



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE
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Washington, DC 20424-0001
(202) 357-6029 FAX: (202) 482-6724

July 25, 2016

Javes Myung, Esq.
Deputy Assistant General Counsel
U.S. Department of Housing and Urban Development
451 7th Street, SW, Room 2124
Washington, DC 20410-3000

Jacob Y. Statman, Esq.
Snider and Associates, LLC
600 Reisterstown Road, 7th Floor
Baltimore, MD 21208

Re: United States Department of Housing and Urban
Development, Washington, D.C. and American
Federation of Government Employees, Council of
Locals 222, AFL-CIO
Case No. WA-CA-16-0472

Dear Parties:

Enclosed is a copy of an unfair labor practice charge that was filed in the above case. The Agent assigned to investigate this charge is: **Melissa Coward, (202) 357-6029, ext. 6024, mcoward@flra.gov**. The Agent will be in contact with you shortly to discuss the charge. Please cooperate fully with the Agent during the investigation of the charge so that we can timely complete the investigation and make a decision.

For the Charging Party:

If you are the party who filed the charge, it is important that you promptly submit your evidence to the Agent so we may begin to investigate your charge. If you have not already done so, please submit the following to the Agent by **August 4, 2016**:

1. A list of your witnesses along with their telephone and email contact information, and a summary of their expected testimony about their personal knowledge of the charge.
2. Copies of all relevant documents, with an index if the submission is lengthy.

Section 2423.4(f) of the FLRA's Regulations requires you to provide this information. If you do not hear from the Agent within a week of submitting the information requested, or should

you have any questions, please feel free to contact the Agent. We may dismiss your charge if you fail to cooperate with the Region or fail to timely submit your evidence.

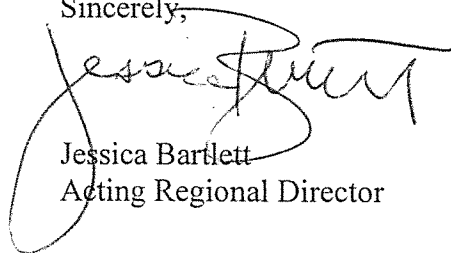
If someone other than you will be representing your party in this case, please provide the Region with the name and contact information (including email address) of your representative.

For the Charged Party:

Please review the allegations in the charge and provide the Region in writing with your position on the allegations, along with any supporting documents. You are expected to cooperate fully in the Region's investigation, and the Agent may ask you to provide additional relevant evidence and testimony concerning the matters under investigation. Should you have any questions, please contact the Agent.

If someone other than you will be representing your party in this case, please provide the Region with the name and contact information (including email address) of your representative.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Bartlett", written over a circular scribble.

Jessica Bartlett
Acting Regional Director

Enclosed: Description of Unfair Labor Practice Investigation Procedure
Notice of Designation of Representative



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
DESIGNATION OF REPRESENTATIVE

UNITED STATES DEPARTMENT OF HOUSING AND
 URBAN DEVELOPMENT
 WASHINGTON, D.C.

Charged Party

and

AMERICAN FEDERATION OF GOVERNMENT
 EMPLOYEES, COUNCIL OF LOCALS 222, AFL-CIO

Charging Party

CASE NO. WA-CA-16-0472

Fill out the information in the boxes in sections 1 and 2 below

Section 1 – Party	
Section 2 - Representative Information	
Name	Telephone No.
Title	Cell No.
Address	Fax No.
	E-mail
City State ZIP	

The person named above represents the party named in Section 1 in this case. Please serve this representative with all written communications, except for subpoenas. This designation remains effective until it is revoked or a new designation is filed.

Name (please print or type)

Signature



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST AN AGENCY

FOR FLRA USE ONLY

Case No. WA-CA-16-0472

Date Filed 7/20/16

1. AGENCY AGAINST WHICH CHARGE IS BROUGHT

a. Name of Charged Agency (include address, city, state, & ZIP)
U.S. Department of Housing & Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

b. Agency Representative (include name, title, address)
Javes Myung, Esq.
Deputy Assistant General Counsel
U.S. Department of HUD
451 7th Street, S.W.; Room 2124
Washington, D.C. 20410

tel. 202-402-5364 fax 202-401-7400

e-mail javes.myung@hud.gov

2. CHARGING PARTY

a. Name of Charging Party (include address, city, state, & ZIP)
AFGE Council of Locals, Council 222
451 7th Street, S.W.
Washington, D.C. 20410

b. Charging Party Representative (include name, title, address)
Jacob Y. Statman, Esq.
Snider & Associates, LLC
600 Reisterstown Road; 7th Floor
Baltimore, Maryland 21208

tel. 410-653-9060 fax 410-653-9061

e-mail jstatman@sniderlaw.com

3. BASIS OF THE CHARGE

a. Set forth a clear and concise statement of the facts constituting the alleged unfair labor practice, including date and location of the particular acts.
See attached detailed writeup.

b. Which subsection(s) of 5 U.S.C. 7116(a) do you believe the Agency has violated? (1) (2) (3) (4) (5) (6) (7) (8)

c. Have you or anyone else raised this matter in any other procedure? No Yes If yes, where?

- Grievance Procedure
- Equal Employment Opportunity Commission
- Other Administrative or Judicial Proceeding
- Federal Mediation and Conciliation Service
- Merit Systems Protection Board
- Negotiability Appeal to FLRA
- Federal Service Impasses Panel
- Office of Special Counsel
- Other

4. DECLARATION

I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001.

THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX 1b BY [check all appropriate boxes]

- In Person
- 1st Class Mail
- Fax
- Commercial Delivery
- Certified Mail
- e-mail (see reverse)

Jacob Y. Statman

Type or Print Your Name

Your Signature

July 20, 2016

Date

AFGE COUNCIL OF LOCALS, COUNCIL 222
v.
U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

ATTACHMENT TO FLRA Form 22

No. 3a.:

I. Background

AFGE Council of Locals, Council 222 (the "Union") is the exclusive representative of more than 90% of the union eligible workforce at the U.S. Department of Housing and Urban Development's (the "Agency" or "HUD"). In November 2002, the Union filed a class-action type grievance pursuant to the Parties' Collective Bargaining Agreement, alleging that the Agency violated numerous provisions of the CBA in its hiring processes. Specifically, the Union alleged that the Agency was hiring employees from outside the Agency, and allowed them to have higher promotion potential, than already employed individuals while at the same time requiring existing employees to take a downgrade in order to be eligible for the eventual higher position. The Union also alleged that the Agency was requiring the existing (and lower-graded) employees to train the new hires who would eventually leapfrog them in grade and pay.

The Union pursued the grievance to arbitration and has prevailed numerous times before the Arbitrator in Decisions and Awards between 2002 and the present. **Exhibit A (Timeline)**. The complete casefile is accessible at the following link:

<http://www.sniderlaw.com/pages/feCaseFile.html>

Since 2002, this case has been appealed by the Agency to the Federal Labor Relations Authority no less than six times. Many of the appeals were dismissed for untimeliness or other procedural errors by HUD. The numerous appeals, each of which take a year or longer for the FLRA to rule upon, have greatly extended the length of time this case has been pending.

Additional delay and waste has resulted from HUD's failure to make a good faith effort to settle this case, despite numerous settlement offers from the Union that would have resolved the case for much less than HUD now owes in damages.

The Arbitrator's January 2012 decision on the merits (the "Remedial Award") (*Exhibit B*) was upheld by the FLRA in August 2012. 66 FLRA 867. In that decision, the Arbitrator ruled:

That the Agency process retroactive permanent selections of all affected BUE's into currently existing career ladder positions with promotion potential to GS-13 level. Affected BUE's shall be processed into positions at the grade level which they held at the time of the violations noted in my prior findings, and (if they met time-in-grade requirements and had satisfactory performance evaluations), shall be promoted to the next career ladder grade(s) until the journeyman level. The Agency shall process such promotions within (30) thirty days, and calculate and pay affected employees all back pay and interest due since 2002.

Exhibit B.

The Arbitrator defined the class of Grievants as follows:

All Bargaining Unit employees in a position in a career ladder (including at the journeyman level), where the career ladder lead to a lower journey man grade than the journeyman (target) grade of a career ladder of a position with the same job series, which was posted between 2002 and present. These include BUE's in positions referenced in Joint Exhibits 2, 3, 4, 7G and Union Exhibits 1 and 9.

Exhibit B.

After the FLRA's August 2012 Decision, the Agency stated that it was unwilling to implement the Decision as required by the Arbitrator. Based upon the Agency's refusal, the and the Union filed an Unfair Labor Practice Charge against the Agency.

After the FLRA indicated that it was going to find an Unfair Labor Practice, the Agency finally agreed (in theory) to implement the Arbitrator's Award, and since then a series of Implementation Meetings (IMs) have been held with Arbitrator McKissick, from early 2014 and continuing to date.

At least two IMs have been “boycotted” by the Agency. First, it claimed that the Arbitrator had no jurisdiction due to a pending Request for Reconsideration (despite clear FLRA regulations contradicting that claim). More recently, HUD failed to participate in an IM since it claimed that the Arbitrator has no jurisdiction due to a pending Exception containing allegations of bias by the Arbitrator (again a claim with no merit or legal backing).

As set forth *infra*, the Union hereby files the instant ULP due to the Agency’s blatant refusal to implement the remedies and orders issued by the Arbitrator in the instant matter.

II. Summary of Implementation Meetings / Orders

After each IM, the Arbitrator issues a Summary of Implementation Meeting / Order. The Authority recently upheld the Arbitrator’s Implementation Meeting Summary 3 (upheld by the FLRA on May 22, 2015 and again on November 4, 2015), in which the Arbitrator noted that the Award covers eligible GS-1101 employees employed during the relevant damages period, and that the Agency was to retroactively promote them, with backpay and interest pursuant to the Back Pay Act. That Decision stated that all eligible GS-1101-12 bargaining unit employees are class members in this matter. (**Exhibit C; upheld: 68 FLRA 631; reconsideration denied: 69 FLRA 60**). Those rulings are final and have no further venue for appeal.

Statements made by the Agency in the course of litigating Summary 3 before the FLRA show that the Agency expected as early as late 2014 and throughout 2015 that it would have to promote thousands of employees (and, by implication, pay hundreds of millions of dollars in backpay and interest, plus emoluments). In the Agency’s October

23, 2014 Response to Order to Show Cause to the FLRA's Order to Show Cause, as well as in its June 8, 2015 Motion for Stay filed to the May 22, 2015 FLRA Decision (68 FLRA 631), the Agency represented to the FLRA that Summary 3 "establishes an absolute requirement that eligible class members are based solely upon encumbering a position in the GS-1101 series, with no related requirement to identify eligible class members." (Agency's October 23, 2014 Response to Order to Show Cause) and "absent a stay of the Authority's Order, the Agency will have to consider whether approximately 2,500 current and former GS-12 employees are entitled to a retroactive promotion..." (Agency's June 8, 2015 Motion to Stay Authority's Order). The Agency, by its own admissions and representations, is now required to promote thousands of current and former employees, and to pay those people hundreds of millions in backpay and other payments.

III. Summary of Implementation Meeting 6

On May 16, 2015, the Arbitrator issued the Summary of IM No. 6. **Exhibit D**. On February 25, 2016, the Authority upheld this Summary. **69 FLRA 213; reconsideration pending¹**.

In Summary 6, the Arbitrator ruled, amongst other things, that the Award covers all eligible GS-12 employees that encompassed any position within any of the Series listed in the remedial award and subsequent summaries during the relevant damages

¹ Section 2929.17 of the Authority's regulations are clear that a request for reconsideration and stay does not preclude to stay the effectiveness of the action of the Authority, unless so ordered by the FLRA. The Authority has not issued a stay and the Agency is required to comply with the Arbitrator's Summary and Orders.

period, and that the Agency was to retroactively promote them, with backpay and interest pursuant to the Back Pay Act. *Id.* Specifically in Summary 6 the Arbitrator found:

Applying the Union's methodology to the "listings of employees who encumbered positions in Job Series identified in the Exhibits as listed in the Award, during the relevant time frame of 2002 until 2012, and ongoing" the Union has identified a class of, at a minimum, three thousand, seven-hundred, seventy-seven (3,777) Bargaining Unit Employees. This list was provided by the Union to the Agency in September 2014 and the Agency has had ample time to review and comment upon it. The Agency has not disputed this list. Therefore, the Agency is directed to, within forty-five (45) days, retroactively promote and make whole these three thousand, seven-hundred, seventy-seven (3,777) employees that have so far been identified, back to January 18, 2002 or the earliest date of eligibility, in accordance with the findings and Analysis set forth above (i.e. after meeting minimum time in grade and fully satisfactory performance).

Exhibit D, p. 15.

In addition to the order directing the Agency to promote the impacted class members, the Arbitrator also ordered the Agency to provide the Union with certain information that had been properly requested pursuant to 5 U.S.C. §7114(b). *Id.*, p. 3. Specifically, the Arbitrator ordered:

The Agency shall produce the MSCS Announcement Listings in the same format as in its May 2014 production, for the period from the inception of the MSCS system entries (circa July 1999) until 2002, to the Union, within thirty (30) days.

Id.

IV. GS-1101 Order

On June 18, 2015, the Arbitrator issued an Order directing the retroactive promotion and back-pay of all eligible GS-1101 class members. **Exhibit E.** Specifically, the Arbitrator ordered:

The Agency is directed to promote the employees listed in the GS-1101 Union list of class members to the earliest date of eligibility or January 18, 2002 (whichever is later), in accordance with the Award and subsequent Summaries.

Exhibit E, p. 4.

The Arbitrator further ordered:

The Agency shall promote all current GS-1101-12 employees who are contained on the Union's class member list (provided to the Agency in September 2014) to

the GS-13 level, in compliance with the Award and Summaries, within thirty days (30).

Within forty-five (45) days, the Agency shall provide the Union with a list of the retroactive date of promotion and estimated back pay with interest, emoluments. For retirees, the Agency shall provide estimated backpay, interest, emoluments and revised annuity calculations. Within thirty (30) days of receipt of the Agency's estimates, the Union shall provide comments to the Agency. Within fourteen (14) days of receipt of the Union's comments, the Agency shall process all undisputed payments. Any remaining disputes shall be submitted to this Arbitrator for resolution.

Id., p. 5.

On February 25, 2016, the Arbitrator's Order was upheld by the Authority. 69 FLRA 213.

V. PHRS / CIRS Order

On June 19, 2015, the Arbitrator issued an Order directing the retroactive promotion and back-pay of all eligible Public Housing Revitalization Specialists ("PHRS") and Contractor Industrial Relations Specialists ("CIRS") class members. Exhibit F. Specifically, the Arbitrator ordered:

1. The Agency shall promote all current GS-12 employees who are contained on the attached Exhibits to the GS-13 level, in compliance with the Award, within thirty days (30) of this ORDER.
2. Within forty-five (45) days of the date of this ORDER, the Agency shall provide the Union with a list of the retroactive date of promotion and estimated back pay with interest, emoluments, for each of the employees listed on the attached Exhibits. For retirees, the Agency shall provide estimated backpay, interest, emoluments and revised annuity calculations.
3. Within thirty (30) days of receipt of the Agency's estimates, the Union shall provide comments to the Agency.
4. Within fourteen (14) days of receipt of the Union's comments, the Agency shall process all undisputed payments.
5. Any remaining disputes shall be submitted to this Arbitrator for resolution.

Exhibit F, p. 2.

On February 25, 2016, the Arbitrator's Order was upheld by the Authority. 69 FLRA 213.

VI. Non-Compliance

The Union has repeatedly inquired as to the status of the Agency's plan for implementation and compliance with the Arbitrator's Awards (i.e., Summary 6, the PHRS/CIRS Order, and the GS-1101 Order), both in emails and in phone calls. The Agency has repeatedly asserted in writing and in telephone discussions that it did not have the resources to come up with a plan to implement, nor to pay, the final and binding Award. **Exhibit D, p. 16.** Most troubling is that despite this case being active for 13 years, and the Agency being aware since 2012 that it would likely be required to pay a substantial sum in damages, the Agency has admitted that it has not reported this case as a contingent liability or as an obligation. Indeed, in the most recent FY-17 budget justification the Agency did not request funding for, **or even note the existence** of this matter.

Even more disturbing is that the Agency has been less than forthcoming not only with omissions, but with appear to be outright fabrications. The FY-17 Congressional Budget Justification states:

Attorney Fees for Program Litigation. As part of prudent planning OGC estimates that there could be approximately \$1.4 million in attorney's fees claims resulting from program litigation across the Department in 2017. For any program litigation attorney's fees, OGC would cover 10 percent, or up to \$140K in 2017, and the appropriate program office(s) would cover any remaining costs. While the Congressional Justifications **reflect HUD's expectation that it will succeed in all pending litigation**, to the extent such costs materialize, HUD anticipates the ability to pay these estimated costs from within the total requested amount for applicable accounts (emphasis added).

HUD has openly admitted that it does not have sufficient funds to pay the backpay, interest and emoluments required by the Award, nor has it requested sufficient funds from Congress. The Agency claims that it lacks sufficient resources to come up with a plan to implement the Award, yet it did not even request additional FTE's for the office tasked with implementation (OCHCO) in the FY 2017 Budget, or as a supplement to the FY 2016 Budget.

Indeed, the Agency has not even complied with the non-monetary portions of the Awards at issue. To date, the Agency has **wholly failed to implement** the awards set forth in Summary 6, the GS-1101 Order and the PHRS/CIRS Order. The Agency has not promoted any employees and has not paid any back-pay or emoluments in connection with those orders. The Agency has also not provided the MSCS data which is was required to produce pursuant to the Order in Summary 6. Finally, the Agency has not complied with **any** of the other directives included in the Awards at issue.

VII. Requested Remedy

The Union respectfully requests that a charge be issued in this matter due to the Agency's failure to implement and comply with the Arbitrator's awards. The Union requests that the Agency be required to fully and properly implement all of the actions and requirements set forth in Summary 6, the PHRS/CIRS Order, and the GS-1101 Order.

Exhibits:

- Ex. A – Timeline of Case
- Ex. B – Remedial Award
- Ex. C – Summary of Implementation Meeting No. 3
- Ex. D – Summary of Implementation Meeting No. 6
- Ex. E – GS-1101 Promotion Award
- Ex. F – PHRS/CIRS Promotion Award