



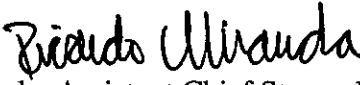
National Council of HUD Locals

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

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

SUBJECT: Request for Information #2 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 the arbitration hearing concerning the January 24, 2013 national workload Grievance of the Parties described above. The information requested will be utilized to analyze the evidence in the possession of HUD to justify the Agency's position for this arbitration case that the Department did not violate the Agreement nor commit an Unfair Labor Practice regarding workload distribution at all HUD Field Office and Headquarters for all Program Offices; that the Agency had no bargaining obligation concerning workload redistribution/reassignments and new work assignments due to retirements, vacant positions, and workload increases and imbalances between offices. The information requested below will also be used to research and prepare counterevidence documentation, and rebuttal testimony for the arbitration hearing that HUD management indeed 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.

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.

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 Requested

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

1. Any and all documents (in whatever written format including, but not limited to: handbooks, policies, regulations, emails, deleted emails, memos, lists, spreadsheets, budgets, letters, hand-written notes, etc.) that HUD intends to enter into evidence at the arbitration hearing concerning the national workload arbitration case described above.
2. Any and all documents (in whatever written format including, but not limited to: handbooks, policies, regulations, emails, deleted emails, memos, lists, spreadsheets, budgets, letters, hand-written notes, etc.) that HUD is considering entering into evidence at the arbitration hearing concerning the national workload arbitration case described above.
3. Any and all documents (in whatever written format including, but not limited to: handbooks, policies, regulations, case law, emails, deleted emails, memos, lists, spreadsheets, budgets, letters, hand-written notes, etc.) that HUD obtains or becomes aware of after providing the information requested in #1 and #2 above, that HUD intends to or is considering entering into evidence at the arbitration hearing concerning the national workload arbitration case described above. Please provide the documentation for item #3 prior to the arbitration hearing.

Consistent with *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001), please provide the information requested at least 5 calendar days prior to the arbitration hearing.

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