



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

August 29, 2018

Ashaki Robinson Johns  
Executive Vice President  
AFGE Council 222 of HUD Locals  
451 7<sup>th</sup> St., S.W.  
Washington, D.C. 20410

*By email only to [Ashaki.Robinson-Johns@hud.gov](mailto:Ashaki.Robinson-Johns@hud.gov)*

Dear Dr. Robinson-Johns:

This responds to your July 30, 2018 correspondence on a Grievance of the Parties filed by the National Council of HUD Locals, American Federation of Government Employees, Council 222, AFL-CIO's (Union) titled "Grievance of the Parties: Failure to Provide Data in 7114(b)(4) Information Request." The grievance indicates that the Union is not requesting a meeting under Article 51.15(2).

In addition to various factual assertions, the grievance alleges the Department of Housing and Urban Development (Agency) violated "5 U.S.C. §7116(a)(1), (5), and (8) in addition to 5 U.S.C. §7114(b) by refusing to provide information relevant and needed regarding term negotiation costs with AFGE Council 222." The grievance further alleges violations of the Preamble; Article 1, "Coverage and Recognition;" Article 4, "Rights and Obligations of the Parties;" and Article 6, "Employee Rights/Standards of Conduct" of the parties' collective bargaining agreement. For the reasons set forth below, the grievance is denied in its entirety. The requested remedies are also denied, except for Remedy 2, which requests that "the Agency satisfy its bargaining responsibilities in accordance with the Statute and the Collective Bargaining Agreement." As demonstrated herein and from its other conduct with regard to the parties' ongoing negotiations, the Agency has satisfied these responsibilities and will continue to do so.

**I. The Agency Has Not Committed an Unfair Labor Practice**

Between June 19 and July 12,<sup>1</sup> the Union submitted thirteen data requests seeking extensive amounts of information. Much of the data requested was unnecessary, and it appears that the Union submitted its voluminous data requests in an effort to delay negotiations. A portion of three of the thirteen requests (certain paragraphs of the data request submitted on June 19, certain paragraphs of one of three data requests submitted on June 26, and the data request submitted on July 12) are at issue in this grievance. The Agency responded to each of the Union's data requests promptly, thoroughly, and completely. At the Union's request, the parties set aside the week of July 9, 2018 to resolve all outstanding issues related to the data requests. The parties met for that purpose on July

---

<sup>1</sup> All dates herein are 2018 unless otherwise indicated.

10, 2018.<sup>2</sup> The Agency provided the Union with all of the data to which it was entitled under the Federal Service Labor-Management Relations Statute (Statute), and in some instances the Agency voluntarily provided additional information.

*1. Request for ground rules negotiated with non-AFGE bargaining units*

On June 26, the Agency provided the Union with the previous ground rules negotiated with AFGE. The Union has not established a need for ground rules agreements negotiated with non-AFGE unions. The Union also acknowledges in its grievance that in the July 10 meeting, it agreed it did not need the ground rules agreements HUD negotiated with other unions. However, the grievance claims the agreement reached on July 10 pertained to one of the Union's numerous other data requests, and that it continues to seek the ground rules negotiated with other unions in response to its July 12 request. The Agency responded to the July 12 request on July 18. The grievance claims that the July 18 response did not address this request. In fact, the Agency's response did address the request for ground rules agreements with other labor unions. The Union has not established a need for the scope of the data being requested, both with regard to the time period covered and the need for information concerning employees represented by other labor unions. As a result, the Union is not entitled to this data under the Statute.

*2. Request for anticipated budget allocations*

The Union's requests submitted on June 19, June 26, and July 12 seek the following data:

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

The Agency's response to this request was first provided on June 21. That response noted that the Union's request did not establish a particularized need for the information, but rather relied upon a misstatement suggesting that the Department indicated to the Union that it was not offering to pay the Union's expenses because it could not afford to do so. On June 29, the Agency again declined to provide the requested data, noting that the Union had not established that data concerning the Department's budget planning process was necessary for the Union to respond to a proposal that it pay its own costs. Most recently, on July 18, the Agency responded to the Union's latest request for the data and noted that the Union is able to assess whether the Department's proposal that each party pay its own travel and related expenses for term negotiations is "fair" without the data requested. The Union has not articulated why the information sought is necessary for the purpose stated. Furthermore, if the Union were to submit a proposal that would prescribe an amount to be allocated in the agency's budget for a particular purpose, that proposal would interfere with management's right to determine its budget under 5 U.S.C. 7106. The Union is not entitled to this information under the Statute.

---

<sup>2</sup> The Agency had also offered to meet for this purpose on June 27, June 28, July 2, July 3, July 5, and July 6, 2018. The earliest date the Union agreed to meet was July 10, 2018, and the parties met on that day.

3. *Request for actual expenditures incurred by HUD's Office of Employee and Labor Relations over the past five fiscal years, and budget amounts for the current and preceding fiscal year*

When initially requested on June 19, the Union sought this information for the past two fiscal years. The Agency's responded to that request on June 21. The response noted that the Union's request did not establish a particularized need for the information, but rather relied upon a misstatement suggesting that the Department indicated to the Union that it was not offering to pay the Union's expenses because it could not afford to do so. On June 26, the Union expanded its request to cover the past five fiscal years. No explanation was provided to support a need for three additional years of information. The Agency responded to the June 26 request on June 29. This response noted that the request did 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. The Union has not established a particularized need for the data sought, including the scope of data requested, and therefore is not entitled to the information under the Statute.

4. *All financial and budgetary information regarding any and all current and projected negotiations*

Initially submitted on June 19, this request seeks the following information:

All financial/budgetary information regarding any/all current and projected negotiations with the Union [(term and mid-term)<sup>3</sup>].<sup>4</sup> 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.

The Agency's response to this request was first provided on June 21. That response noted that the Union's request did not establish a particularized need for the information, but rather relied upon a misstatement suggesting that the Department indicated to the Union that it was not offering to pay the Union's expenses because it could not afford to do so. On June 29, the Agency responded to the Union's June 26 version of this request, and informed the Union of the following:

Here, 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.

---

<sup>3</sup> In its June 26 version of this request, the Union added "(term and mid-term)" where indicated.

<sup>4</sup> In its July 12 version of this request, the Union limited it to term negotiations.

The Union never provided a list of names and dates for the Agency to query its systems as offered. Instead, the Union resubmitted its request on July 12. That version dropped the request for data related to mid-term bargaining but was otherwise unchanged. The Agency responded on July 18, as follows.

This request has been modified from similar requests previously submitted by the Union in that it has been narrowed from seeking data related to both term and mid-term negotiations with the Union to now seeking only data related to term negotiations. The other deficiencies previously identified by the Department have not been addressed. It is also unclear which of management's proposals is being referenced in the statement of need, ". . . proposal to cover only non-management negotiators." If this is intended to reference the Department's proposal that each party directly pay the costs of its own negotiators' travel expenses, then the requested data is not necessary for the Union to formulate counterproposals. As noted in my June 29, 2018 response, the Department has not proposed that the Union pay the expenses of any non-bargaining unit employees. The Union already has sufficient information to evaluate the Department's stated reasons for the proposals and prepare counters without additional data.

The Union has not established a particularized need for the data sought, including the scope of data requested, and therefore is not entitled to the information under the Statute.

*5. Requests concerning non-bargaining unit employees*

The Union's June 19 request sought, among other things:

- a. Any and all contracts, including costs and terms of engagement, for consultants, advisors, assistants, and support during negotiations.

The Agency responded on June 21. That response noted that the Union's request did not establish a particularized need for the information, but rather relied upon a misstatement suggesting that the Department indicated to the Union that it was not offering to pay the Union's expenses because it could not afford to do so. On June 26, the Union submitted a new version of this request, among other requests submitted on that date. The new version included the same request related to contracts, shown above in paragraph (a), and also sought the following information that is identified in the grievance:

- b. The number of management HUD staff [that] were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time);
- c. 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
- d. 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 29, the Agency responded to these four items concerning non-bargaining unit employees as follows:

The data requested in paragraphs (f)(iii), (f)(iv), (f)(v), and (f)(vi) concerns information related to non-bargaining unit employees and the Union has not explained its need for this information. As you know, the Department has not proposed that the Union pay for any expenses of non-bargaining unit employees.

On July 10, the Agency and Union met for the purpose of resolving outstanding issues related to the data requests. In the discussion, the Agency informed the Union that time spent by management officials on negotiations was not tracked using a timekeeping code. On July 12, the Union resubmitted its data request for these four categories of information related to non-bargaining unit employees. For the items shown above in items (a), (b), and (c), the Union did not provide any statement of particularized need. For item (d), above, the Union stated its needs were the following:

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, the Agency responded to the requests shown above in paragraphs (a), (b), and (c) as follows:

Consistent with the responses previously provided on June 21, 2018 and June 29, 2018, the requested information concerns information related to non-bargaining unit employees and the Union has not explained its need for this information. As you know, the Department has not proposed that the Union pay for any expenses of any non-bargaining unit employee.

Also on July 18, the Agency provided the following response to the Union's updated statement of need for the information shown above in paragraph (d):

The statement of need provided, quoted above, does not accurately reflect management's initial proposal 5(G). That proposal seeks to limit the amount of "official time" granted under 5 U.S.C. § 7131(d) for preparation time or travel to no more than twenty-five percent of an employee's total workhours in any pay period (normally 20 hours). Official time of this type is paid by the Department, and so it not clear what the Union means by saying that the Department proposes "to only pay the non-union negotiator time." Nonetheless, the Union should be able to anticipate its own needs for preparation time, and thus has sufficient information already 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.

The Union has not established a particularized need for the data sought concerning non-bargaining unit employees and therefore is not entitled to the information under the Statute.

6. *The Agency has not violated the Statute as alleged*

As detailed above, the Agency has responded promptly, thoroughly, and completely to all of the Union's many data requests. The grievance alleges the Agency violated 5 U.S.C. §7114(b)(4) and 5 U.S.C. 7116(a)(1), (5), and (8), "by refusing to provide information relevant and needed regarding term negotiation costs with AFGE Council 222." No such violations have occurred. These grievance allegations, and related requested remedies, are denied in their entirety.

The Agency has provided the Union with all the information to which it is entitled. Federal Labor Relations Authority precedent requires a union to establish a "particularized need" for data requested under 5 U.S.C. §7114(b)(4). This standard requires more than a showing of relevance or that the requested information would be helpful to the Union's purpose. Rather, the information must be necessary in order for the Union to carry out a representational function. As detailed above, the Union has not established a particularized need for the items identified in the grievance. Furthermore, the Union has not provided any statement of need whatsoever for the items quoted above in paragraph 5(b), (c), and (d). Even assuming, for the sake of argument, that the Union could show it had established a particularized need for some of the information requested and identified in the grievance (which it has not), since AFGE did not establish a need for all of the information requested, the Agency was not required to provide any of it. *United States DOL, Wash., D.C. 51 FLRA 462, 476 (1995)*.

## **II. The Agency Has Not Violated the Collective Bargaining Agreement**

In addition to the statutory allegations addressed above; the grievance claims the Agency violated the collective bargaining agreement, and specifically the preamble; Article 1, "Coverage and Recognition;" Article 4, "Rights and Obligations of the Parties;" and Article 6, "Employee Rights/Standards of Conduct" when it declined to provide the information requested. As an initial matter, each of the data requests at issue in the grievance (submitted June 19, June 26, and July 12) clearly stated that they were seeking information under 5 U.S.C. 7114(b) and made no reference to any request being made under the provisions of the CBA. The specific contractual allegations are addressed in the order presented.

1. *Preamble*

The grievance claims 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."

In considering this argument, which was raised for the first time in the grievance, it is apparent that the referenced section of the Preamble contains an unattributed quotation from Executive Order 13522, "Creating Labor-Management Forums to Improve Delivery of Government

Services,” Section 3(a)(ii).<sup>5</sup> The Preamble’s provisions are limited to activities occurring within labor-management forums. The Union’s data requests arise from ground rules negotiations for a new term contract and are unrelated to any activities occurring within a labor-management forum. Accordingly, the Preamble does not apply to the requests at issue in the grievance. Even assuming, for the sake of argument, that it did apply, the Preamble does not entitle the Union to the information addressed in its grievance. The Agency has provided the Union with “adequate” information, as described in the Preamble, in relation to the ground rules negotiations. This allegation is denied.

2. *Article 1, “Coverage and Recognition”*

The grievance does not identify any section of Article 1 that is alleged to have been violated. Article 1 does not contain any provisions concerning information requests. This allegation is denied.

3. *Article 4, “Rights and Obligations of the Parties”*

In this grievance allegation, the Union states that Article 4 provides for the parties to be governed by existing laws and claims that the Agency’s refusal to provide data is a violation of the Statute. Accordingly, I understand this allegation to be that if the Agency violated the Statute in its response to the data requests, then there would be a derivative violation of Article 4, Section 4.01, of the CBA. The previous section of this grievance response makes clear that no statutory violation has occurred. Accordingly, this allegation is denied.

4. *Article 6, “Employee Rights/Standards of Conduct”*

The Union alleges the Agency violated Article 6, “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.” Article 6 is inapplicable to the stated allegation. The only section of Article 6 pertaining to data is Section 6.09(5), concerning when the Union may receive copies of employee standards of conduct and waivers thereof. This section is wholly inapplicable to the allegations in the grievance. This allegation is denied.

**III. The Requested Remedies Are Inappropriate**

The first remedy requested seeks, “Immediate provision of all information requested that is reasonably available and necessary for full and proper discussion, understanding and negotiation of ground rules.” As demonstrated above, none of the information at issue in the grievance is necessary for these purposes. Accordingly, this remedy is denied. The second remedy requested asks that “the Agency satisfy its bargaining responsibilities in accordance with the Statute and the Collective Bargaining Agreement.” As demonstrated herein and from its other conduct related to the parties’ ongoing negotiations, the Agency has satisfied these responsibilities and will continue to do so. The third remedy requested is for attorney fees related to the preparation and conduct of the arbitration, as well as the full costs of the arbitration. This request for attorney fees does not meet the criteria for reimbursement under the Back Pay Act or any other waiver of sovereign immunity applicable to

---

<sup>5</sup> Executive Order (E.O.) 13522 was revoked by E.O. 13812 on September 29, 2017.

the Agency in this case. This aspect of the request is denied. Payment of costs for the arbitration is addressed in the collective bargaining agreement, at Section 52.04. No such costs exist, and this request is denied. Finally, the grievance seeks any other remedy available. This request is too vague to warrant a specific response and is denied.

#### **IV. Conclusion**

For all the reasons stated above, the grievance and requested remedies are denied, except for Remedy 2, which requests that “the Agency satisfy its bargaining responsibilities in accordance with the Statute and the Collective Bargaining Agreement.” As demonstrated herein and from its other conduct with regard to the parties’ ongoing negotiations, the Agency has satisfied these responsibilities and will continue to do so. You may contact me should you wish to discuss this case further.

Sincerely,



Katherine Hannah  
Employee and Labor Relations Specialist