



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

January 26, 2022

MEMORANDUM FOR: D'Andra Hankinson, HUD Deputy Director, Employee and Labor Relations Division, AHEDB

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

SUBJECT: 5 U.S.C. § 7114(b)(4) Request for Information #1 for Flexiplace Policy Mid-Term Bargaining

The American Federation of Government Employees (AFGE) National Council of HUD Locals No. 222 (referred to herein as "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. § 7114(b)(4).

Standards for Provision of Information Requested under 5 U.S.C. § 7114(b)(4)

In accordance with U.S.C. § 7114(b)(4)(B), the Agency is required to furnish to the Union data, which is reasonably available and necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. The duty to provide information to a union applies not only to information needed to negotiate an agreement, but also to data relevant to its administration and the full range of a union's representational responsibilities under the Federal Service Labor-Management Relations Statute (Statute) including bargaining, contract administration, processing a grievance, representing an employee in proposed discipline, and determining whether to file a grievance or Unfair Labor Practice (ULP). *See Department of Health and Human Services (HHS), Social Security Administration (SSA) and AFGE Local 3302, 36 FLRA 943 (1990); Federal Aviation Administration (FAA), National Air Traffic Controllers Association (NATC) et al., 55 FLRA 254, 259-60 (1999); and Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) and National Weather Service Employees Organization, MEBA, 30 FLRA 127, 141 (1987).*

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 Federal Service Labor-Management Relations Statute (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); and *Dept. of Navy, Portsmouth Naval Shipyard and Portsmouth FEMTC*, 4 FLRA 619, 624 (1980). In *Internal Revenue Service, Washington, D.C. and Kansas City, MO*, 50 FLRA 661 (1995), Footnote 13, regarding a union's particularized need, the FLRA stated:

However, a request need not be so specific as, for example, to require a union to reveal its strategies or compromise the identity of potential grievants who wish anonymity. See, for example, NLRB v. FLRA, 952 F.2d at 530 ("Necessarily, the bargainers are not obliged to reveal their strategies[.]"); American Federation of Government Employees, AFL-CIO v. FLRA, 811 F.2d 769, 774 (2d Cir. 1987) (court acknowledged that protecting the identity of potential grievants is a justifiable union consideration). **Moreover, the degree of specificity required of a union must take into account the fact that, in many cases, including the one now before us, a union will not be aware of the contents of a requested document.** [emphasis added]

For a Section 7114(b)(4) information request, a union is not required in its Particularized Need to describe the exact nature of any alleged misapplication or violation of policy, procedure, law or regulation by the agency. *See Health Care Financing Administration and AFGE Local 1923*, 56 FLRA 156 (March 17, 2000).

Under 5 U.S.C. § 7114(b)(4), HUD is required to furnish to the Union "data which is normally maintained by the Agency in the regular course of business" and "reasonably available." **In Department of Justice, U.S. Immigration and Naturalization Service (INS), U.S. Border Patrol El Paso, Texas and AFGE National Border Patrol Council, 40 FLRA 792, 804-05 (1991), the FLRA found that information was reasonably available even when the agency had to give the union 10,000 documents. The FLRA has ruled that an agency may be required to produce information that does not exist in the precise format requested, but which can be extracted from records within an agency's control.** *See Department of Air Force, Sacramento Air Logistics Center, and AFGE, Local 1857*, 37 FLRA 987 (October 15, 1990).

Information Requested

1. Any and all documents in whatever written format (including, but not limited to: studies, reports, complaints, emails, memoranda, letters, counseling memos, hand-written notes, etc.) that the Department utilized to determine whether on a preliminary or final basis that any particular HUD bargaining-unit position or employees are not suitable to expanded telework or full-time telework/remote work (i.e., work at home 5 days per week) due to operational/customer-service coverage needs and/or problems encountered during the COVID-19 pandemic emergency mandatory telework and maximum telework statuses. The Department may sanitize any document that discloses individual employee identifiers to comply with the Privacy Act. However, please code the records for each employee by HUD Office (i.e., Headquarters in

Washington, D.C, Regional Offices, Field Offices, and Satellite Offices not by Program Offices) so that the Union can assess the volume and extent of the operational/customer-service problems.

Particularized Need

HUD Management and the Union will begin mid-term negotiations within the next 21 days on the Department's proposed new Flexiplace Policy, which includes expanded telework and full-time/5-days per week remote work at home for HUD bargaining-unit employees. AFGE Council 222 needs Information Requested #1 to formulate preliminary bargaining proposals and counterproposals for eligibility criteria for expanded telework and remote work for bargaining-unit positions and employees for the upcoming Flexiplace Policy mid-term negotiations. The Union also needs the data to compare the evidence and basis for the Agency's determination—whether on a preliminary or final basis—for the eligibility criteria for expanded telework and remote work with the authorizing telework statutes' eligibility criteria in Public Law 106-346 and Telework Enhancement Act of 2010 at 5 U.S.C. § 6502.

During the immediately preceding mid-term negotiations concerning ending Maximum Telework Status during the Coronavirus pandemic, the Department's bargaining team argued that not all positions and employees are suitable to expanded telework and remote work and that it has evidence of operational/customer-service problems for some positions and employees during the COVID-19 pandemic mandatory telework and maximum telework statuses. The Union wants to see such evidence that in fact not all positions are eligible for expanded telework or remote work given that the current CBA at Article 18, Section 18.02(1) says that "all employees in positions with duties that are conducive to telework are eligible to telework." Moreover, in 2020, the HUD Office of Inspector General conducted an audit of the Agency's workforce productivity during the COVID-19 pandemic mandatory telework status and found that productivity actually increased.

The information requested will also be used as evidence for Federal Mediation and Conciliation Service (FMCS) mediation and before the Federal Service Impasses Panel (FSIP) should Management and the Union reach impasse on expanded telework and remote work eligibility criteria for AFGE Council 222 to justify its bargaining position and proposal that the eligibility criteria should be broader than the Department's proposed Flexiplace Policy criteria and be consistent with the authorizing telework statutes' eligibility criteria in Public Law 106-346 and Telework Enhancement Act of 2010 at 5 U.S.C. § 6502. In sum, the information requested above is needed in order for AFGE Council 222 to represent the interests of HUD bargaining-unit employees in mid-term negotiations with the Department on the Flexiplace Policy.

Deadline to Furnish the Information Requested

Please provide the information requested above by February 2, 2021 so that the Union has sufficient time to review the potentially voluminous amount of documentation and formulate preliminary bargaining proposals prior to commencement of bargaining on February 14, 2022. The Union notes that it previously requested this same documentation in its 5 U.S.C. § 7114(b)(4) information request dated November 24, 2021, which the Agency has yet to provide. Therefore, the Department should have already started compiling this information since November 24, 2021. The Union notes that it is an Unfair Labor Practice in violation of 5 U.S.C.

§ 7116(a)(1), (5) and (8) not to timely furnish documentation in response to an information request under 5 U.S.C. § 7114(b)(4), which the FLRA defines as timely to meet the Union's representational responsibilities. See Bureau of Prisons, Lewisburg Penitentiary and AFGE Local 148, 11 FLRA 639 (1983); Department of Defense Dependent Schools and North Germany Area Council, Overseas Education Association, 19 FLRA 790 (1985); and Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171, 57 FLRA 604 (2001). Please be advised that in Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171, 57 FLRA 604 (2001), the FLRA found that the agency committed an Unfair Labor Practice even though the union submitted the information request under 5 U.S.C. § 7114(b)(4) only five days prior to the arbitration hearing and the agency provided the information on the day of the arbitration hearing as it was untimely for the union to meet its representational responsibilities. [emphasis added]

Please do not attempt to interpret any part of this request that you may not understand. If you have any questions concerning this request, or if you do not understand any part of this request, please contact me at ##### or via email at Ricardo.Miranda@hud.gov.

I appreciate your cooperation in timely processing and furnishing the information requested. Thank you in advance.