



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

March 15, 2013

MEMORANDUM FOR: John E. Anderson, Senior Advisor, AHC
HUD Employee and Labor Relations Division

Ricardo Miranda

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

SUBJECT: Request for Information #1 for National Workload Grievance of
the Parties

The AFGE National Council of HUD Locals, Council No. 222 (referred to herein as “the Council,” “AFGE Council 222” or “the Union”) 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. Section 7114(b)(4).

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 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); Dept. of Navy, Portsmouth Naval Shipyard and Portsmouth FEMTC, 4 FLRA 619, 624 (1980).* A particularized need statement does not have to be so specific as to require a union to reveal its strategy or the identity of potential grievants. *See Internal Revenue Service, Kansas City, 50 FLRA 661 (1995).*

Particularized Need

On January 24, 2013, the Council filed a Grievance of the Parties (GOP) concerning HUD's continuing condition/violation of the HUD-AFGE Council 222 Agreement (“Agreement”) when it failed to fairly and equitably distribute workload and notify and bargain the impact and implementation of workload redistribution/reassignment and new work assignments 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). In accordance with 5 U.S.C. § 7116(d), the Grievance of the Parties also included 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.

To date, the Department has not provided a response to the Union's January 24, 2013 Grievance of the Parties. Therefore, the Council will be invoking arbitration in accordance with Article 22, Sections 22.06(3) and (4) and 22.15(3), and Article 23, Sections 23.01 and 23.02 of the Agreement.

"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 under 5 U.S.C. § 7114(b)(4) in preparation for an arbitration hearing. *See Federal Aviation Administration, New England Region and National Association of Air Traffic Specialists*, 38 FLRA 1623 (1991).

The information requested below is needed by the Union in order to prepare for and submit documentary evidence at an arbitration hearing that the Department violated the Agreement and committed an Unfair Labor Practice when it failed to fairly and equitably distribute workload and notify and bargain the impact and implementation of workload redistribution/reassignments and new work assignments 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. Please note that the Council is requesting information for the most recent three Fiscal Years (FY 2011, 2012, and 2013) to submit evidence that the Agency has a pattern of downsizing employees by attrition without notifying and bargaining with the Union and that workload is not being redistributed fairly and equitably over time in violation of the Agreement and the Federal Service Labor-Management Relations Statute. Information Item #1 requested below is needed to show that there is a pattern that the number of bargaining-unit employees is decreasing over the most recent three Fiscal Years. The Union needs Information Item #2 requested below in order to interview bargaining-unit employees for witness preparation to prove that the Department is assigning new duties outside of their position descriptions when co-workers retire, which would require notification and

bargaining with the Union in accordance with *U.S. Department of the Air Force and AFGE Local 2924*, 64 FLRA 85 (September 28, 2009). Information Item #3 requested below is needed to prove that there are significant workload imbalances between the Field Offices and Headquarters for employees with the same positions (title and grade) with some offices having much smaller workloads and others having much greater workloads, which is not treating employees fairly and equitably in violation of Article 4, Section 4.01 of the Agreement. The Council needs Information Items #4, #5 and #6 requested below to be able to identify the names, titles and grades of retirees, total number of retirees, specific and total vacancy announcements, names, titles, grades, and total number of employees hired from the vacancy announcements, and to correlate these names, titles, grades, and numbers of retirees and employees hired with the bargaining-unit employee lists in Information Item #1 below to be able to show a pattern of downsizing of bargaining-unit employees through attrition by not backfilling all of the positions (title and grade) of retirees over the three most recent Fiscal Years. Information Items #7 and #8 of Article 5 Notifications and resulting National and Local Supplements are needed to determine whether or not management has been notifying the Council and AFGE Locals at HUD to bargain the impact and implementation of workload redistribution/reassignment and new work assignments at all HUD Field Offices and Headquarters for all Program Offices due to retirements, lack of backfilling of positions (title and grade), workload increases, or imbalances between offices.

All of the information requested below will be utilized to show that at minimum the Agency violated the Preamble, Article 3, Sections 3.01 and 3.02, Article 4, Section 4.01 and Article 5, Sections 5.01, 5.02 and 5.03 of the Agreement and the Federal Service Labor-Management Relations Statute (Statute), which require the Department to treat employees fairly and equitably and bargain the impact and implementation of changes in conditions of employment as a result of the exercise of management rights. The information will be used to prepare for and submit evidence for an arbitration hearing that the Department violated the Agreement and the Statute.

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 of the Privacy Act at 5 U.S.C. § 552a(b)(3) for the release of documents for administrative hearings. *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 disclosed in order to be able to identify potential witnesses for direct or cross examination and rebuttal at the arbitration hearing. Therefore, a less intrusive means is not available. In any event, none of the documentation requested below is covered by the Privacy Act. Consistent with U.S. Office of Personnel Management (OPM) regulations at 5 CFR § 293.311, employees' names, present and past position titles, grades, salaries, position descriptions, and duty stations are publicly available information not subject to the Privacy Act.

Information Requested

Therefore, the Council requests the following information, including any documentation in paper, electronic and other form justifying the requested information:

1. A numbered list of all HUD bargaining-unit employees in Headquarters and all Field Offices for every Program Office (including, but not limited to: Public and Indian Housing (PIH), Housing (Single Family and Multifamily), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Office of General Counsel, Policy Development and Research (PD&R), Office of Chief Financial Officer, Office of Chief Information Officer, etc.) identifying employees' names, title, grade, duty station (Headquarters or specific Field Office), and Program Office for Fiscal Years 2011, 2012 and 2013.
2. A copy of all current or most recent position descriptions for all HUD bargaining-unit positions in Headquarters and all Field Offices for every Program Office (including, but not limited to: Public and Indian Housing (PIH), Housing (Single Family and Multifamily), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Office of General Counsel, Policy Development and Research (PD&R), Office of Chief Financial Officer, Office of Chief Information Officer, etc.).
3. A numbered list of all HUD bargaining-unit employees' workload distribution/grantee assignments/responsibilities in Headquarters and all Field Offices for every Program Office (including, but not limited to: Public and Indian Housing (PIH), Housing (Single Family and Multifamily), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Office of General Counsel, Policy Development and Research (PD&R), Office of Chief Financial Officer, Office of Chief Information Officer, etc.) identifying employees' names, title, grade, duty station (Headquarters or specific Field Office), and Program Office for Fiscal Years 2011, 2012, and 2013.
4. A numbered list of all retirees identifying the former bargaining-unit employees' names, title, grade, duty station (Headquarters or specific Field Office), and Program Office (including, but not limited to: Public and Indian Housing (PIH), Housing (Single Family and Multifamily), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Office of General Counsel, Policy Development and Research (PD&R), Office of Chief Financial Officer, Office of Chief Information Officer, etc.) for Fiscal Years 2011, 2012 and 2013.
5. A copy of all HUD bargaining-unit position vacancy announcements for Fiscal Years 2011, 2012 and 2013 showing position title, Program Office (including, but not limited to: Public and Indian Housing (PIH), Housing (Single Family and Multifamily), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Office of General Counsel, Policy Development and Research (PD&R), Office of Chief Financial Officer, Office of Chief Information Officer, etc.), duty station (Headquarters or specific Field Office), and grade level(s).

6. A numbered list of the names of the bargaining-unit employees hired for all HUD bargaining-unit position vacancy announcements for Fiscal Years 2011, 2012 and 2013 identifying the Vacancy Announcement Number, title, Program Office (including, but not limited to: Public and Indian Housing (PIH), Housing (Single Family and Multifamily), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Office of General Counsel, Policy Development and Research (PD&R), Office of Chief Financial Officer, Office of Chief Information Officer, etc.), duty station (Headquarters or specific Field Office), and grade level(s).
7. Excluding the Program Office of 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, all Article 5 Notifications provided to AFGE Council 222 and any AFGE Locals at HUD in Fiscal Years 2011, 2012, and 2013 regarding workload redistribution/reassignment and new work assignments at all HUD Field Offices and Headquarters for all Program Offices (including, but not limited to: Public and Indian Housing (PIH), Housing (Single Family and Multifamily), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Office of General Counsel, Policy Development and Research (PD&R), Office of Chief Financial Officer, Office of Chief Information Officer, etc.) due to retirements, lack of backfilling of positions, workload increases, or imbalances between offices.
8. Excluding the Program Office of 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, all National and Local Supplements in Fiscal Years 2011, 2012 and 2013 resulting from management Article 5 Notifications provided to AFGE Council 222 and any AFGE Locals at HUD in Fiscal Years 2011, 2012, and 2013 regarding workload redistribution/reassignment and new work assignments at all HUD Field Offices and Headquarters for all Program Offices (including, but not limited to: Public and Indian Housing (PIH), Housing (Single Family and Multifamily), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO), Office of General Counsel, Policy Development and Research (PD&R), Office of Chief Financial Officer, Office of Chief Information Officer, etc.) due to retirements, lack of backfilling of positions, workload increases, or imbalances between offices.

This information is normally maintained by HUD in its regular course business. The information is reasonably available and accessible and is necessary in order to prepare for and present evidence for the arbitration hearing. AFGE Council 222 has established the right to such information to fulfill its representational duties towards its bargaining-unit employees.

The FLRA has held 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).*

The Union requests that the above specified information be furnished within 20 workdays so that the Union can timely prepare for and submit the information requested as evidence for the arbitration hearing. According to FLRA case law, an agency must furnish information requested timely so that a union can effectively carry out its representational responsibilities; otherwise, the agency commits an Unfair Labor Practice (5 U.S.C. § 7116(a)(1), (5) and (8)). See *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001); *Department of Defense Dependent Schools and North Germany Area Council, Overseas Education Association*, 19 FLRA 790 (1985); and, *Bureau of Prisons, Lewisburg Penitentiary and AFGE Local 148*, 11 FLRA 639 (1983).

If this request is denied, in whole or in part, please state in writing the name, position title, and grade of the official making the decision, and the statutory, regulatory, or contractual citation it is based upon.

If the Agency is unable to fulfill any request in full, please fulfill it in non-objectionable part, and articulate any denial in detail and/or the Agency's interest in non-disclosure at the time that it denies the request for information. See *U.S. Department of Justice, Immigration and Naturalization Service, Northern Region, Twin Cities, Minnesota*, 51 FLRA 1467, 1473 (1996), *reconsideration denied*, 52 FLRA 1323 (1997), *aff'd*, 144 F.3d 90 (1998); *IRS-Kansas City*, 50 FLRA at 670 (1995).

If you have any further questions regarding this memo, please contact me at (787) 274-5883 or (787) 766-5400 ext. 2121. Thank you in advance for providing this information.

cc:
Jackie Mercer-Hollie
Perry Casper
Sal Viola
Melanie Hertel