining Agreement Sections 14 and 34.

Supplement 33, Section 14, states:

Eligibility. All HUD positions and employees should normally be eligible to participate in a Flexiplace arrangement in accordance with Agency Policy, applicable regulations, and the CBA . . . The Parties agree that Flexiplace eligibility is based on objective, equitable guidelines, function-based criteria, and shall not be arbitrary and capricious . . . If an employee is determined to be ineligible, Management shall, at the time the determination is made, provide the employee in writing with the reason(s) for ineligibility.

Section 14, contrary to HUD’s actions, starts with a presumption of eligibility and requires Management to make decisions based on individual situations, i.e., using function-based criteria. The fact that management made its decision without consideration of my individual duties and situation shows that the determination is, by its very nature, arbitrary and capricious.

Supplement 33, Section 34, provides:

Basis for Denial, Modification, or Termination of Remote Work Arrangement. Any decision by Management to deny, modify, or terminate a remote work arrangement must be based on business needs, misconduct, or performance, not arbitrary or capricious reasons. Management shall provide the denial/modification/termination and the reason for the action in writing. Management shall not terminate, modify, or deny a remote work arrangement as a form of punishment or managerial personal preference.

Like Section 14, Section 34 prohibits Management from denying remote work requests for arbitrary and capricious reasons. It also prohibits Management from basing remote work eligibility determinations on managerial personal preferences. Instead, it requires Management to make its decisions based on business needs, misconduct, or performance.

These two sections together require Management to apply objective, business needs-based criteria specifically related to the functions that I personally and individually perform. Management failed to apply such criteria in response to my request and failed to provide written reasons for denying my request that were objective, based on business needs, related to the functions that I perform.

The response did not provide a business reason for the denial of my request. Management's lack of any objective, business need-based reason for denying my request is especially obvious because I successfully worked remotely for over two years during the COVID-19 pandemic. While working remotely during the pandemic, I was able to perform all my duties effectively for more than two years, as shown by the fact that I received a performance appraisal of excellent/highly successful in 2021. See attachment 3. None of my duties either then or now require me to be in a HUD office to perform them effectively. Management's decision failed to identify the agency's business needs specific to my position and the functions that I perform. Management failed to identify any specific task, duty, or assignment that can be performed only in the HUD office. Therefore, Management's decision was subjective, arbitrary, and based on managerial preference rather than on equitable and objective guidelines and business needs in violation of Supplement 33, Sections 14 and 34.

In summary, my successful performance of all of my duties, responsibilities, and assignments from my remote (home) worksite for over two years demonstrates that Management's denial of my request is arbitrary and capricious in violation of Supplement 33 and the HUD-AFGE Agreement.

In accordance with Article 51, Section 51.01(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 and I reserve the right to grieve and raise any violation, misinterpretation, or misapplication of any provision of the HUD-AFGE Agreement, law, rule or regulation concerning my request to work remotely in any step of the grievance procedure and/or arbitration. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes to the violations of the collective bargaining agreement, law, rule, or regulation alleged for the subject matter being grieved.

Meeting: I request a meeting with the Deciding Official under Section 51.13.

Remedies: To resolve this grievance, I request from the following equitable relief remedies:

(1) Immediate reconsideration and approval of my request for remote work in accordance with Supplements 33 and 34, and a written response within the timeframes specified by and in accordance with the provisions of Supplement 33. In accordance with Supplement 33, Section 29, I request immediate approval of 10 days per pay period of telework pending approval of my remote work request.

(2) 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.

(3) Payment of the Union's attorneys' fees should the Union have to invoke and pursue arbitration for denial of this grievance pursuant to the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(ii) if I lose any pay, allowances, or differentials as a result of Management's failure to allow me to work remotely.



(4) 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.

These remedies are reasonably and proportionally related to the Supplement 33, HUD-AFGE Agreement, and statutory violations cited above and do not excessively interfere with the management rights provisions in 5 U.S.C. § 7106(a) in accordance with *U.S. Department of Justice Federal Bureau of Prisons and AFGE Local 817 Council of Prison Locals #33*, 70 FLRA 398 (2018) (*DOJ*). The remedies merely seek Management's compliance with Supplement 33, the HUD-AFGE Agreement, and statutory provisions cited above. Alternatively, should an arbitrator award the Union's remedies requested above and the Department files exception(s) with the Federal Labor Relations Authority (FLRA), the Union requests that the FLRA reconsider its existing case law precedent in *DOJ* and revert back to the abrogation test for arbitrators' authority to fashion remedies to enforce appropriate-arrangement provisions negotiated pursuant to 5 U.S.C. § 7106(b)(3) even if it affects management's rights at § 7106(a) [*Environmental Protection Agency and AFGE Council 238*, 65 FLRA 113 (2010)], and re-establish the broader discretion of arbitrators to fashion remedies even if it affects management's rights [*Federal Deposit Insurance Corporation and NTEU Chapter 273*, 65 FLRA 102 (2010)].

## Union Request for Information Pursuant to 5 U.S.C. § 7114(b)(4)

AFGE Local 476 requests that the Department of Housing and Urban Development (HUD) provide the information identified below pursuant to 5 U.S.C. § 7114(b)(4). The Union requires the information in order to fully represent Tara Waterlander, who filed a grievance on 6/29/22 related to the denial of a request for remote work.

Under 5 U.S.C. § 7114(b)(4), HUD is required to furnish to the Union “data which is normally maintained by the Agency in the regular course of business” and “reasonably available.” The Union “is entitled to information that is necessary to enable it to carry out effectively its representational responsibilities, including information which will assist it in the investigation, evaluation and processing of a grievance.” *National Labor Relations Board and National Labor Relations Board Union Local 6*, 38 FLRA 506 (November 28, 1990). The FLRA has ruled that an agency may be required to produce information that does not exist in the precise format requested, but which can be extracted from records within an agency's control. See *Department of Air Force, Sacramento Air Logistics Center, and AFGE, Local 1857*, 37 FLRA 987 (October 15, 1990). According to FLRA case law, information requested under 5 U.S.C. § 7114(b)(4) is not limited to documentation and can be in the form of describing information. See *U.S. Veterans Administration and AFGE Local 3314*, 28 FLRA 260, 261 (July 29, 1987).

1. A list of all duties that the employee named above must perform in the office and that were not performed remotely over the past two years. Please identify which, if any, of these duties require in-person interaction with customers and the reason why (e.g., to receive/provide laptops).
2. A list of people with whom the employee named above is expected to collaborate in person, and the reason that in-person collaboration is required. For each person named, please indicate the days on which they will be present in the office, and whether those days correspond to the scheduled in-office days of the employee named above.
3. A list of meetings the employee named above is expected to attend that require in-person attendance. For each meeting, please provide:
  - a. The host organization
  - b. The frequency of the meeting(s)
  - c. The purpose of the meeting
  - d. The reason that in-person attendance is required
  - e. A list of others who are expected to attend in person
  - f. Whether any arrangements will be made for virtual attendance
  - g. A list of others who may attend virtually
4. For any activities other than the physical exchange or inspection of materials, empirical evidence that supports the requirement for in-person rather than virtual collaboration or attendance.
5. A list of all personnel, including supervisors/managers, who will be present on the employee's office on the days the employee named above is scheduled to be present in the office. For each person named, please provide the person's organization, title/position, connection to the employee, a description of any interactions expected with

the employee named above, and the frequency and length of interactions by email, phone, or in person.

*Statement of Particularized Need:* The Union requires this information for the following reasons:

(1) [*Why the Union needs the requested information*]: The Union requires the requested information in order to fully investigate, evaluate, and process the employee's grievance. to support its charge that HUD violated the Parties' collective bargaining agreement, including but not limited to Supplement 33, Sections 14 and 34. The Union also requires the information in order to evaluate whether to pursue arbitration, if necessary. The Union needs the information to assess when and to what extent HUD violated its contractual obligations, to determine how to support and pursue its grievance, and, if necessary, to assess whether to arbitrate or settle the grievance. The Union also needs the documentation requested to meet its preponderance of evidence burden of proof that HUD OGC management in fact violated the Federal Service Labor-Management Relations Statute and the HUD-AFGE collective bargaining agreement as alleged in the Grievance of the Parties and possibly in arbitration. Please be advised that for a § 7114(b)(4) information request, a union is not required in its statement of particularized need to describe the exact nature of any alleged misapplication or violation of policy, procedure, law or regulation by the agency. *See Health Care Financing Administration and AFGE Local 1923*, 56 FLRA 156 (March 17, 2000).

(2) [*How its use of the information relates to the Union's representational responsibilities*]: The Union will use the information as evidence to support the employee's grievance related to HUD's violations of the collective bargaining agreement. The Union's representational responsibilities include enforcement of the collective bargaining agreement and its supplements, and protection of employee rights under those agreements, laws, rules, and regulations.

**Deadline to Provide Requested Information:** Please provide the requested information no later than July 7, 2022. The Union notes that it is an Unfair Labor Practice in violation of 5 U.S.C. §§ 7116(a)(1), (5) and (8) not to timely furnish documentation in response to an information request under 5 U.S.C. § 7114(b)(4), which the FLRA defines as timely to meet the Union's representational responsibilities. *See Bureau of Prisons, Lewisburg Penitentiary and AFGE Local 148*, 11 FLRA 639 (1983); *Department of Defense Dependent Schools and North Germany Area Council, Overseas Education Association*, 19 FLRA 790 (1985); and *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001). Please be advised that in *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001), the **FLRA found that the agency committed an Unfair Labor Practice even though the union submitted the information request under 5 U.S.C. § 7114(b)(4) only five days prior to the arbitration hearing and the agency provided**

**the information on the day of the arbitration hearing as it was untimely for the union to meet its representational responsibilities.**

As a reminder, the Federal Labor Relations Authority held in *National Labor Relations Board*, 38 FLRA 506, 523 (1990) (NLRB), *aff'd sub nom. NLRB v. FLRA*, 952 F.2d 523 (D.C. Cir. 1992), that § 7114(b)(4)(C) “does not exempt from disclosure guidance, advice, or counsel to management officials concerning the conditions of employment of a bargaining unit employee, for example: the personnel[] policies and practices and other matters affecting the employee's working conditions that are not specifically related to the collective bargaining process.” The FLRA reiterated that position in *Department of the Army, Army Corps of Engineers, Portland District, Portland, Oregon and United Power Trades Union*, 60 FLRA 413, 416 (2004), again stating explicitly that “Section 7114(b)(4)(C) does not exempt from disclosure guidance, advice, or counsel to management officials concerning the conditions of employment of bargaining unit employees.”

Furthermore, the Union hopes that HUD does not resort to its usual assertion that “The union has failed to establish a particularized need for the above information.” The Union has clearly articulated why the Union needs the requested information and how its use of the information relates to the Union’s representational responsibilities. As the Authority has stated: “We reject the argument that a union has failed to articulate its need with requisite specificity, where . . . the information request referenced a specific agency action and specified that the union needed the information to assess: (1) whether the agency violated established policies, and (2) whether to file a grievance, even though the union did not explain exactly how the information would enable it to determine whether to file a grievance.” *Department of Veterans Affairs, Veterans Affairs Medical Center, Decatur, Ga. and NFFE, Local 2102*, 71 FLRA 428, 430 (2019).

Finally, you are reminded of your obligation to inform the Union explicitly if any requested information does not exist.

#### Attachments

1. Application/Denial
2. Eligibility notice
3. FY21 performance rating

CC: James Fox, HQ ELR Branch Chief

# Employee Grievance

## U.S. Department of Housing and Urban Development

Employees must use this form to file grievances at steps 2 and 3 of the grievance procedure. Use of this form is optional at step 1.

Check one of the boxes:  Step 1     Step 2     Step 3

Name of Grievant: Sylloris Lampkin	Office Code: 4ACS	Duty Phone: 678-732-2808
Name of Union Representative (if any): Antonio Gaines	Office Code: 4AHHR2	Duty Phone: 678-732-2652

Briefly describe the incident-causing grievance. Include date, time, and place, management officials involved, if any:

Pursuant to the HUD-AFGE Collective Bargaining Agreement, Article 51, including but not limited to Sections 51.01, 51.06, 51.08, and 51.13, I am filing this grievance against the Department of Housing and Urban Development.

On 5/23/2022, I submitted my request for remote work to Ingrid Osborn, Chief Counsel. See attachment 1. On 5/23/2022, I received a response from Ingrid Osborn stating that my remote work request was disapproved. See attachment 2 (email entitled RE:Flexiplace Application for Remote Work). The reason given for the denial was, "your position was not approved as a remote work eligible position at this time."

The denial of my request was based on an earlier determination that I was eligible for only routine telework. On 5/18/2022, the Office of General Counsel sent an email that stated, "Upon completion of an initial assessment of the positions within our program office, we have determined that your position is eligible for the option of: routine telework. This is the maximum flexibility your position is eligible for at this time." See attachment 3 (email entitled: Flexiplace Eligibility). The earlier determination that I was not eligible for remote work failed to provide me with any specific reasons related to my duties and responsibilities for my ineligibility.

By issuing both its recent denial of my request and the earlier determination about my eligibility, Management did not base its decision on objective guidelines, function-based criteria, or business needs. Instead, this was an arbitrary decision based on managerial personal preference. Management thus violated National Supplement 33, Implementation of the Department of Housing and Urban Development's (HUD's) Proposed Flexiplace Policy, to the HUD-AFGE Collective Bargaining Agreement Sections 14 and 34.

Supplement 33, Section 14, states:

Eligibility. All HUD positions and employees should normally be eligible to participate in a Flexiplace arrangement in accordance with Agency Policy, applicable regulations, and the CBA . . . The Parties agree that Flexiplace eligibility is based on objective, equitable guidelines, function-based criteria, and shall not be arbitrary and capricious . . . If an employee is determined to be ineligible, Management shall, at the time the determination is made, provide the employee in writing with the reason(s) for ineligibility.

Section 14, contrary to HUD's actions, starts with a presumption of eligibility and requires Management to make decisions based on individual situations, i.e., using function-based criteria. The fact that management made its decision without consideration of my individual duties and situation shows that the determination is, by its very nature, arbitrary and capricious.

Supplement 33, Section 34, provides:

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date: <i>X Sylloris Lampkin 6/10/22</i>	Acknowledgement of receipt by Management (if personally delivered) Signature & Date: <i>X</i>
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date: <i>X</i>

Basis for Denial, Modification, or Termination of Remote Work Arrangement. Any decision by Management to deny, modify, or terminate a remote work arrangement must be based on business needs, misconduct, or performance, not arbitrary or capricious reasons. Management shall provide the denial/modification/termination and the reason for the action in writing. Management shall not terminate, modify, or deny a remote work arrangement as a form of punishment or managerial personal preference.

Like Section 14, Section 34 prohibits Management from denying remote work requests for arbitrary and capricious reasons. It also prohibits Management from basing remote work eligibility determinations on managerial personal preferences. Instead, it requires Management to make its decisions based on business needs, misconduct, or performance.

These two sections together require Management to apply objective, business needs-based criteria specifically related to the functions that I personally and individually perform. Management failed to apply such criteria in response to my request and failed to provide written reasons for denying my request that were objective, based on business needs, related to the functions that I perform.

The response did not provide a business reason for the denial of my request. Management's lack of any objective, business need-based reason for denying my request is especially obvious because I successfully worked remotely for over two years during the COVID-19 pandemic. While working remotely during the pandemic, I was able to perform all my duties effectively for more than two years, as shown by the fact that I received a performance appraisal of outstanding in 2021. See Attachment 5. None of my duties either then or now require me to be in a HUD office to perform them effectively. Management's decision failed to identify the agency's business needs specific to my position and the functions that I perform. Management failed to identify any specific task, duty, or assignment that can be performed only in the HUD office. Therefore, Management's decision was subjective, arbitrary, and based on managerial preference rather than on equitable and objective guidelines and business needs in violation of Supplement 33, Sections 14 and 34.

I am an Outstationed Worker as defined in National Supplement 33 § 6(e). I am assigned to the Jacksonville Office of Counsel, but I physically report to the Atlanta Office. See attachment 4. I have been an Outstationed Worker since 2017. Since 2017, I have used technology in order to establish and maintain necessary business relationships with program clients, first level supervisor and team.

National Supplement 33 § 6(e) states:

Outstationed workers: Employees who are assigned to an agency office in one location but who physically report to an agency office in a different locality. Outstationed employees may be approved for telework or remote work.

By limiting the maximum flexibility of my position to routine telework and disallowing remote work, the Agency violated National Supplement 33§ 6(e).

In summary, my status as an outstationed worker and my successful performance of all of my duties, responsibilities, and assignments from my remote (home) worksite for over two years demonstrates that Management's denial of my request is arbitrary and capricious in violation of Supplement 33 and the HUD-AFGE Agreement.

In accordance with Article 51, Section 51.01(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 and I reserve the right to grieve and raise any violation, misinterpretation, or misapplication of any provision of the HUD-AFGE Agreement, law, rule or regulation concerning my request to work remotely in any step of the grievance procedure and/or arbitration. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes to the violations of the collective bargaining agreement, law, rule, or regulation alleged for the subject matter being grieved.

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date: <input checked="" type="checkbox"/> <i>Sylleris Lampkin</i> 6/10/22	Acknowledgement of receipt by Management (if personally delivered) Signature & Date: <input checked="" type="checkbox"/>
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date: <input checked="" type="checkbox"/>

Identify the article(s) or section(s) of the master agreement / local supplement, law or regulation alleged to have been violated:

National Supplement 33 § 14  
National Supplement 33 § 34  
National Supplement 33§ 6(e).

Identify the remedy you seek:

I do not request a meeting with the Deciding Official under Section 51.13 of the Collective Bargaining Agreement. To resolve this grievance, I request the following equitable relief remedies:

- (1) Immediate reconsideration and approval of my request for remote work in accordance with Supplements 33 and 34, and a written response within the timeframes specified by and in accordance with the provisions of Supplement 33
- (2) 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.
- (3) Payment of the Union's attorneys' fees should the Union have to invoke and pursue arbitration for denial of this grievance pursuant to the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(ii) if I lose any pay, allowances, or differentials as a result of Management's failure to allow me to work remotely.
- (4) 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.

These remedies are reasonably and proportionally related to the Supplement 33, HUD-AFGE Agreement, and statutory violations cited above and do not excessively interfere with the management rights provisions in 5 U.S.C. § 7106(a) in accordance with U.S. Department of Justice Federal Bureau of Prisons and AFGE Local 817 Council of Prison Locals #33, 70 FLRA 398 (2018) (DOJ). The remedies merely seek Management's compliance with Supplement 33, the HUD-AFGE Agreement, and statutory provisions cited above. Alternatively, should an arbitrator award the Union's remedies requested above and the Department files exception(s) with the Federal Labor Relations Authority (FLRA), the Union requests that the FLRA reconsider its existing case law precedent in DOJ and revert back to the abrogation test for arbitrators' authority to fashion remedies to enforce appropriate-arrangement provisions negotiated pursuant to 5 U.S.C. § 7106(b)(3) even if it affects management's rights at § 7106(a) [Environmental Protection Agency and AFGE Council 238, 65 FLRA 113 (2010)], and re-establish the broader discretion of arbitrators to fashion remedies even if it affects management's rights [Federal Deposit Insurance Corporation and NTEU Chapter 273, 65 FLRA 102 (2010)].

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date: X <i>Sylleris Lampkin</i> 6/10/22	Acknowledgement of receipt by Management (if personally delivered) Signature & Date: X
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date: X

# Employee Grievance

U.S. Department of Housing and Urban Development

Employees must use this form to file grievances at steps 2 and 3 of the grievance procedure. Use of this form is optional at step 1.

Check one of the boxes:  Step 1  Step 2  Step 3

Name of Grievant: Joseph Carroll	Office Code:	Duty Phone:
Name of Union Representative (if any): Tobey Zimmer	Office Code:	Duty Phone: 202-402-6230

Briefly describe the incident-causing grievance. Include date, time, and place, management officials involved, if any:

See memo and attachments

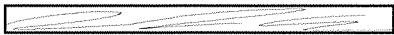
Identify the article(s) or section(s) of the master agreement / local supplement, law or regulation alleged to have been violated:

Sections 51.01, 51.06, 51.08, and 51.13; Supplement 33 and 34; all other applicable sections of the CBA, laws, or regulations

Identify the remedy you seek:

See memo and attachments

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date: X  6/27/22	Acknowledgement of receipt by Management (if personally delivered) Signature & Date: X
If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.	Signature of Grievant & Date: X





**American Federation of Government Employees  
Local 476**

*Affiliated with AFL-CIO*

451 7th Street, SW, Suite 3142  
Washington, DC 20410

[www.afge476.org](http://www.afge476.org)

Cynthia Fisher Carter  
President  
Regional Vice President, Council 222

Phone: 202-402-2915  
Fax: 202-485-9447  
E-mail: [cynthia.f.carter@hud.gov](mailto:cynthia.f.carter@hud.gov)

June 27, 2022

MEMORANDUM FOR: Sheila Sayles,  
Employee and Labor Relations Division

FROM: Tobey Zimber, PhD, Steward  
AFGE Local 476

SUBJECT: Step 1 Grievance and RFI: Remote Work Denial

**Employee Step 1 Grievance**

**Grievant:** Joseph J. Carroll

**Organization:** FHEO      **Email:** [Joseph.Carroll@hud.gov](mailto:Joseph.Carroll@hud.gov)

**Union representative, if any:** Local 476

**Representative's email:** [Tobey.J.Zimber@hud.gov](mailto:Tobey.J.Zimber@hud.gov), [Cynthia.F.Carter@hud.gov](mailto:Cynthia.F.Carter@hud.gov),  
[Ashaki.Robinson@hud.gov](mailto:Ashaki.Robinson@hud.gov), [Antonio.A.Carraway@hud.gov](mailto:Antonio.A.Carraway@hud.gov)

Pursuant to the HUD-AFGE Collective Bargaining Agreement, Article 51, including but not limited to Sections 51.01, 51.06, 51.08, and 51.13, I am filing this grievance against the Department of Housing and Urban Development. I am designating AFGE Local 476 as my representative.

On 5/19/2022, I submitted my request for remote work to Gregory Crespo, Director Programs and Compliance. See attachment 1. On 6/15/2022, I received a response from Carlos Osegueda, Acting DAS, Operations, FHEO that denied my request. See attachment 2. The reason given for the denial was: At this time, your position was not approved as a remote work (100% telework) eligible position.

The denial of my request was based on an earlier determination that I was eligible for only routine telework. On 5/24/2022, FHEO sent an email that stated, "Upon completion of an initial assessment of the positions within our program office, we have determined that your position is eligible for the option of: routine telework. This is the maximum flexibility your position is eligible for at this time." See attachment 3. The earlier determination that I was not eligible for

remote work failed to provide me with any specific reasons related to my duties and responsibilities for my ineligibility.

By issuing both its recent denial of my request and the earlier determination about my eligibility, Management did not base its decision on objective guidelines, function-based criteria, or business needs. Instead, this was an arbitrary decision based on managerial personal preference. Management thus violated National Supplement 33, Implementation of the Department of Housing and Urban Development's (HUD's) Proposed Flexiplace Policy, to the HUD-AFGE Collective Bargaining Agreement Sections 14 and 34.

Supplement 33, Section 14, states:

Eligibility. All HUD positions and employees should normally be eligible to participate in a Flexiplace arrangement in accordance with Agency Policy, applicable regulations, and the CBA . . . The Parties agree that Flexiplace eligibility is based on objective, equitable guidelines, function-based criteria, and shall not be arbitrary and capricious . . . If an employee is determined to be ineligible, Management shall, at the time the determination is made, provide the employee in writing with the reason(s) for ineligibility.

Section 14, contrary to HUD's actions, starts with a presumption of eligibility and requires Management to make decisions based on individual situations, i.e., using function-based criteria. The fact that management made its decision without consideration of my individual duties and situation shows that the determination is, by its very nature, arbitrary and capricious.

Supplement 33, Section 34, provides:

Basis for Denial, Modification, or Termination of Remote Work Arrangement. Any decision by Management to deny, modify, or terminate a remote work arrangement must be based on business needs, misconduct, or performance, not arbitrary or capricious reasons. Management shall provide the denial/modification/termination and the reason for the action in writing. Management shall not terminate, modify, or deny a remote work arrangement as a form of punishment or managerial personal preference.

Like Section 14, Section 34 prohibits Management from denying remote work requests for arbitrary and capricious reasons. It also prohibits Management from basing remote work eligibility determinations on managerial personal preferences. Instead, it requires Management to make its decisions based on business needs, misconduct, or performance.

These two sections together require Management to apply objective, business needs-based criteria specifically related to the functions that I personally and individually perform. Management failed to apply such criteria in response to my request and failed to provide written reasons for denying my request that were objective, based on business needs, related to the functions that I perform.

The response did not provide a business reason for the denial of my request. Management's lack of any objective, business need-based reason for denying my request is especially obvious

because I successfully worked remotely for over two years during the COVID-19 pandemic. While working remotely during the pandemic, I was able to perform all my duties effectively for more than two years, as shown by the fact that I received a performance appraisal of outstanding in 2021. See attachment 4. None of my duties either then or now require me to be in a HUD office to perform them effectively. Management's decision failed to identify the agency's business needs specific to my position and the functions that I perform. Management failed to identify any specific task, duty, or assignment that can be performed only in the HUD office. Therefore, Management's decision was subjective, arbitrary, and based on managerial preference rather than on equitable and objective guidelines and business needs in violation of Supplement 33, Sections 14 and 34.

In accordance with Article 51, Section 51.01(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 and I reserve the right to grieve and raise any violation, misinterpretation, or misapplication of any provision of the HUD-AFGE Agreement, law, rule or regulation concerning my request to work remotely in any step of the grievance procedure and/or arbitration. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes to the violations of the collective bargaining agreement, law, rule, or regulation alleged for the subject matter being grieved.

Meeting: I request a meeting with the Deciding Official under Section 51.13.

Remedies: To resolve this grievance, I request from the following equitable relief remedies:

(1) Immediate reconsideration and approval of my request for remote work in accordance with Supplements 33 and 34, and a written response within the timeframes specified by and in accordance with the provisions of Supplement 33. In accordance with Supplement 33, Section 29, I request immediate approval of 9 days per pay period of telework pending approval of my remote work request.

(2) 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.

(3) Payment of the Union's attorneys' fees should the Union have to invoke and pursue arbitration for denial of this grievance pursuant to the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(ii) if I lose any pay, allowances, or differentials as a result of Management's failure to allow me to work remotely.

(4) 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.

These remedies are reasonably and proportionally related to the Supplement 33, HUD-AFGE Agreement, and statutory violations cited above and do not excessively interfere with the management rights provisions in 5 U.S.C. § 7106(a) in accordance with *U.S. Department of Justice Federal Bureau of Prisons and AFGE Local 817 Council of Prison Locals #33, 70 FLRA 398 (2018) (DOJ)*. The remedies merely seek Management's compliance with Supplement 33,

the HUD-AFGE Agreement, and statutory provisions cited above. Alternatively, should an arbitrator award the Union's remedies requested above and the Department files exception(s) with the Federal Labor Relations Authority (FLRA), the Union requests that the FLRA reconsider its existing case law precedent in *DOJ* and revert back to the abrogation test for arbitrators' authority to fashion remedies to enforce appropriate-arrangement provisions negotiated pursuant to 5 U.S.C. § 7106(b)(3) even if it affects management's rights at § 7106(a) [*Environmental Protection Agency and AFGE Council 238*, 65 FLRA 113 (2010)], and re-establish the broader discretion of arbitrators to fashion remedies even if it affects management's rights [*Federal Deposit Insurance Corporation and NTEU Chapter 273*, 65 FLRA 102 (2010)].

## Union Request for Information Pursuant to 5 U.S.C. § 7114(b)(4)

AFGE Local 476 requests that the Department of Housing and Urban Development (HUD) provide the information identified below pursuant to 5 U.S.C. § 7114(b)(4). The Union requires the information in order to fully represent Joseph Carroll, who filed a grievance on 6/27/22 related to the denial of a request for remote work.

Under 5 U.S.C. § 7114(b)(4), HUD is required to furnish to the Union “data which is normally maintained by the Agency in the regular course of business” and “reasonably available.” The Union “is entitled to information that is necessary to enable it to carry out effectively its representational responsibilities, including information which will assist it in the investigation, evaluation and processing of a grievance.” *National Labor Relations Board and National Labor Relations Board Union Local 6*, 38 FLRA 506 (November 28, 1990). The FLRA has ruled that an agency may be required to produce information that does not exist in the precise format requested, but which can be extracted from records within an agency's control. See *Department of Air Force, Sacramento Air Logistics Center, and AFGE, Local 1857*, 37 FLRA 987 (October 15, 1990). According to FLRA case law, information requested under 5 U.S.C. § 7114(b)(4) is not limited to documentation and can be in the form of describing information. See *U.S. Veterans Administration and AFGE Local 3314*, 28 FLRA 260, 261 (July 29, 1987).

1. A list of all duties that the employee named above must perform in the office and that were not performed remotely over the past two years. Please identify which, if any, of these duties require in-person interaction with customers and the reason why (e.g., to receive/provide laptops).
2. A list of people with whom the employee named above is expected to collaborate in person, and the reason that in-person collaboration is required. For each person named, please indicate the days on which they will be present in the office, and whether those days correspond to the scheduled in-office days of the employee named above.
3. A list of meetings the employee named above is expected to attend that require in-person attendance. For each meeting, please provide:
  - a. The host organization
  - b. The frequency of the meeting(s)
  - c. The purpose of the meeting
  - d. The reason that in-person attendance is required
  - e. A list of others who are expected to attend in person
  - f. Whether any arrangements will be made for virtual attendance
  - g. A list of others who may attend virtually
4. For any activities other than the physical exchange or inspection of materials, empirical evidence that supports the requirement for in-person rather than virtual collaboration or attendance.
5. A list of all personnel, including supervisors/managers, who will be present on the employee's office on the days the employee named above is scheduled to be present in the office. For each person named, please provide the person's organization, title/position, connection to the employee, a description of any interactions expected with

the employee named above, and the frequency and length of interactions by email, phone, or in person.

*Statement of Particularized Need:* The Union requires this information for the following reasons:

(1) [*Why the Union needs the requested information*]: The Union requires the requested information in order to fully investigate, evaluate, and process the employee's grievance. to support its charge that HUD violated the Parties' collective bargaining agreement, including but not limited to Supplement 33, Sections 14 and 34. The Union also requires the information in order to evaluate whether to pursue arbitration, if necessary. The Union needs the information to assess when and to what extent HUD violated its contractual obligations, to determine how to support and pursue its grievance, and, if necessary, to assess whether to arbitrate or settle the grievance. The Union also needs the documentation requested to meet its preponderance of evidence burden of proof that HUD OGC management in fact violated the Federal Service Labor-Management Relations Statute and the HUD-AFGE collective bargaining agreement as alleged in the Grievance of the Parties and possibly in arbitration. Please be advised that for a § 7114(b)(4) information request, a union is not required in its statement of particularized need to describe the exact nature of any alleged misapplication or violation of policy, procedure, law or regulation by the agency. *See Health Care Financing Administration and AFGE Local 1923*, 56 FLRA 156 (March 17, 2000).

(2) [*How its use of the information relates to the Union's representational responsibilities*]: The Union will use the information as evidence to support the employee's grievance related to HUD's violations of the collective bargaining agreement. The Union's representational responsibilities include enforcement of the collective bargaining agreement and its supplements, and protection of employee rights under those agreements, laws, rules, and regulations.

Deadline to Provide Requested Information: Please provide the requested information no later than July 5, 2022. The Union notes that it is an Unfair Labor Practice in violation of 5 U.S.C. §§ 7116(a)(1), (5) and (8) not to timely furnish documentation in response to an information request under 5 U.S.C. § 7114(b)(4), which the FLRA defines as timely to meet the Union's representational responsibilities. *See Bureau of Prisons, Lewisburg Penitentiary and AFGE Local 148*, 11 FLRA 639 (1983); *Department of Defense Dependent Schools and North Germany Area Council, Overseas Education Association*, 19 FLRA 790 (1985); and *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001). Please be advised that in *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001), the **FLRA found that the agency committed an Unfair Labor Practice even though the union submitted the information request under 5 U.S.C. § 7114(b)(4) only five days prior to the arbitration hearing and the agency provided**

**the information on the day of the arbitration hearing as it was untimely for the union to meet its representational responsibilities.**

As a reminder, the Federal Labor Relations Authority held in *National Labor Relations Board*, 38 FLRA 506, 523 (1990) (NLRB), *aff'd sub nom. NLRB v. FLRA*, 952 F.2d 523 (D.C. Cir. 1992), that § 7114(b)(4)(C) “does not exempt from disclosure guidance, advice, or counsel to management officials concerning the conditions of employment of a bargaining unit employee, for example: the personnel[] policies and practices and other matters affecting the employee's working conditions that are not specifically related to the collective bargaining process.” The FLRA reiterated that position in *Department of the Army, Army Corps of Engineers, Portland District, Portland, Oregon and United Power Trades Union*, 60 FLRA 413, 416 (2004), again stating explicitly that “Section 7114(b)(4)(C) does not exempt from disclosure guidance, advice, or counsel to management officials concerning the conditions of employment of bargaining unit employees.”

Furthermore, the Union hopes that HUD does not resort to its usual assertion that “The union has failed to establish a particularized need for the above information.” The Union has clearly articulated why the Union needs the requested information and how its use of the information relates to the Union’s representational responsibilities. As the Authority has stated: “We reject the argument that a union has failed to articulate its need with requisite specificity, where . . . the information request referenced a specific agency action and specified that the union needed the information to assess: (1) whether the agency violated established policies, and (2) whether to file a grievance, even though the union did not explain exactly how the information would enable it to determine whether to file a grievance.” *Department of Veterans Affairs, Veterans Affairs Medical Center, Decatur, Ga. and NFFE, Local 2102*, 71 FLRA 428, 430 (2019).

Finally, you are reminded of your obligation to inform the Union explicitly if any requested information does not exist.

#### Attachments

1. Remote Work Application
2. Denial
3. Eligibility Notification
4. FYI 2021 Performance Rating

CC: James Fox, HQ ELR Branch Chief