




National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

February 11, 2022

MEMORANDUM FOR: James M. Fox, HUD Headquarters Branch Chief, Employee and Labor Relations Division, A
Lori A. Michalski, HUD Chief Human Capital Officer

FROM: 
Ricardo Miranda, Chief Negotiator, Flexiplace Policy
AFGE National Council of HUD Locals No. 222

SUBJECT: Grievance of the Parties (GOP) for Unfair Labor Practice (ULP) and HUD-AFGE Agreement contract violations for Flexiplace Policy Negotiations

Subject Matter of the Grievance of the Parties

Pursuant to Article 51, Sections 51.01(2), 51.01(3), 51.04, and 51.15 of the 2015 HUD-AFGE Agreement (Agreement, collective bargaining agreement, or CBA) and the Federal Service Labor-Management Relations Statute (Statute) at 5 U.S.C. § 7103(a)(9)(B) and (C), 5 U.S.C. § 7121(b)(1)(C)(I)¹, and 5 U.S.C. § 7116(d)², I am filing this Grievance of the Parties (GOP) with you on behalf of AFGE National Council of HUD Locals No. 222 (AFGE Council 222, Council, or Union) concerning the U.S. Department of Housing and Urban Development's (HUD, the Department, the Agency, or Management) failure to timely furnish to the Union information requested on January 26, 2022 under 5 U.S.C. § 7114(b)(4) (attached as Exhibit 1) needed to

¹ The AFGE National Council of HUD Locals No. 222 (AFGE Council 222 or Union) has a statutory right to file a grievance on behalf of all affected bargaining-unit employees in accordance with 5 U.S.C. § 7103(a)(9)(B) and (C) and 5 U.S.C. § 7121(b)(1)(C)(I). See *United States Department of the Army, White Sands Missile Range, White Sands Missile Range, New Mexico (Agency) and National Federation of Federal Employees (NFFE) Local 2049 (Union)*, 67 FLRA 619, 621 (August 29, 2014), Footnote 26, and *United States Department of Veterans Affairs and National Association of Government Employees (NAGE)*, 72 FLRA 194 (April 23, 2021).

² Article 51, Section 51.04 of the CBA and 5 U.S.C. § 7116(d) provide the Union, as the aggrieved party, the option to file an Unfair Labor Practice (ULP) complaint under the statutory appeal procedure of the Federal Labor Relations Authority (FLRA) or as a grievance under the negotiated grievance procedure, but not both. An arbitrator has the authority to decide ULP issues and to provide appropriate remedies in accordance with FLRA case law. See *Department of Health and Human Services (HHS), Region V, and National Treasury Employees Union (NTEU)*, Chapter 230, 45 FLRA 737, 743 (1992); and *Federal Deposit Insurance Corporation (FDIC), Division of Depositor and Asset Services, and National Treasury Employees Union (NTEU)*, Chapter 256, 49 FLRA 894, 900 (1994). The arbitrator's responsibility when presented with a nonfrivolous ULP issue is to resolve the issue in accordance with FLRA law, as the FLRA explained in *National Treasury Employees Union (NTEU), Chapter 168, and Department of Treasury, Customs Service*, 55 FLRA 237, 241 (1999).

formulate bargaining proposals and counterproposals for the Flexiplace Policy negotiations. AFGE Council 222 also needs the documentation requested as bargaining position evidence should the parties reach impasse before neutral third parties such as the Federal Mediation and Conciliation Service (FMCS) and/or the Federal Service Impasses Panel (FSIP) during the negotiations for the Flexiplace Policy negotiations. The Union had originally requested this same documentation in the January 26, 2022 information request in the Council's November 24, 2021 5 U.S.C. § 7114(b)(4) request for information (attached as Exhibit 2). Therefore, the Department had sufficient time to compile and provide the information requested to the Union. AFGE Council 222 also attempted informal resolution to get the information requested by advising Management's Employee and Labor Relations Division officials—Ms. D'Andra Hankinson, Deputy Director, and Mr. James Fox, Headquarters Branch Chief—by email on February 9, 2022 that AFGE Council 222 was writing a Grievance of the Parties for failure to timely furnish the information requested on January 26, 2022 under 5 U.S.C. § 7114(b)(4) prior to filing this GOP (attached as Exhibit 3). The intent of the email was to spur Ms. Hankinson and Mr. Fox to provide the Council the information requested. Ms. Hankinson and Mr. Fox did not respond to AFGE Council 222's email.

The Union had also inquired via email on February 9, 2022 (attached as Exhibit 4) if Management intended to change the Telework Agreement and safety checklist as part of the new Flexiplace Policy as these documents were not provided with HUD's Article 49 Notice for the Flexiplace Policy. The Department did not respond to the Union's email inquiry concerning if there were going to be any changes to the Telework Agreement and safety checklist as part of the new Flexiplace Policy.

Through these acts of omission, AFGE Council 222 alleges that HUD committed an Unfair Labor Practice by bargaining in bad faith in violation of 5 U.S.C. § 7116(1), (5) and (8) and also violated the HUD-AFGE Agreement's Preamble to work collaboratively and cooperatively with the Union, Article 6, Section 6.01 of the CBA to treat employees fairly and equitably in the administration of this Agreement and in policies and practices concerning conditions of employment, Article 49 and Sections 49.01, 49.02, 49.04, and 49.06(p) to furnish information for proposed changes of conditions of employment and information requested by the Union under 5 U.S.C. § 7114(b)(4) for mid-term bargaining, etc. In accordance with Article 51, Section 51.01(2) and (3) of the HUD-AFGE Agreement and the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7103(a)(9)(B) and (C), the Union reserves the right to grieve and raise any violation, misinterpretation, or misapplication of any provision of the HUD-AFGE Agreement, law, rule or regulation concerning the failure by HUD to provide the information requested for the Flexiplace Policy negotiations in this GOP and/or arbitration. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes to the violations of the collective bargaining agreement, law, rule or regulation alleged for the subject matter being grieved.

Remedies Requested

To resolve this Grievance of the Parties, AFGE Council 222 requests from the Department the following equitable relief remedies:

- (1) Furnish the documentation requested in the Union's January 26, 2022 request for information under 5 U.S.C. § 7114(b)(4).

- (2) Provide the Telework Agreement and safety checklist that will be utilized with the new Flexiplace Policy. The Union shall have 15 days from receipt of these documents to submit preliminary bargaining proposals for the Telework Agreement and safety checklist in accordance with Article 49, Section 49.04 of the CBA.
- (3) The Department shall send an Unfair Labor Practice (ULP) email posting to all AFGE Council 222 bargaining-unit employees in the national consolidated bargaining unit as well as as do physical postings on all bulletin boards at all HUD Offices represented by AFGE Council 222 that Management will not bargain in bad faith by failing to provide information requested pursuant to 5 U.S.C. § 7114(b)(4) and required in Article 49 of the CBA. An electronic posting is an appropriate remedy available for a ULP violation. *See U.S. Department of Justice, Federal Bureau of Prisons, Federal Transfer Center, Oklahoma City and American Federation of Government Employees (AFGE), Council of Prison Locals 33, Local 171, 67 FLRA 222 (January 31, 2014).* The Union will subsequently provide the ULP posting language to be sent by email and physically posted at all HUD Office bulletin boards.
- (4) Pay all arbitration fees and expenses in accordance with Article 52, Section 52.04 of the HUD-AFGE Agreement should the Union have to pursue arbitration for denial of this Grievance of the Parties.
- (5) Pay AFGE Council 222's attorneys' fees should the Union have to invoke and pursue arbitration for denial of this Grievance of the Parties pursuant to the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(ii) if any bargaining-unit employee in the Council's national consolidated bargaining unit losses any pay, allowances, or differentials as a result of Management's failure to provide AFGE Council 222 the information requested for the Flexiplace Policy negotiations.
- (6) Any other remedy available to the fullest extent of the law, rule, regulation, CBA, policy, past practice, or arbitrator's award. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes in remedies requested.

Meeting

The Union is willing to meet with Management within 20 days to discuss resolution/settlement of this Grievance of the Parties in accordance with Article 51, Section 51.15(2) of the HUD-AFGE Agreement.

cc: Salvatore T. Viola, AFGE Council 222 President
Jerry Gross, AFGE Council 222 Mid-Term Bargaining Committee Co-Chair
Sajid Shariar, AFGE Council 222 Regional Vice President, Region 1
Kimberly Horton, AFGE Council 222 Secretary
Crystal Brand, AFGE Council 222 Treasurer