July 18, 2018

Holly Salamido
President
AFGE Council 222 of HUD Locals
451 7th St., S.W.
Washington, D.C. 20410

By email only to Holly.Salamido@hud.gov

Dear Ms. Salamido:

On June 14, 2018, the Agency provided the union a mid-term proposal to amend Article 48 of the parties' agreement. Specifically, the proposal addressed the union's continued use of government space and resources. On June 18, 2018, the union submitted a grievance concerning the proposal.

The grievance filed June 18, 2018, concerning the union's continued use of government space is denied in its entirety. The Agency has not violated the CBA, committed any unfair labor practice or any other violation of federal law. The Agency made a completely permissible mid-term proposal on June 14, 2018. The Agency withdrew the proposal pursuant to an agreement with AFGE on July 11, 2018. In addition to being groundless the grievance is moot.

I. Allegation of CBA Violations

The union alleges that the Agency violated Articles 53.05 and Article 49.01. Article 53.05 of the CBA reads "During the term of this agreement, either party may propose negotiations to re-open, amend or modify this agreement. Such negotiations may only be conducted by mutual agreement of the parties, an in accordance with Article 49 Mid Term Bargaining provisions." On June 14, 2018, the Agency made a proposal to amend Article 48 of the CBA. Article 53.05 fully provides for either party to make such proposals to amend the CBA. Nothing about the proposal had the effect of reopening the CBA without the union's consent. The union has produced no evidence that the contract was re-opened without the mutual consent of the parties. Therefore, no violation of Article 53.05 has occurred.

Article 49.01 reads in part, "The rights and obligations of the parties regarding Mid-Term Bargaining shall be in accordance with 5 USC Chapter 71 and this Agreement." The union alleges that the proposal violated this provision because it somehow violated "5 USC 71 as well as other provisions of the CBA." The union does not indicate what about the proposal specifically violated 5 USC 71 or any other provisions of the CBA. No such violations have occurred.

II. Allegation of Unfair Labor Practice Charges

The union makes several unfair labor practice claims.

First, the union claims that it is an unfair labor practice to submit a mid-term bargaining proposal on a matter that is 'covered by' the current agreement. The union provided no basis for this theory. As described above, the CBA Article 53.05 fully contemplates the parties offering mid-term proposal that seek to amend the existing contract. The union submits mid-term bargaining proposals that are 'covered by' the existing agreement on a regular basis. It is the agency's view that ordinarily proposals that are 'covered by' an existing agreement constitute a permissive subject of bargain and not an unfair labor practice. The Agency is not aware of any reason why this midterm 'covered by' proposal would be an unfair labor practice.

Second, the union alleges that "the agency sought to engage in illegal parallel and piecemeal bargaining by simultaneously trying to negotiate 'covered by' matters while the new CBA negotiations were underway." It is the Agency's view that piecemeal bargaining refers to the practice of insisting on negotiating a CBA through multiple individual proposals rather than as a single effort. The June 14, 2018, proposal was made during the life of the existing CBA and was proposed to take effect during the life of the existing CBA, it is therefore a mid-term proposal and is in no way parallel or piecemeal bargaining. It is simply a midterm proposal as provided for in Article 53.05 of the CBA.

Third, the union alleges that the Agency committed an unfair labor practice by "attempting and threatening to take away Union office space …" The union errs in calling a valid mid-term proposal a "threat." The union may not like the proposal and they are free to decline to bargain or counter with their own proposals, but it does not constitute an unfair labor practice to make a proposal to amend a CBA.

Fourth, the union alleges that the Agency committed an unfair labor practice when it "interfered in internal Union business, including but not limited to, dictating who the union could choose to negotiate the term CBA, by scheduling illegal parallel negotiations, and stating that other Union officials, less skilled in bargaining could handle the parallel negations." As stated above the Agency does not view its mid-term bargaining proposal as illegal parallel bargaining. No Agency official made any attempt to state who the union should have represent them in any negotiation. No Agency official made any reference to the skill level of any union official. Presumably, the union's theory is that if two negotiations are scheduled to occur simultaneously the union would not be able to have the same person present for both negotiations and therefore their choice of who to have present has been 'dictated' to them. This theory is flawed for several reasons. First, AFGE Council 222 has over 100 representatives receiving taxpayer funded union time. For the union to claim that they are unable to handle two negotiations simultaneously is either false or an indication of a severely inefficient labor organization, in either event scheduling two negotiations for the same time is not an unfair labor practice. Second, nothing about the June 14, 2018, proposal sought to schedule a bargaining session for a particular time. The union had the flexibility to schedule the term renegotiation sessions and the bargaining of the mid-term proposals at separate times. Notably, if the union had demanded to bargain and followed the timeframes in Article 49, negotiations over the June 14th proposal would have begun on or before July 10, 2018. The union and the Agency did not meet for ground rules negotiations during that week, nor did they meet during the weeks immediately before or after that date. The Agency made no attempt to interfere with any internal union business.

Fifth, the union alleges that it is an unfair labor practice to "take away facilities and space necessary to fulfill its statutory representational duties to bargaining unit employees." The Agency is not aware of any statute requiring the agency to provide facilities or space to a union. On the contrary Executive Order 13837 forbids offering labor unions free or discounted use of government space and resources. However, even in the absence of the Executive Order, it is not an unfair labor practice to propose to cease providing free or discounted use of government resources to a union.

Sixth, the union alleges that the Agency committed an unfair labor practice by offering free space to a fitness center, day care and HUD employee groups while attempting to charge the union for the use of space. First, nothing in the Agency's proposals sought to charge the union for the use of space, the proposal was for the union to vacate government space. Second, the Agency is not aware of government space being designated for the use of any HUD employee group other than unions. Third, the fitness center and day care are not staffed by HUD employees and are provided for the benefit of all HUD employees.

Seventh, the union alleges the Agency sought to prohibit meetings with union representatives and employees they represent without express prior permission of the Agency. The Agency sought no such thing. This is presumably, a misreading of a portion of the mid-term proposals that permitted the union to use government space for meetings on an as needed basis, with permission, when it did not negatively impact the Agency; as opposed to continuing to provide the union with permanent office space. Had the union met with the Agency to discuss the proposal, this misunderstanding could have been explained or the union could have countered with language they thought was clearer. In any event, no unfair labor practice has been committed.

Eighth, the union alleges that it was unfair labor practice for the Agency to seek to reopen the contract without the union's consent. As explained above the offering of a mid-term proposal in accordance with Article 53.05 does not constitute an attempt to re-open the contract without the union's consent.

Ninth, the union alleges that the agency committed an unfair labor practice by "repudiating the CBA and refusing the abide by the negotiated terms of the agreement." The union does not identify what provision of the contract they allege was repudiated or that the Agency failed to abide by. The Agency is aware of no term that has been repudiated or that was not abided by.

III. Mootness

As described above the union's grievance is without merit. It is also moot as the proposal upon which it is based was withdrawn on July 11, 2018.

First, the union requests a withdrawal of the June 14, 2018, notice. The notice was in fact withdrawn on July 11, 2018.

Second, the union requests an acknowledgment that the Agency will honor the CBA. The Agency is always dedicated to honoring valid commitments.

Third, the union seeks attorney fees. No attorney fees should have been generated in this case. It is unnecessary to incur fees merely to be the recipient of a mid-term bargaining proposal. In

addition, the union has not identified any waiver of sovereign immunity applicable to the agency in this case that would provide for the payment of attorney fees.

Fourth, the union seeks any other remedy available. This is too vague to respond to.

IV. Conclusion

On June 14, 2018, the Union received a valid mid-term proposal that they did not like. Rather than offer counters or engage in any discussion they offered a grievance that alleged two contractual violations and nine unfair labor practices. All the allegations are without merit. The Agency was well within its rights to offer the June 14, 2018, mid-term proposal. The union sought four remedies, one of which has been provided and the remainder of which would not be appropriately granted, for the reasons set forth above.

Sincerely,

Sonya Gaither

Sonya Gaither
Deputy Director, Employee & Labor Relations