



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

June 13, 2022

MEMORANDUM FOR: Sonya Gaither, HUD Director of Employee & Labor Relations,
AHE

FROM: Ricardo Miranda, Chief Steward, Regions 1, 2 & 4
AFGE National Council of HUD Locals No. 222

SUBJECT: 5 U.S.C. § 7114(b)(4) Request for Information #1 for Unfair Labor
Practices (ULPs) and Collective Bargaining Agreement (CBA)
Violations Grievance of the Parties Concerning Preemptive
Exclusion for Remote Work Eligibility

The American Federation of Government Employees (AFGE) National Council of HUD Locals No. 222 (referred to herein as “AFGE Council 222,” “the Union,” or “the Council”) is submitting this information request to the U.S. Department of Housing and Urban Development (referred to herein as “HUD,” “the Department,” “Management,” or “the Agency”) pursuant to 5 U.S.C. § 7114(b)(4).

Standards for Provision of Information Requested under 5 U.S.C. § 7114(b)(4)

In accordance with U.S.C. § 7114(b)(4)(B), the Agency is required to furnish to the Union data, which is reasonably available and necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. The duty to provide information to a union applies not only to information needed to negotiate an agreement, but also to data relevant to its administration and the full range of a union’s representational responsibilities under the Federal Service Labor-Management Relations Statute (Statute) including bargaining, contract administration, processing a grievance, representing an employee in proposed discipline, and determining whether to file a grievance or Unfair Labor Practice (ULP). *See Department of Health and Human Services (HHS), Social Security Administration (SSA) and AFGE Local 3302, 36 FLRA 943 (1990); Federal Aviation Administration (FAA), National Air Traffic Controllers Association (NATC) et al., 55 FLRA 254, 259-60 (1999); and Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) and National Weather Service Employees Organization, MEBA, 30 FLRA 127, 141 (1987).*

The standard adopted by the U.S. Federal Labor Relations Authority (FLRA) requires a union requesting information under 5 U.S.C. § 7114(b)(4) to establish a particularized need for the

information by articulating with specificity why it needs the requested information including the uses to which the union will put the information, and the connection between those uses and the union's representational responsibilities under the Federal Service Labor-Management Relations Statute (Statute). See *Internal Revenue Service, Washington, DC, and Internal Revenue Service, Kansas City Service Center, Kansas City, MO and NTEU and NTEU, Chapter 66*, 50 FLRA 661 (1995); *VA and AFGE Local 3314*, 28 FLRA 260, 265 (1987); and *Dept. of Navy, Portsmouth Naval Shipyard and Portsmouth FEMTC*, 4 FLRA 619, 624 (1980). In *Internal Revenue Service, Washington, D.C. and Kansas City, MO*, 50 FLRA 661 (1995), Footnote 13, regarding a union's particularized need, the FLRA stated:

However, **a request need not be so specific as, for example, to require a union to reveal its strategies** or compromise the identity of potential grievants who wish anonymity. See, for example, *NLRB v. FLRA*, 952 F.2d at 530 ("Necessarily, the bargainers are not obliged to reveal their strategies[.]"); *American Federation of Government Employees, AFL-CIO v. FLRA*, 811 F.2d 769, 774 (2d Cir. 1987) (court acknowledged that protecting the identity of potential grievants is a justifiable union consideration). Moreover, **the degree of specificity required of a union must take into account the fact that, in many cases, including the one now before us, a union will not be aware of the contents of a requested document.** [emphasis added]

For a Section 7114(b)(4) information request, a union is not required in its 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).

"It is well established that under section 7114(b)(4) of the Statute the exclusive representative 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.**" [emphasis added] *National Labor Relations Board and National Labor Relations Board Union Local 6*, 38 FLRA 506 (November 28, 1990). An exclusive representative is entitled to receive information that meets the criteria of 5 U.S.C. § 7114(b)(4) in preparation for an arbitration hearing. See *Federal Aviation Administration, New England Region, Burlington, MA and National Association of Air Traffic Control Specialists*, 38 FLRA 1623 (1991); and *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001).

In accordance with FLRA case law, please be advised that an information request by a labor organization under 5 U.S.C. § 7114(b)(4) to prepare for an arbitration hearing meets the routine-use exemption at 5 U.S.C. § 552a(b)(3) for judicial and administrative proceedings for the release of documents covered by the Privacy Act. See *Department of the Air Force and NAGE, Local R7-23*, 51 FLRA 675 (December 22, 1995); *Bureau of Indian Affairs (BIA) and NFFE Council of BIA Locals*, 52 FLRA 629 (November 26, 1996); and *General Services Administration and AFGE, Local 2275*, FLRA ALJ SF-CA-00804 (November 18, 2004). The Union needs the names of any individuals contained in the documents requested and disclosed in order to be able to identify potential witnesses for direct or cross examination and rebuttal at

arbitration hearing(s) should Management deny the Union's June 8, 2022, Unfair Labor Practices (ULPs) and Collective Bargaining Agreement (CBA) violations Grievance of the Parties concerning the preemptive exclusions for remote work eligibility for the vast majority of the AFGE bargaining unit. Therefore, a less intrusive means is not available. However, the Agency may sanitize personally invasive information such as home street address, home phone number, Social Security Number, etc. contained in the documentation.

Please be further advised that pursuant to U.S. Office of Personnel Management (OPM) regulations at 5 CFR § 293.311, a federal employee's name, title, grade, occupational series, annual salary rate, awards, bonuses, position description, job elements and performance standards, and duty station are publicly available information not subject to the Privacy Act.

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." **In *Department of Justice, U.S. Immigration and Naturalization Service (INS), U.S. Border Patrol El Paso, Texas and AFGE National Border Patrol Council*, 40 FLRA 792, 804-05 (1991), the FLRA found that information was reasonably available even when the agency had to give the union 10,000 documents. 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).**

Information Requested

1. Any and all documents in whatever written format (including, but not limited to: studies, reports, surveys, complaints, emails, memoranda, letters, counseling memos, hand-written notes¹, etc.) that the Department utilized and/or relied upon to determine that any particular HUD bargaining-unit positions and employees are only eligible for routine telework. Please do not sanitize names contained in the documents.
2. A list of all of the AFGE bargaining unit positions, the names, and the number of employees that the Department determined were only eligible for routine telework for every Program Office (including, but not limited to: Public and Indian Housing (PIH), Multifamily Housing (MF), Single Family Housing (SF), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Field Policy and Management (FPM), Office of General Counsel (OGC), etc.) and each subdivision within each Program Office.
3. A list of all of the AFGE bargaining unit positions, the names, and the number of employees that the Department determined were eligible for remote work for every Program Office (including, but not limited to: Public and Indian Housing (PIH), Multifamily Housing (MF),

¹ The FLRA has also ruled that a supervisor's memory-jogger notes are releasable to a union for an information request under 5 U.S.C. § 7114(b)(4). See *Department of Health and Human Services, Social Security Administration and AFGE Local 1164*, 37 FLRA 1277 (October 29, 1990). Information about non-bargaining-unit employees is releasable under 5 U.S.C. § 7114(b)(4) for the union to carry out its representational responsibilities. See *U.S. Dept. of Air Force and AFGE Local 1857*, 37 FLRA 987 (October 15, 1990); and *Department of Labor and AFGE, National Council of Field Labor Locals*, 39 FLRA 531 (February 13, 1991).

Single Family Housing (SF), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Field Policy and Management (FPM), Office of General Counsel (OGC), etc.) and each subdivision within each Program Office.

4. A copy of the DocuSign Flexiplace application for every employee who was approved for remote work identifying the employee's name but sanitized to remove the employee's home street address and home phone number.

5. The bargaining notes² of all of Management's negotiators for National Supplement 33 for Flexiplace Policy implementation, especially the notes of HUD's scribe/note taker Human Resources Specialist, Jodi E. Doran. Please identify the names of each of Management's negotiators on their respective bargaining notes.

Particularized Need

On June 8, 2022, AFGE Council 222 filed an Unfair Labor Practices (ULPs) and collective bargaining agreement (CBA) violations Grievance of the Parties (GOP) concerning the Department's preemptive exclusions that broad groups of AFGE bargaining unit employees who constitute the vast majority of the bargaining unit are ineligible for remote work without appropriate consideration of the employees' duties, assignments, and functions and without addressing how those determinations would specifically affect the Department's business needs in violation and repudiation of multiple provisions of National Supplement 33 for the Department's implementation of Flexiplace Policy, especially the eligibility criteria and basis of denial for remote work. In the June 8, 2022, ULPs and CBA violations GOP on remote work, the Union also alleged that Management violated the Federal Service Labor-Management Relations Statute, National Supplement 34, other HUD-AFGE collective bargaining agreement (Agreement) provisions, the Telework Enhancement Act of 2010, and reserved the right to grieve and raise any other violation, misinterpretation, or misapplication of any applicable provision of the HUD-AFGE collective bargaining agreement, law, rule or regulation on the subject matter being grieved.

The Union needs Information Request #1 in order to understand how the Agency determined that the vast majority of the AFGE only qualify for routine telework but not remote work, the reasons for those determinations, and how Management's determinations comply or do not comply with

² The bargaining notes are merely documents summarizing and transcribing the parties' discussions during negotiations on each party's explanation of the meaning of their respective proposals' language. The bargaining notes are documents that concern the facts on what was discussed during bargaining and not Management's bargaining strategy for Supplement 33 negotiations per se, nor constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. This is consistent with FLRA case law in *Department of Health and Human Services (HHS), Washington, D.C., and National Treasury Employees Union (NTEU)*, 49 FLRA 61 (1994) and the Washington, D.C. Circuit Court of Appeals case law in *National Labor Relations Board (NLRB) v. Federal Labor Relations Authority (FLRA)*, 952 F.2d 523 (D.C. Cir. 1992). A document is exempt from disclosure under 5 U.S.C. Section 7114(b)(4)(C) only if it constitutes "strategic information concerning the bargaining process" for guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. *HHS, Washington, D.C., and NTEU*, 49 FLRA 61, 69 (1994); and *NLRB v. FLRA*, 952 F.2d at 530-31 (upholding the FLRA's "distinction between nonstrategic and strategic information: information about the subject of collective bargaining versus information about the bargaining itself"). The Council is not requesting any bargaining strategy documentation through this request for bargaining notes.

the eligibility criteria and basis for denial for remote work in accordance with the relevant provisions of National Supplement 33 for the Department's implementation of the Flexiplace Policy. Information Requests #2 and #3 are needed by the Council to factually prove that the Department engaged in bad-faith, surface bargaining and repudiation of the eligibility criteria and basis for denial for remote work by excluding the vast majority of AFGE bargaining unit employees from being eligible for remote work through the preemptive determination that the positions are only eligible for routine telework. The Union needs Information Requests #3 and #4 to factually verify the accuracy of the number of positions and employees approved to work remotely compared to the number of positions and employees only approved for routine telework as evidence of Management's bad-faith, surface bargaining and repudiation of the eligibility criteria and basis for denial for remote work by excluding the vast majority of AFGE bargaining unit employees from being eligible for remote work. It is necessary to disclose employees' names in Information Requests #s 1 through 4 for the Council to be able to identify possible witnesses to testify at arbitration hearing(s) if Management denies AFGE Council 222's June 8, 2022, ULPs and CBA violations Grievance of the Parties on remote work. Arbitration is the next step of the Grievance Procedures if Management denies the Grievance of the Parties in accordance with Article 51, Section 51.15(3) and Article 52, Sections 52.01 and 52.02 of the 2015 HUD-AFGE collective bargaining agreement.

The Union needs Information Request #5 to review and analyze the bargaining notes of Management's negotiators regarding the Department's understanding of the explanation and meaning of the Parties for the eligibility criteria and basis of denial for remote work language and other relevant provisions in National Supplement 33 as discussed during negotiations cited by the Council in the June 8, 2022, GOP on ULPs and CBA violations on remote work.

In sum, AFGE Council 222 needs all of the information requested above to meet its burden of proof by a preponderance of the evidence for the June 8, 2022, Unfair Labor Practices and collective bargaining agreement violations Grievance of the Parties (GOP) concerning remote work. This information requested will also be used to submit documentary evidence and identify and prepare witnesses for direct examination, cross-examination and rebuttal for arbitration hearing(s) should Management deny AFGE Council 222's June 8, 2022, GOP on remote work. Arbitration is the next step of the Grievance Procedures if Management denies the Grievance of the Parties in accordance with Article 51, Section 51.15(3) and Article 52, Sections 52.01 and 52.02 of the 2015 HUD-AFGE collective bargaining agreement. Therefore, a less intrusive means is not available to collect this information because the Union needs to be able to identify potential witnesses' names.

Deadline to Furnish the Information Requested

Please provide the information requested above in 30 days (i.e., by July 13, 2022) so that the Union has sufficient time to evaluate the evidence and meet the deadline to invoke arbitration should Management deny AFGE Council 222's June 8, 2022, June Grievance of the Parties. 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.

If HUD is not able to timely furnish the documentation for this information request under 5 U.S.C. § 7114(b)(4), then the Union requests an extension of the 25-day deadline to invoke arbitration until at least 25 days after HUD provides the information requested.

Please do not attempt to interpret any part of this request that you may not understand. If you have any questions concerning this request, or if you do not understand any part of this request, please contact me at [REDACTED] or via email at Ricardo.Miranda@hud.gov.

I appreciate your cooperation in timely processing and furnishing the information requested. Thank you in advance.

cc: Salvatore T. Viola, AFGE Council 222 President
Jerry Gross, AFGE Council 222 Steward
AFGE Council 222 Executive Board
AFGE Local Presidents at HUD