

National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

December 17, 2012

Memorandum for: Jackie Mercer-Hollie, Director, ELRD

From: Carolyn Federoff, Executive Vice President, AFGE Council 222

Subject: Grievance of the Parties

Unilateral Change of Terms of HUD/AFGE Agreement at Section 13.13
with regard to career ladder promotions for field attorneys

Pursuant to the HUD/AFGE Agreement at Article 22, Section 22.15, please accept this Grievance of the Parties on behalf of AFGE Council 222. The grievance concerns Management's unilateral change in the terms of the HUD/AFGE Agreement at Article 13, Section 13.13, and its refusal to process career ladder promotions for certain field attorneys. The affected attorneys have been unreasonably denied their career ladder promotions to GS-14. As this matter involves a loss of pay, we will also be seeking any attorneys' fees we may incur in the pursuit of this matter.

On or about November 5, 2012, we learned that the Office of General Counsel unilaterally imposed an eighteen month waiting period for promotion from GS-13 to GS-14 for career attorneys in the field. (See attached electronic mail correspondence between Linda Cruciani, General Deputy General Counsel for Operations, and Carolyn Federoff, Executive Vice President, dated November 9, 5 and 2, 2012.) The HUD/AFGE Agreement at Article 13, Section 13.13, requires career ladder decisions on an employee's "anniversary date." Anniversaries are annual, or every twelve months. There is no eighteen month requirement for career ladder promotions in the HUD/AFGE Agreement.

Management does not have the right to unilaterally change the HUD/AFGE Agreement. Management has violated the HUD/AFGE Agreement at: Article 13, Section 13.13; Article 5, Sections 5.01, 5.02, and 5.04; and Article 4, Sections 4.01, and 4.03. Moreover, Management has violated the law at 5 U.S.C. Section 7116(a) at subsections (1), (5), (7) and (8).

The affected attorneys have been harmed by the delay in their career ladder promotions, including a loss of pay, future delays in Step Increases, and loss of opportunity to apply for positions that include the attainment of grade GS-14 as a minimum qualification.

The Union has been harmed by Management's unilateral change in the parties' collective bargaining agreement without notice and an opportunity to bargain.

As relief, the Union seeks retroactive promotion and pay with interest for all affected employees. This includes all attorneys who have served in their positions at least 12 months at GS-13, but who were not promoted timely to GS-14. As this matter involves back pay, we further seek any and all attorneys' fees that may be incurred in pursuit of this matter. Finally, we seek any other relief as may be just.

Pursuant to the HUD/AFGE Agreement at Article 22, Section 22.15(2), we seek to meet within twenty days to discuss informal resolution of this matter. I may be reached at 617/994-8264. I will be on annual leave from December 24-January 1. Otherwise, I am available at your convenience.

Attachment

cc: AFGE Council 222 Executive Board
Dorothy Crow-Willard, Alternate RVP, Region 8
Mark Matulef, Steward, AFGE Local 476

Federoff, Carolyn

From: Federoff, Carolyn
Sent: Friday, November 09, 2012 5:05 PM
To: Cruciani, Linda M
Subject: RE: Request for Information: OGC Reorganization Implementation

Linda,

At no point in our negotiations did you mention an 18 month time in grade requirement. However, out of concern that I may have missed a management proposal, I went back and looked at the materials provided in the Article 5 notice, attached. There is no mention in the Article 5 notice of a change in the time in grade requirement.

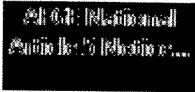
In searching through earlier materials, I have found a reference to an 18 month time in grade requirement in the materials sent by you to Karen Newton Cole on April 16, 2012. That memorandum, however, was not part of the Article 5 notice. Moreover, even if it were, a notice of a change in working conditions cannot, in and of itself, change the terms of the main contract. The parties would have to mutually agree to the change.

The fact that you have a Supplement with a Local is of no concern to me. You don't have an agreement with the Council.

As for the information provided, we both know that the agency did not process the reassignments by September 9. Your decision to provide the "effective date" is an effort to obfuscate the facts.

When does the bad faith end?

Carolyn Federoff, EVP
AFGE Council 222
617/994-8264



From: Cruciani, Linda M
Sent: Friday, November 09, 2012 4:45 PM
To: Federoff, Carolyn
Cc: Mesewicz, Norman; Mercer-Hollie, Jacqueline; Crowwillard, Dorothy C; Matulef, Mark L; Reynolds, James M; Griggs, Kiara B; Kelly, Sinthea; Eitches, Edward E
Subject: RE: Request for Information: OGC Reorganization Implementation

Addendum to below.

I was incorrect. We have found an agreement between AFGE Local 476 and HUD, dated November 1, 1989, that establishes an 18 month period for promotion from a 13 to a 14.

From: Cruciani, Linda M
Sent: Friday, November 09, 2012 1:12 PM
To: Federoff, Carolyn
Cc: Mesewicz, Norman; Mercer-Hollie, Jacqueline; Crowwillard, Dorothy C; Matulef, Mark L; Reynolds, James M; Griggs,

Kiara B; Kelly, Sinthea; Eitches, Edward E

Subject: RE: Request for Information: OGC Reorganization Implementation

Carolyn,

Attached is a revised Excel chart with the additional information that you requested. Please note that for OGC attorneys, who were hired as legal honors, their anniversary dates are at the end of August. At the end of their legal honors year, they are reassigned from the law clerk position description to an attorney position description on the first pay period after their anniversary date. This may be the source of confusion about dates in columns D and G. At this point, if you have questions about the information in the chart, I recommend that we discuss them.

The 18 month time-in-grade requirement for OGC attorneys from the GS-905-13 to the GS-905-14 has been an OGC practice since OGC established the headquarters attorney career ladder at the GS-905-12/13/14 levels, in 1989. Both Mark and Eddie can confirm the 18 month time-in-grade requirement. We researched our records and do not have documentation of an agreement with Local 476 on this issue. We do have a 1989 memorandum from General Counsel Keating on the topic of the attorney career ladder.

One of the main drivers for OGC's most reorganization was to put the field attorneys on a level playing field with the headquarters attorneys. I discussed this during our negotiations. At one point in the negotiations, I stated that the time-in-grade for promotion from the GS-905-13 to the GS-905-14 in OGC is 18 months.

I hope this information helps,
Linda

<< File: UNION REQUEST FOR INFORMATION UPDATED (2).xlsx >>

From: Federoff, Carolyn

Sent: Monday, November 05, 2012 6:00 PM

To: Cruciani, Linda M

Cc: Mesewicz, Norman; Mercer-Hollie, Jacqueline; Crowwillard, Dorothy C; Matulef, Mark L; Reynolds, James M; Griggs, Kiara B; Kelly, Sinthea

Subject: RE: Request for Information: OGC Reorganization Implementation

Linda,

Your email raises a new issue, regarding time in grade requirements for career ladder promotions. But before I go to that issue, I want to return to the issue that I was exploring through this request for information.

The agency response to the request for information is incomplete. During bargaining, you argued strenuously that the agency could not bargain beyond September 7 because the agency had to process the promotions of GS-13 attorneys to GS-14 by September 9. I am looking for data that shows when the agency reassigned attorneys to the new PDs and processed the promotions for each GS-13 Bargaining Unit attorney. Thus, I asked for:

Since September 6, 2012, please provide the date of any change in position description (PD), the PD number assigned, the employee's grade and step upon reassignment, and, if applicable, the date, PD number, grade and step for any subsequent change:

The information provided does not include the date the PD changed. Please advise the date that the reassignment was processed. If the reassignment was made retroactive, please provide both the date the reassignment was processed and its effective date.

As to the new issue raised in your email, the Article 5 notice provided by the agency did not propose any changes to Article 13, Section 13.13 of the HUD/AFGE Agreement. The Supplement does not make any changes to Article 13, Section 13.13. Section 13.13 does not provide for an 18 month time in grade requirement for attorneys progressing from GS-13 to GS-14. The agency may have a "special" agreement with Local 476. But the Council is not a party to that agreement.

If the agency wanted to change the HUD/AFGE Agreement, it should have proposed it during negotiations and set forth the change in the Supplement. As it stands, there is no agreement with the Council to change Section 13.13 as it applies to attorneys.

Please process the attorney career ladder promotions in accordance with the HUD/AFGE Agreement at Section 13.13.

Thank you for your attention to both the request for information and the career ladder promotions. If there is a problem with one or both of these matters, please advise me by November 14, 2012.

Carolyn Federoff, EVP
AFGE Council 222
617/994-8264

From: Cruciani, Linda M
Sent: Friday, November 02, 2012 4:57 PM
To: Federoff, Carolyn
Cc: Mesewicz, Norman; Mercer-Hollie, Jacqueline; Crowwillard, Dorothy C; Matulef, Mark L; Reynolds, James M; Griggs, Kiara B; Kelly, Sinthea
Subject: RE: Request for Information: OGC Reorganization Implementation

Carolyn,

We provided employees' dates of last Within Grade Increase wherever this information was available; HIRTS no longer provides a date of last step increase in instances where a grade promotion has occurred more recently, so for those impacted employees we provided a date of last grade promotion unless we could otherwise source the step increase date.

The date of last Within Grade Increase is reflected for Noel Miller – he received his last step increase on 8/26, then received his grade increase on 9/9 with the reorganization. Our office sourced his date of last step increase from a HIRTS print out we had before his 9/9 grade promotion went into effect, so we provided the information you requested.

The date of last grade promotion is reflected for Susanna Mitchell, William Edwards, and Diana Crespo-Caballero. Diana's grade promotion was the result of the reorganization; William and Susanna are now on a higher grade career ladder as a result of the reorganization, but have not served the required 18 months in grade to move to a GS-14. The attorney career ladder in HQ has always required 18 months as a GS-13 as a prerequisite for a career ladder promotion to GS-14.

Hope this clears it up,
Linda

From: Federoff, Carolyn
Sent: Friday, November 02, 2012 9:14 AM
To: Cruciani, Linda M
Cc: Mesewicz, Norman; Mercer-Hollie, Jacqueline; Crowwillard, Dorothy C; Matulef, Mark L; Reynolds, James M; Griggs, Kiara B; Kelly, Sinthea
Subject: RE: Request for Information: OGC Reorganization Implementation

Linda,

Thank you for providing the requested information in a timely manner. I have a question about what column E means ("Date of Last WIG or Promotion" below):

LOCATION	NAME	POSITION TITLE PRIOR TO 09/06/12	GRADE PRIOR TO 09/06/12	D O
HARTFORD	MILLER, NOEL	ATTORNEY-ADVISOR	GS-13/5	8/
NEW YORK	MITCHELL, SUSANNA	ATTORNEY-ADVISOR	GS-12/1	8/
NEWARK	CRESPO-CABALLERO, DIANA	ATTORNEY-ADVISOR	GS-13/7	9/
PHILADELPHIA	EDWARDS, WILLIAM	ATTORNEY-ADVISOR	GS-12/1	8/

Does this mean that Noel Miller was promoted to GS 14 Step 2 on August 26, 2012?

Thank you for helping me understand the information better.

Carolyn Federoff, EVP
AFGE Council 222
617/994-8264

From: Cruciani, Linda M
Sent: Friday, November 02, 2012 8:36 AM
To: Federoff, Carolyn
Cc: Mesewicz, Norman; Mercer-Hollie, Jacqueline; Crowwillard, Dorothy C; Matulef, Mark L; Reynolds, James M; Griggs, Kiara B; Kelly, Sinthea
Subject: RE: Request for Information: OGC Reorganization Implementation

<< File: UNION - REQUEST FOR INFORMATION 10 26 2012.xlsx >>

As requested, please see attached Excel spreadsheet. If you need to discuss any of the information or have any concerns, I am available at the end of next week. I will be out of the office Monday and Tuesday and have been swamped with Sandy issues in NYC and Newark.

Thank you,
Linda

From: Federoff, Carolyn
Sent: Wednesday, October 17, 2012 8:53 AM
To: Cruciani, Linda M
Cc: Mesewicz, Norman; Mercer-Hollie, Jacqueline; Crowwillard, Dorothy C; Matulef, Mark L
Subject: Request for Information: OGC Reorganization Implementation

Linda,

Pursuant to 5 U.S.C. Section 7114, we are seeking information regarding the status of implementation of the OGC reorganization. We are investigating compliance with the Article 5 Notice and statements made by Management during negotiations, as well as compliance with the HUD/AFGE Agreement. Please provide this information at your earliest convenience, but in no event more than 20 days from this request. If the agency is unable or unwilling to provide any of the requested information, please advise as soon as possible.

Thank you for your attention to this request. If you have questions, please contact me at 617/994-8264.

Carolyn Federoff, EVP
AFGE Council 222
617/994-8264

For the following employees, please provide the employee's grade and step prior to September 6, 2012, and the date of their last step increase. For employees at Step 1, please substitute the date of assignment to their grade. Since September 6, 2012, please provide the date of any change in position description (PD), the PD number assigned, the employee's grade and step upon reassignment, and, if applicable, the date, PD number, grade and step for any subsequent change:

Noel Miller
Susanna Mitchell
Dianna Caballero
William Edwards
Kevin Nilsson
Amber Mohr
Daniel Behrend
Mary Browder
Elizabeth Hirko
Sylloris Lampkin
Monica Yoma Awin
Jonathan Anderson
Erin Reis
Jessica Shapiro
Jamie Wershale
Sorella Jacobs
Michael Berke
Kim Harris
Anyjo Smith-Conroy
Matthew Towey
Alison Flowers
J. Timothy Edmunds
Heather Johns
Amy Schwarz
S. Charles Sorenson, Jr.
Brian Surratt
Elizabeth Cypers
Jesse Loper
Melissa Pingley