



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

July 30, 2018

MEMORANDUM FOR: Towanda Brooks, Chief Human Capital Officer
Joseph Sullivan, Director, Employee and Labor Relations

FROM: Ashaki Robinson Johns, Executive Vice President
AFGE National Council of HUD Locals #222

SUBJECT: Grievance of the Parties: Failure to Provide Data in 7114 (b)(4)
Information Request

Pursuant to Article 51 of the Collective Bargaining Agreement between the Council of HUD Locals 222, AFGE, AFL-CIO and the U.S. Department of Housing and Urban Development, please be advised that this is a Grievance of the Parties (GOP). This GOP concerns the Department of Housing and Urban Development's (the Agency's) violation of statutory and contractual provisions, unfair labor practices and other violations of Federal law, which requires management to fulfill an information request that has shown a particularized need. The Union further maintains that management's attempt to withhold this information on matters relevant to Ground Rules negotiations for impending term bargaining is an unfair labor practice and violation of Management's duty to bargain in good faith. The Agency failed and refused to furnish data requested by AFGE Council 222 which is normally maintained by the agency in the regular course of business which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of ground rules.

Background

On June 19 and June 26, 2018 AFGE Council 222 ("Union") submitted a 5 U.S.C. 7114(b) information request in order to assist in the crafting of proposals for Ground Rules negotiations which commenced on June 19 – June 21, 2018. Specifically, the Union requested:

1. Any and all ground rules negotiated with non-AFGE bargaining units which provide for the payment of any travel and/or per diem of bargaining, including over grounds rules; and
2. Any and all HUD documents, policies, memorandum case law, instruction, correspondence or position papers regarding anticipated budget allocations for FY 2018 and 2019, including but not limited to projected reductions, allocations and reorganizations resulting from budget changes; and

3. All financial/budgetary information regarding actual expenditures/costs incurred by HUD's Office of Employee and Labor Relations over the past five fiscal years, as well as budget amounts for the current and preceding fiscal year; and
4. All financial/budgetary information regarding any/all current and projected negotiations with the Union (term and mid-term). The data on actual (and budgeted) expenditures should include dollar amounts by detailed category, including bargaining unit and non-bargaining unit employee salaries and benefits, travel costs, etc. A budgetary breakdown for each member of the Management Negotiating Team is also requested.
5. Any and all contracts, including costs and terms of engagement, for consultants, advisors, assistants, and support during negotiations and Ground Rules preparation; and
6. The number of management HUD staff that were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time)
7. The number of non-HUD staff that were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time if federal employees, approximate salary for non-Federal employees; and
8. The number of staff hours (HUD, Federal, Non-Federal) utilized to craft Management's initial Ground Rules proposals, including the number of months it took to complete the proposals, and the number of hours spent each week during that time period by each staff member participating in the preparation of Management's initial Ground Rules proposals.

On June 21, 2018 Katherine Hannah, Employee and Labor Relations Specialist and management's Chief Negotiator for the Ground Rules Negotiations responded that the Union had "not made a particularized need that would obligate the U.S. Department of Housing and Urban development (HUD) to provide the requested information".¹ In addition, she stated that the data request did not articulate a relationship between the information requested and the Department's Ground Rules proposals.

On June 26, 2018 the Union revised the information request, reiterating the initial data request with the following particularized need:

"The Union is requesting this information so that it can draft proposals, perform a cost analysis and allow it to understand the context in which the proposals were made and consider making concessions it would be unable to make absent evidence supporting the proposal"

On June 29, 2018, the Agency responded to the Union's revised information requests enumerated in 1-8 above with the following responses:

1. The Union has not articulated a particularized need for the scope of the information being requested, both with regard to the time period covered (all time periods?) and the need for information concerning employees represented by other labor unions. Further, the Union has not explained the relationship between final agreements reached by the Department with it or other unions and Union's ability to respond to the Department's initial proposals in our current ground rules negotiations.

¹ This statement was made for requests 1-5. Requests 6-8 were presented by the Union on June 26, 2018.

2. It is not clear how data related to the Department's budget planning process is related to the Union's ability to respond to a proposal that you pay your own costs. As such, the Union has failed to articulate a particularized need for the data requested.
 3. No explanation has been provided concerning the relationship between the data requested and the Union's representational functions. Specifically, the Union does not explain why the Department's previous expenditures for an office with responsibilities that include term bargaining and many other activities would be necessary for the Union to conduct a cost analysis for its own expenses in the upcoming term negotiations. This is another example of the Union's failure to state a particularized need for the data sought, including the scope of data requested.
 4. The Union has failed to state a particularized need for the data requested. Specifically, you have not explained a need for the full scope of the data requested as it pertains to mid-term bargaining and non-bargaining unit employees. Notwithstanding that deficiency, if you provide a list of names and dates for the Union's negotiators and travelers, the Department would be happy to query our systems for that information.
- 5– 8 For requests 5, 6, 7 and 8 above the Agency stated that information related to non-bargaining unit employees and the Union has not explained its needs for that information.

On July 12, 2018 the Union submitted another information request with a particularized need stated for each request or group of requests as well as well as articulating a relationship between the information requested and the Department's Ground Rules proposals. The Union stated:

“In order for to determine what is fair and equitable for the Union to pay its own expenses the union needs to know the facts relied upon by management to arrive at this determination. The union is aware that Management paid for the travel expenses for 1 (one) person from the Fort Worth Texas office during the first week for Ground Rules Negotiations. The union is also aware that at least 3 members of the term negotiation team were brought into the Washington, DC headquarters during the week of July 9th for preparatory work for term negotiations. In addition, the union is aware that in the past that the Agency has always paid the travel expenses and per diem of union and non-headquarters-based agency negotiators. Management’s position that it is fair for the union to pay its own expensive, is conclusory and does not provide any facts upon which this conclusion was based. The Union needs the requested information to formulate a proposal that considers agency resources, present expenditures by the agency and past expenditures by the agency in order to formulate a counterproposal.”

In addition, the Union reiterated that:

“The Union is requesting this information so that it can draft proposals, perform a cost analysis and allow it to understand the context in which the proposals were made and consider making concessions it would be unable to make absent evidence supporting the proposal. The use of the information is connected to the Unions representation of employees within Ground Rules and Term negotiations with the Agency. The Union will utilize the information received to craft proposals and counterproposals to the Agency’s initial proposal for Ground Rules negotiations.”

1. Any and all ground rules negotiated with non-AFGE bargaining units which provide for the payment of any travel and/or per diem of bargaining, including over ground rules; and

Particularized need: The other non-AFGE union serves similarly situated bargaining unit employees. The Union needs to know if the Agency is treating all HUD unions similarly, fairly and equitably in order to craft proposals relevant to travel related costs.

2. Any and all HUD documents, policies, memorandum, case law, instruction, correspondence or position papers regarding anticipated budget allocations for FY 2018 and 2019, including but not limited to projected reductions, allocations, and reorganizations resulting from budget changes; and

Particularized need: The Union needs to know if the anticipated budget allocations are similar to the resources of the Union so as to determine if the proposal to cover only non-management negotiators is fair and equitable as purported by the Agency. As such, information regarding projected reductions, allocations and reorganizations that would allow the Agency to allocate additional resources to negotiations is essential.

3. Information directly impacting the costs of bargaining, including but not limited to:

All financial/budgetary information regarding actual expenditures/costs incurred by HUD's Office of Employee and Labor Relations over the past five (5) fiscal years, as well as budgeted amounts for the current and preceding fiscal year;

Particularized need: The Union needs to know if the anticipated budget allocations are similar to the resources of the Union so as to determine if the Management proposal to cover only non-management negotiators is fair and equitable as purported by the Agency. The Agency has purported that to split the costs between the parties would be fair and equitable.

4. All financial/budgetary information regarding any/all current and projected term negotiations with the Union. The data on actual (and budgeted) expenditures should include dollar amounts by detailed category, including bargaining unit and non-bargaining unit employee salaries and benefits, travel costs, etc. A budgetary breakdown for each member of the Management Negotiating Team is also requested;

Particularized need: The Union needs to know if the anticipated budget allocations are similar to the resources of the Union so as to determine if the proposal to cover only non-management negotiators is fair and equitable as purported by the Agency

5. Any and all contracts, including costs and terms of engagement, for consultants, advisors, assistants, and support during negotiations and Ground Rules preparation.
6. The number of management HUD staff were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time)
7. The number of non-HUD staff were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time if federal employees, approximate salary for non-Federal employees)
8. How many staff hours (HUD, Federal, Non-Federal) were utilized to craft Management's initial Ground Rules proposals and what was the time frame (separated by number of weeks and staff)?

Particularized need: The Agency proposed that Union negotiators receiving official time to craft counter proposals as well as prepare for FMCS or FSIP proceedings shall not be granted more than 20 hours per pay period of official time (Management Ground Rules #1 5G). The Union needs the above information to determine if it is equitable or fair for the Agency to only pay the non-union negotiator time as it proposes. This determination cannot be made without disclosure of the above information.

On July 18, 2018, the Agency responded to the Union's revised information requests enumerated in 1-8 above with the following responses:

1. The Agency stated that in a meeting between the Union and Management the Union agreed that we did not need the information and therefore the current request was made in bad faith. However, Ms. Hannah is conflating two different requests. At the July 10, 2018 meeting we discussed the July 5, 2018 request ("Union Negotiation Timeframes") and not the request made on June 26, 2018. Therefore, the Union was not in fact acting in bad faith and Ms. Hannah did not address the requests in 1 above nor was data provided.
2. The Agency stated that the Union is able to assess whether the Department's proposal if "fair" without the data requested and that it did not articulate why the information sought was necessary for the purpose stated.
3. The Union has not established a need for the scope for the data requested. In addition, Ms. Hannah states that the Union already has sufficient information to evaluate the Department's stated reasons for the proposals and prepare counters without additional data.
4. The requested data is not necessary for the Union to formulate counterproposals as it has sufficient information to evaluate the Department's stated reasons for the proposals and prepare counters without additional data.
- 5-7 For requests 5, 6, and 7 the Agency states that the requested information related to non-bargaining unit employees and the Union has not explained its needs for this information.
8. The Union should be able to formulate a counter to the Department's proposal. The Union has not articulated a particularized need for the data sought, which concerns non-bargaining unit employees.

Statutory and Contractual Violations

In accordance with 5 U.S.C. § 7116(d), this Grievance of the Parties also includes a claim 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), (5) and (8) in addition to 5 U.S.C. § 7114 (b)(4) by refusing to provide information relevant and needed regarding term negotiation costs with AFGE Council 222. In addition, the Agency violated the Preamble when it failed and refused to provide adequate information expeditiously to the Union representative that was not prohibited by law and failed to make a good-faith effort to resolve issues associated with the Union's data request.

The Agency violated Article 1, "*Coverage and Recognition*" when it failed and refused to provide to the sole and exclusive representative for all bargaining unit employees, data that is reasonably

available and necessary for full and proper discussion, understanding, and negotiation of ground rules. As a result of the Agency's violation, the Union's ability to act for and negotiate ground rules is hampered which consequently impacts its ability to fulfill its statutory obligation to represent all the employees in the bargaining unit. By the Agency's refusal to honor its statutory obligation to provide data, the Agency's practice violates the parties Collective Bargaining Agreement.

The Agency violated Article 4, "*Rights and Obligations of the Parties*," when it violated 5 U.S.C 7114(b) to provide data that is reasonably available and necessary for full and proper discussion, understanding, and negotiation of ground rules. The Collective Bargaining Agreement requires that the parties be governed by existing laws and the Agency's refusal to provide the data is a violation of the statute. The Agency's actions affected the statutory authority of 5 U.S.C. 7106 with its refusal to provide data that impacts the Union's ability to bargain procedures and appropriate arrangements which flows from the bargaining of ground rules.

The Agency violated Article 6, "*Employee Rights / Standards of Conduct*," when it limited and impaired the statutory and legal rights of the exclusive representative to receive data that is reasonably available and necessary for full and proper discussion, understanding, and negotiation of ground rules.

The Agency is in violation of all applicable articles of the Collective Bargaining Agreement and Chapter 71, of the Federal Service Labor-Management Relations Statute.

Meeting

AFGE Council 222 is **not** requesting a meeting for informal resolution pursuant to Article 51.15 (2) of the Agreement.

Remedy

1. Immediate provision of all information requested that is reasonably available and necessary for full and proper discussion, understanding and negotiation of ground rules;
2. That the Agency satisfy its bargaining responsibilities in accordance with the Statute and Collective Bargaining Agreement;
3. Attorneys' fees related to the preparation and conduct of the arbitration, as well as the full costs of the arbitration, including but not limited to, arbitrator's fees and the travel expenses and per diem of Union witnesses who traveled to the arbitration site to testify;
4. Any other remedy available to the fullest extent of the law.

Response

In accordance with Article 51, Section 51.15(3) of the Agreement, please provide your written response within 30 days of receipt of this GOP.