



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

January 24, 2013

MEMORANDUM FOR: Jackie Mercer-Hollie, Director
HUD Employee and Labor Relations Division

FROM: Ricardo Miranda, Assistant Chief Steward
AFGE National Council of HUD Locals #222

SUBJECT: Grievance of the Parties concerning workload

In accordance with Article 22, Section 22.01(2) and (3) and Section 22.15(1) of the HUD-AFGE Council 222 Agreement (Agreement), I am filing this Grievance of the Parties (GOP) with you. This GOP concerns HUD's continuing condition/violation of the Agreement when it failed to fairly and equitably distribute workload and notify and bargain the impact and implementation of workload redistribution and reassignment at all HUD Field Offices and Headquarters for all Program Offices due to retirements, lack of backfilling of positions, and workload increases and imbalances between offices. The FLRA has previously held that an agency has an obligation to notify and bargain the impact and implementation of the redistribution of workload due to the downsizing of headquarters and field office staff through attrition because of the reasonably foreseeable effects on employees' performance appraisals. *See EEOC and National Council of EEOC Locals, No. 216, AFGE, 40 FLRA 1147 (May 30, 1991)*. The FLRA has found that a union's proposals were negotiable appropriate arrangements when an agency increased workload for the same duties of a position. *See AFGE Local 1367 and the U.S. Dept. of Air Force, Lackland Air Force Base, 64 FLRA 869 (2010)*. The FLRA has also ruled that an agency is required to bargain the impact and implementation of new work assignments. *See U.S. Department of the Air Force and AFGE Local 2924, 64 FLRA 85 (September 28, 2009)*.

The Agreement at Article 22, Section 22.01(2) and (3), Section 22.05(17), and the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7103(a)(9)(B) and (C) say that the Union may file a grievance concerning any matter related to the employment of any employee and concerning any effects, interpretation or claimed breach or violation of the collective bargaining agreement, law, rule or regulation, which includes agency handbooks, policies, and practices. The Union may file a continuing condition/violation GOP at any time pursuant to Article 22, Section 22.15(1) of the Agreement.

Because of its failure to fairly and equitably distribute workload and notify and bargain the impact and implementation of workload distribution with AFGE Council 222, HUD violated the Agreement, including, but not limited to, the Preamble, Article 3 and Sections 3.01 and 3.02, Article 4 and Section 4.01, Article 5 and Sections 5.01, 5.02 and 5.03, Article 26, Article 34, etc. Pursuant to Article 22, Section 22.01(2) and (3) of the Agreement and the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7103(a)(9)(B) and (C), the Union reserves its right to raise in this GOP any additional violations of the contract, law, rule, regulation, agency handbook, policies, and practices related to the continuing condition/violation of failure to fairly and equitably distribute workload and notify and bargain the impact and implementation of workload distribution with the Council.

In accordance with 5 U.S.C. § 7116(d), this Grievance of the Parties also includes that the Department failed to bargain in good faith and committed an Unfair Labor Practice in violation of Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7116(a)(1) and (5) when it failed to notify AFGE Council 222 to bargain the impact and implementation of workload redistribution, increases and new work assignments.

Please note that the Union excludes from this Grievance of the Parties the Multifamily Housing workload sharing pilot program in the HUD Field Offices of Minneapolis, Detroit, Chicago, Kansas City and Fort Worth effective January 21, 2013 through May 2013.

Should the Department claim that workload distribution concerns management's rights to assign work, hire and budget, and, therefore, that this issue is not grievable, please be advised that the management rights provisions of 5 U.S.C. § 7106 do not provide a basis for determining that a grievance is not arbitrable. *See AFGE Local 1045 and VAMC Biloxi*, 64 FLRA 520 (2010). Conversely, a grievance is arbitrable despite even a successful claim that the resultant award infringes on management's rights. As the FLRA explained in *DHS, Customs & Border Protection Agency and AFGE Local 1917*, 61 FLRA 72, 75 (2005):

CBP's management's rights arbitrability exceptions are misplaced because they ignore applicable Authority precedent. The Authority has consistently held that the management's rights provisions of Section 7106 of the Statute do not provide a basis for finding grievances non-arbitrable. *See, e.g., United States Dep't of the Navy, Pac. Missile Test Ctr., Point Mugu, Cal.*, 43 FLRA 157, 159 (1991); *United States Information Agency*, 32 FLRA 739, 748-49 (1988); *Newark Air Force Station*, 30 FLRA 616, 631-35 (1987) (*Newark*); *Marine Corps Logistics Support Base, Pac., Barstow, Cal.*, 3 FLRA 397, 398-99 (1980) (*Barstow*). As the Authority stated in *Newark*: The proper phase of the arbitration proceeding in which to determine the impact or application of Section 7106 is not at the outset so as to preclude by law an arbitrator from having jurisdiction over the matter. Rather, the determination as to the impact or application of Section 7106 is to be made in connection with the arbitrator's consideration of the substantive issue presented by the grievance and any possible remedy. *Newark*, 30 FLRA at 634. See also *Barstow*, 3 FLRA at 399 (nothing in Section 7106 precludes an arbitrator

from reaching the merits of a grievance alleging violations of provisions of the collective bargaining agreement). Consequently, insofar as CBP's exceptions contend that the grievance in this case is not arbitrable based on management's rights under Section 7106 of the Statute, the exceptions do not provide a basis for finding the award deficient.

Meeting

AFGE Council 222 is **not** requesting a meeting with you for informal resolution pursuant to Article 22, Section 22.15(2) of the Agreement.

Remedy

- (1) Agency shall backfill all positions of retirees;
- (2) Management shall request more Full Tim Equivalent bargaining-unit positions and funding from Congress;
- (3) Agency shall conduct a baseline workload study of what constitutes a full and fair workload for each bargaining-unit position in every program office in all field offices and Headquarters;
- (4) Move Headquarters personnel resources to the field offices or shift field work to Headquarters employees;
- (5) Program offices with small workloads per employee shall receive workload from offices with large workloads to balance out workload throughout the nation;
- (6) Automatic higher performance appraisals for employees who perform their duties for high workloads;
- (7) Additional and temporary promotions for higher workloads; and
- (8) Any other remedy available to the fullest extent of the law.

Response

In accordance with Article 22, Section 22.15(3) of the Agreement, please provide your written response within 30 days of receipt of this GOP.

cc:

Eddie Eitches, AFGE Council 222 President

Carolyn Federoff, AFGE Council 222 Executive Vice President

Perry Casper, AFGE Council 222 Chief Steward & Region 10 Regional Vice President

Melanie Hertel, AFGE Council 222 Region 10 Regional Vice President Alternate