




National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

July 15, 2022

MEMORANDUM FOR: José Álvarez, Regional Administrator, HUD Region 4, 4AMA
Efraín Maldonado, San Juan Field Office Director, 4NMA
Sonya Gaither, HUD Employee & Labor Relations Director, AHE

FROM: 
Ricardo Miranda, Chief Steward, Regions 1, 2 & 4
AFGE National Council of HUD Locals No. 222
San Juan Area Vice President & Steward
AFGE Local 1568

SUBJECT: Grievance of the Parties (GOP) concerning lack of notification to Union & employees concerning health and safety threats posed by employees with positive Coronavirus tests & other workplace safety issues in HUD offices

Subject Matter and Scope of Grievance

Pursuant to Article 51, Sections 51.01(2), 51.01(3), 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), and 5 U.S.C. § 7121(b)(1)(C)(I)¹, I am filing this Grievance of the Parties (GOP) against the Department of Housing and Urban Development (HUD, the Department, the Agency, or Management) on behalf of AFGE Local 1568, AFGE National Council of HUD Locals No. 222 (AFGE Council 222 or the Union), and affected AFGE bargaining unit employees concerning the Department's lack of notification to AFGE Local 1568, AFGE Locals at HUD (Locals), AFGE Council 222, and bargaining unit employees when HUD employees test positive for the Coronavirus (COVID-19) who were in HUD offices shortly before testing positive given the health and safety threat posed to other employees as required by Supplement 32 and the CBA including, but not limited to: the Preamble, Articles 6, 37, 41, 59, etc.

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).

On June 1, 2022, in my capacity as San Juan Area Vice President of AFGE Local 1568, I received an email from [REDACTED] of the San Juan Office of Public Housing, that [REDACTED] tested positive for COVID-19 and was previously in the HUD San Juan Field Office within a few days of testing positive. Attached as Exhibit 1. Therefore, this Grievance of the Parties (GOP) is timely within 45 days of becoming aware of the situation in accordance with Article 51, Section 51.15(1) of the HUD-AFGE Agreement. The 45th day falls on Saturday, July 16, 2022. Therefore, the 45-day grievance-filing deadline is Monday, July 18, 2022, in accordance with Article 51, Section 51.06(1) of the HUD-AFGE Agreement.

HUD San Juan Field Office Management did not notify AFGE Local 1568 and San Juan bargaining unit employees that an employee (without identifying the name) was in the San Juan Field Office within a few days of testing positive for COVID-19 as required by Supplement 32 and the CBA including, but not limited to: the Preamble, Articles 6, 37, 41, 59, etc. as explained in more detail below. I attempted informal resolution to resolve these contractual violations by meeting with San Juan Field Office Director (FOD), Efraín Maldonado, and Human Resources (HR) Specialist, Sharon Jackson, on June 16, 2022, to get Management to agree to comply with Supplement 32 and the CBA without having to resort to filing a formal grievance. On July 1, 2022, I received an email from San Juan FOD Maldonado refusing to provide the proper notification to AFGE Local 1568 and bargaining unit employees as required by Supplement 32 and the CBA. Attached as Exhibit 2.

Moreover, AFGE Locals at HUD have been consistently complaining to AFGE Council 222 that local Management throughout the country refuses to notify the Locals when HUD employees who have been in the HUD offices tested positive for COVID-19. Management is not notifying and identifying to Union and employees the general areas² of the HUD offices that have been contaminated, the actions taken to clean and disinfect the contaminated areas, nor posting notices of the contaminated area(s) where employees should avoid. Therefore, in accordance with Article 51, Section 51.06(1) of the HUD-AFGE Agreement, AFGE Council 222 alleges a continuing condition/violation of Supplement 32 and the CBA including, but not limited to: the Preamble, Articles 6, 37, 41, 59, etc.

Elkouri and Elkouri's How Arbitration Works (Edited by Kenneth May, Arlington, VA: Bloomberg BNA Books, Seventh Edition, 2012), states the following regarding continuing violations:

Many arbitrators have held that “continuing violations” of the agreement (as opposed to a single isolated and completed transaction) give rise to “continuing” grievances in the sense that the act complained of may be said to be repeated from day to day, with each day treated as a new “occurrence.” ... (Elkouri and Elkouri, How Arbitration Works, Seventh Edition, Chapter 5, page 5-28)

² The Union is not interested nor requesting specific employee workstations that may have been contaminated just the general area(s) of the HUD offices that are being cleaned and disinfected to protect employees' privacy, but also safeguard all other employees' health and safety as explained below.

The FLRA will not overturn an arbitrator's finding that a grievance was filed timely on the basis of the continuing-violation doctrine; an arbitrator's determination of a continuing violation constitutes a ruling on procedural arbitrability. See *U.S. Department of Veterans Affairs Regional Office, Winston-Salem, N.C. and American Federation of Government Employees, Local 1738*, 66 FLRA 34 (August 25, 2011); and *U.S. Department of Veterans Affairs and National Association of Government Employees (NAGE)*, 72 FLRA 194 (April 23, 2021). This is consistent with U.S. Supreme Court case law precedent on procedural and substantive arbitrability from over sixty years ago in the Steel-workers Trilogy of 1960 [see *United Steelworkers v. American Manufacturing Company*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Company*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corporation*, 363 U.S. 593 (1960); and, progeny]. While it has been modified somewhat since then, the basic and long-standing tenet of the U.S. Supreme Court still being followed by arbitrators is that doubts concerning the arbitrability of a dispute concerning interpretation of negotiated CBA procedural language should be resolved in favor of arbitration. This doctrine of presumptive arbitrability standard continues to prevail.

CBA and Supplement 32 Violations

By failing to notify the Union, AFGE Locals at HUD, and bargaining unit employees when employees who have been in the HUD offices tested positive for COVID-19 within a few days of being in the office, not identifying the general areas of the HUD offices that have been contaminated, the actions taken to clean and disinfect the contaminated areas, nor posting notices of the contaminated area(s) where employees should avoid, Management has violated the following provisions of Supplement 32 and the CBA, including, but not limited to: the Preamble, Article 6 and Section 6.01, Article 37 and Sections 37.01, 37.09, 37.10, 37.15, Article 41 and Section 41.01, Article 59 and Sections 59.01, 59.03, etc.

The Union, AFGE Locals, and employees need such information in order to ensure that employees are working in safe and healthy work environments free from hazards and that do not cause **or are not likely to cause** employees to become ill, injured or die given that COVID-19 is a deadly pandemic disease. The Union, AFGE Locals, and employees need to ascertain CBA contract compliance with this information; relevant provisions of the CBA violated by the Department through its refusal to notify the Union, AFGE Locals and bargaining unit employees are cited below.

Article 37: Safety and Health

Section 37.01 - General. The Department shall furnish to each employee a place of employment that is free from hazards that cause, or are likely to cause, accident, injury, or illness and that promotes a healthy work environment. The Department's Occupational Safety and Health Program shall comply with requirements of Executive Order 12196 and the basic program elements of the Department of Labor regulations (29 CFR 1960) and Occupational Safety and Health Act of 1970, as amended. In circumstances where there is no regulatory safety or health standard, nationally recognized sources of health and safety criteria will be utilized, as required. The source of the criteria will be identified in

the Occupational Safety and Health program description on HUD at Work and other Departmental documents. The sources are, but not limited to: Center for Disease Control, National Institute of Environmental Health Sciences, the National Institute for Occupational Safety and Health (NIOSH), and the U.S. Department of Energy, etc.). Management will post in conspicuous locations the OSHA poster regarding the rights of employees for reporting unsafe or unhealthy working conditions.

Section 37.09 - Reporting and Correction/Abatement of Unsafe and Unhealthful Working Conditions.

- (1) The Department agrees to make a timely response to employee reports of unsafe and/or unhealthful working conditions.
- (2) Employees are encouraged to report unsafe or unhealthy conditions to their immediate supervisor, the local designated Safety & Health officer, or the Chairperson of the Safety and Health Committee. While the Department strives to respond immediately to reports of unsafe or unhealthy conditions, at a minimum, the Department will inspect within 24 hours if the conditions pose an imminent danger, within 3 working days for potentially serious conditions, and within 20 days for other than serious safety and health conditions.
- (3) Where the designated Departments' safety representative determines that an unsafe or unhealthy condition exists, **the Department shall post notices prominently at or near the location until the cited condition has been corrected** and shall make reasonable efforts toward prompt abatement. **The Union will be notified of significant conditions warranting postings.**
- (4) Whenever the Department cannot remedy a safety and health condition within 30 calendar days, the Department will develop a plan, in conjunction with the responsible parties, with a timetable including a schedule and summary of interim corrective steps. When abatement is dependent upon the General Services Administration (GSA), the plan shall be prepared in conjunction with them. Employees exposed to such conditions shall be informed of the abatement plan and advised as to measures which should be taken to safeguard their health.
- (5) The Department will address with GSA any hazardous conditions affecting walkways and sidewalks.
- (6) The Department will provide to the Union the results of any and all health and safety testing, within a timely manner but no later than thirty (30) days of receipt of the testing.

Section 37.10 - Imminent Danger Situations and Threats to Safety and Health.

(1) In the case of imminent danger situations, the persons reporting such situations shall make the reports in the most expeditious manner available. The Department recognizes that employees have a right to decline to perform their assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm, and that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. The Department agrees to make every effort to ensure an appropriate response to imminent danger situations.

(2) **Immediately upon identifying any condition that could reasonably be expected to cause death or serious physical harm, the Department shall immediately inform all employees at risk and where necessary, evacuate staff.**

Article 37, Section 37.15 of the CBA is clear that Management must notify the Union of any workplace injury or illness:

Section 37.15 - Union Notification. **The Department shall notify the Union of the report of any job-related injury or illness, subject to privacy constraints, by forwarding a copy of all appropriate reports, such as form 795 to the Union within three (3) days of receipt by the Department.** Upon request, the Department shall provide to the Union available appropriate safety data regarding chemicals that are used at the work site.

During my June 16, 2022, meeting with San Juan FOD Maldonado and HR Specialist Jackson, I informed Management that the Union is not requesting that employees' names be disclosed to the Union or bargaining unit employees just to be notified of the number of employees, frequency and when employees tested positive for COVID-19 who were in the HUD office within of few days of testing positive. I did not even request copies of any sanitized reports. If an employee has COVID-19 and was in the HUD offices within a few days of testing positive, there is a possibility and threat that other employees were exposed, infected, and can continue spreading COVID-19 to their colleagues, including managers. This is clearly a job-related-illness issue as COVID-19 can be spread by employees to co-workers just by being in the HUD offices even though the employee may have contracted COVID-19 outside of the workplace. The Department's lack of transparency and this "hide-the-ball" game is inexplicable, dangerous to the health and safety of all HUD employees, including supervisors, and can be deadly. The Union, AFGE Locals, and bargaining unit employees need to know the number, frequency, when employees tested positive for COVID-19 who were in the HUD office within a few days of positive tests, and the area(s) contaminated to determine if Management is in compliance with Article 37, Section 37.10 of the Agreement for imminent danger situations, if the HUD offices should be evacuated, and situational telework authorized.

Article 41: Occupant Emergency, Pandemic Events and Continuity of Operations Plans

Section 41.01 - General. HUD Headquarters and each field office maintain a range of plans for safeguarding lives and ensuring continuation of essential services in the event of an emergency in accordance with Federal guidance and requirements. This would include natural disasters, security incidents and other

events such as pandemic influenza. During an emergency event, both parties recognize that the Department may be operating under emergency conditions as outlined under Section 7106 of the statute.

Occupant Emergency Plans (OEP) ensure the entire building workforce is safe and accounted for in the event of an emergency, such as a fire during normal business hours. These plans shall be made available to all employees and include procedures for quick and safe evacuation of employees. HUD also has Continuity of Operations Plans that ensures the Department continues to perform essential functions when events beyond the Department's control disrupt day to day operations. To activate Continuity Plans, decision-makers make a distinction between situations that only require evacuation and a severe emergency that renders the facility unusable for a longer period and may impact the ability of that office to perform its mission. **When an emergency exists, the Department shall continuously review the situation, provide information to employees, and make immediate decisions so that employees know what actions to take until a final determination has been made regarding whether or not a COOP is to be declared.** These may include Shelter-in-Place or evacuations.

Article 59: Workplace of the Future

Section 59.01 - General. The Workplace of the Future shall consist of a diverse workforce and a modern work environment that supports the Department's current and future business requirements in a more productive, efficient, **humane**, and cost effective **manner**. The Department should endeavor to incorporate new ideas, innovation, and technologies to meet the needs of HUD's evolving workforce. The success of the Department in the future hinges on how effectively it can restructure its cost profile, streamline business practices, and more effectively utilize limited resources.

The ultimate goals of the Workplace of the Future are:

- (1) Improve employee morale and productivity.**
- (2) Better alignment of technology investments.
- (3) Lower physical and technology infrastructure costs.
- (4) Improving the work environment.**
- (5) Reducing carbon footprint.
- (6) Enhancing the ability to meet business needs.
- (7) Improve job training and career opportunities.

Through its lack of transparency, in violation of Article 59, Section 59.03 of the CBA, the Department is not being humane, improving productivity nor the work environment by not informing the Union, AFGE Locals, and bargaining unit employees when employees who have been in the HUD offices tested positive for COVID-19 within a few days of being in the office, not identifying the general areas of the HUD offices that have been contaminated, the actions

taken to clean and disinfect the contaminated areas, nor posting notices of the contaminated area(s) where employees should avoid.

Section 59.03 - Morale/Quality of Work Life. The Department and the Union recognize an important goal is to improve the morale and quality of work life for all employees and this goal is important for the success of the Department in the future. In order to facilitate, **the Department and the Union will endeavor to work together to improve the following:**

- (1) **Consistency in high quality communication and civility among employees and between employees and managers.**
- (2) A high degree of positivity and dedication to mission.
- (3) **Improvement in** working methods, training, procedures, **conditions, and productivity.**
- (4) Demonstrated appreciation for the employee's accomplishments and innovation.
- (5) Respect for persons and property.
- (6) A commitment to human and administrative services for the benefit of employees.

By playing its “hide-the-ball” game of not informing the Union, AFGE Locals, and bargaining unit employees of the number of employees, frequency and when employees tested positive for COVID-19 who were in the HUD office within of few days of testing positive, Management is not endeavoring to work with the Union to improve consistency in high quality communication between employees and managers in violation of Article 59, Section 59.03 of the CBA. Instead, HUD is mired in the command-and-control management practices of the early 20th century rather than making efforts to create the Workplace of the Future as required by Article 59.

Supplement 32: Implementation of the COVID-19 vaccination mandate and the HUD COVID-19 Response Return to Safe Workplace Plan dated March 2022 (attached as Exhibit 3)

Section 46. Active Case Response. If any employee, onsite contractor, or visitor reports a positive test for COVID-19 within 3 days of being in the workplace, HUD shall commence active case response upon notification.

The response shall include shutting down the immediate affected area, **notifying all employees who worked in the area, or attended meetings in the area,** of an active case, and engaging the active case response process.

- a. HUD shall follow CDC guidance at https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html#anchor_1617551661760 regarding closing down, cleaning, and disinfecting the affected area.
- b. HUD shall not permit employees to access the space until cleaning and sanitizing has been completed or the requisite period of time has passed to ensure **there is no contamination** (i.e., 72 hours or more since the infected employee has been in the space). Management may authorize situational telework as appropriate

or provide alternate workspace for impacted employees. **HUD shall notify employees when cleaning and disinfecting has been completed.**

c. HUD shall ensure that only EPA-registered disinfectants are used for cleaning and disinfection of contaminated space.

d. In accordance with CDC guidelines at <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#:~:text=Contact%20tracing%20has%20been%20used,someone%20with%20COVID%2D19>, Management shall identify and notify all people who had contact within 6 feet of an infected person for a total of 15 minutes or more over a 24-hour period (for example, three individual 5-minute exposures for a total of 15 minutes). This shall include all people who were in contact with the infected person (whether they wore a mask or not) starting from 2 days before they have any symptoms (or, if they are asymptomatic or 2 days before their specimen that tested positive was collected), until the infected person leaves to isolate at home.

e. HUD shall direct employees and onsite contractor personnel with symptoms or positive test results to situationally telework, if appropriate, or request appropriate available leave for at least 5 calendar days after symptoms appeared or a test result was positive. The individuals also must be free of fever for 24 hours without the use of fever-reducing medications before returning to the workplace and must follow CDC guidelines and seek medical advice and/or attention.

f. **Management shall inform the contacts of infected individuals that they should follow CDC guidance for appropriate measures.**

g. **Management shall notify all employees who had immediate physical contact with the infected individual.** Such employees may request situational telework or request appropriate available leave (i.e., depending on their ability to work).

The Agency is trying to make a narrow interpretation of its notification requirements to the Union, AFGE Locals, and bargaining unit employees based one sentence fragment of one sentence of the provisions in Section 46 of Supplement 32 only. During my June 16, 2022, informal resolution meeting with San Juan FOD Maldonado and HR Specialist Jackson, Mr. Maldonado made an argument that Management only had to notify employees in the immediately affected area in the second paragraph of Section 46 of Supplement 32 in isolation of the rest of the provisions, paragraphs, and sentences of Section 46 and the HUD-AFGE CBA. The sentence in the second paragraph of Section 46 also says employees who attended meetings in the area must be notified; paragraph b. of Section 46 says “employees” with no qualification or limitation must be notified when cleaning and disinfecting has been completed; paragraph f. of Section 46 states Management shall inform contacts of infected individuals, which can be any person in any part of the HUD office; and paragraph g. of Section 46 says Management “shall notify **all employees** who had immediate physical contact with the infected individual.” The Union’s position is that to safeguard and protect the health and safety of employees, all employees in the entire HUD office, especially small offices, must be notified because it may not be possible to know who walked in or near the affected area, had a meeting in the affected area, employees may not remember who they interacted or had contact with in the office, any employee can walk to or near the affected area of the HUD office, etc. I was AFGE Council 222’s Chief Negotiator for Supplement 32 and San Juan FOD, Mr. Maldonado, was not on

Management’s bargaining team to witness the discussions during the negotiations when this supplement was negotiated between AFGE Council 222 and HUD.

Moreover, the HUD-AFGE CBA as quoted above has broader notification requirements to the Union and employees concerning health and safety issues, threats, and especially imminent-danger situations like a pandemic, as well as communication requirements between Management, the Union, AFGE Locals, and bargaining unit employees to improve the work environment, productivity, etc. as quoted and explained above. Supplement 32 must be interpreted in conjunction with the rest of the HUD-AFGE CBA—that is, the contract as a whole principle. In accordance with Elkouri and Elkouri’s How Arbitration Works (Edited by Kenneth May, Arlington, VA: Bloomberg BNA Books, Seventh Edition, 2012) at page 9-34:

The Restatement (Second) of Contracts comments:

Meaning is inevitably dependent on context. A word changes meaning when it becomes part of a sentence, the sentence when it becomes part of a paragraph. A longer writing similarly affects the paragraph. ...Where the whole can be read to give significance to each part, that reading is preferred...

In the arbitral domain, numerous decisions have invoked this interpretive principle. One of the earliest stated:

The primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties, and to interpret the meaning of a questioned word, or part, with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions.

In the years that followed, the concept that the disputed portions ‘must be read in light of the entire agreement’ has received widespread acceptance. Typical arbitral thinking is the following:

Sections or portions cannot be isolated from the rest of the agreement and given construction independently of the purpose and agreement of the parties as evidence by the entire document. ... The meaning of each paragraph and each sentence must be determined in relation to the contract as a whole.

Article 6, Section 6.01 of the HUD-AFGE Agreement says: “Employees shall be treated fairly and equitably in the administration of this Agreement and in policies and practices concerning conditions of employment.” By playing its “hide-the-ball” game by not notifying the Union, AFGE Locals, and bargaining unit employees when employees who were recently in the HUD office tested positive for COVID-19, identifying the general area(s) of the office that were contaminated, posting notices of the contaminated area(s), and when the contaminated area(s) were cleaned and disinfected, Management is not treating employees fairly and equitably by not providing a “place of employment that is free from hazards that cause, or are likely to cause, accident, injury, or illness and that promotes a healthy work environment” as required in **Article 37, Section 37.01** of the CBA.

The **Preamble** of the HUD-Agreement states the following:

This Agreement reflects the values and **commitment of the Department of Housing and Urban Development (“the Department”) and its employees through the American Federation of Government Employees -AFL-CIO (AFGE) (“the Union”)**, while maintaining a diligent focus on the public we serve. It is designed to recognize the realities of the 21st Century workplace by remaining flexible to technological and societal changes as they occur.

The terms and conditions of this Agreement apply only to employees within the bargaining unit.

The Department and the Union agree that the labor-management relationship is **strengthened by the participation of employees in the formulation and implementation of personnel policies and practices and their conditions of employment. This is best achieved through a constructive and cooperative working relationship.**

The Department shall allow employees and their Union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; **provide adequate information on such matters expeditiously to union representatives where not prohibited by law**; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving subjects set forth in 5 U.S.C 7106(b)(1), through labor-management forums.

Advance collaboration and consultation are the preferred methods for maximizing positive results and minimizing conflict.

The Department and Union affirm the public interest demands the highest standards of employee performance and the continued **development and implementation of modern and progressive work practices** to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government. **The Department and Union affirm that the public service to which the Department is dedicated can be advanced through understanding and cooperation** achieved through the collective bargaining process. The provisions of this Agreement shall be administered and interpreted in a manner consistent with the requirement for an effective and efficient Government. ...

In sum, the Department’s insistence on playing its “hide-the-ball” with its refusal to notify the Union, AFGE Locals, and bargaining unit employees of the number of employees, frequency, and when employees tested positive for COVID-19 who were in the HUD office within of few days of testing positive, is a direct affront to collaboration, cooperation, and consultation. It denies employees participation in the formulation and implementation of personnel policies and practices and their conditions of employment in violation of the Preamble of the CBA. Through its actions, Management is not interested in providing “adequate information on such matters expeditiously to union representatives where not prohibited by law” as the CBA’s Preamble requires. HUD is more

interested in the command-and-control management practices of the early 20th century instead of coming into the 21st century with “modern and progressive work practices” as stated in the Preamble of the Agreement to create the Workplace of the Future pursuant to Article 59 of the CBA.

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), AFGE Council 222 reserves the right to grieve and raise any violation, misinterpretation, or misapplication of any provision of Supplement 32, the HUD-AFGE Agreement, law, rule or regulation concerning the Department’s failure to notify the Union, AFGE Locals, and bargaining unit employees about positive COVID-19 tests for employees who were recently in the HUD offices, identifying an posting notices of contaminated areas, and efforts to ensure that the offices were cleaned and disinfected. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes to the violations alleged of the collective bargaining agreement, law, rule, or regulation for the subject matter being grieved.

Meeting

I am willing to meet with Management’s representative to discuss settlement of this GOP within 20 days to avert arbitration in accordance with Article 51, Section 51.15(2) of the HUD-AFGE Agreement.

Remedies Requested

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

- (1) The Department shall notify the corresponding AFGE Locals’ union representatives and all bargaining unit employees for every HUD office of the number of employees, frequency, and when employees tested positive for COVID-19 who were in the HUD office within of few days of testing positive;
- (2) Management shall identify to the corresponding AFGE Locals’ union representatives and all bargaining unit employees for every HUD office the general areas of the HUD offices that have been contaminated, the actions taken to clean and disinfect the contaminated areas, and post notices of the contaminated area(s) where employees should avoid.
- (3) Payment of 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.
- (4) Should the Agency deny this Grievance of the Parties, payment of the Union’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 AFGE bargaining-unit employee loses any pay, allowances, or differentials as a result of Management’s failure to notify the Union and employees about health and safety threats in the HUD offices concerning COVID-19 raised in this GOP. Please be advised that

employees' loss of annual, sick leave, or other forms of leave is recoverable and qualifies for attorneys' fees as leave is considered a pay, allowances, or differentials under the Back Pay Act of 1966 in accordance with U.S. Office of Personnel Management (OPM) definition regulations at 5 CFR § 550.803 (Subpart H-Back Pay). "Pay, allowances, and differentials means pay, leave, and other monetary employment benefits to which an employee is entitled by statute or regulation and which are payable by the employing agency to an employee during periods of Federal employment."

- (5) Any other remedy available to the fullest extent of the law, rule, regulation, HUD-AFGE Agreement, 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.

An arbitrator has the authority to find a violation of law or collective bargaining agreement provision and award a remedy even if it affects management's rights as long as the remedy reasonably and proportionally relates to the violation, and the violation interpretation does not excessively interfere with management's rights under 5 U.S.C. Section 7106(a). *See U.S. Department of Justice (DOJ), Federal Bureau of Prisons (FBP) and American Federation of Federal Employees (AFGE), Local 817, Council of Prison Locals #33*, 70 FLRA 398 (February 22, 2018) (DOJ). The remedies requested above are reasonably and proportionally related to the Supplement 32 and HUD-AFGE Agreement violations cited above, and do not excessively interfere with the management rights provisions in 5 U.S.C. § 7106(a). The remedies merely seek Management's compliance with Supplement 32 and the HUD-AFGE Agreement provisions identified in this Grievance of the Parties. Alternatively, should an arbitrator award the Union's remedies requested above and the Department files exception(s) with the Federal Labor Relations Authority (FLRA), AFGE Council 222 requests that the FLRA reconsider its existing case law precedent in *DOJ* and revert back to the abrogation test for arbitrators' authority to fashion remedies to enforce appropriate-arrangement provisions negotiated pursuant to 5 U.S.C. § 7106(b)(3) even if it affects management's rights at § 7106(a) [*Environmental Protection Agency (EPA) and American Federation of Government Employees (AFGE), Council 238*, 65 FLRA 113 (September 29, 2010)], and re-establish the broader discretion of arbitrators to fashion remedies even if it affects management's rights [*Federal Deposit Insurance Corporation (FDIC) and National Treasury Employees Union (NTEU), Chapter 273*, 65 FLRA 102 (September 29, 2010)].

Attachments:

Exhibit 1: June 1, 2022, COVID email from [REDACTED]

Exhibit 2: July 1, 2002, San Juan Field Office Director Efraín Maldonado's email response to informal resolution meeting

Exhibit 3: Supplement 32: Implementation of the COVID-19 vaccination mandate and the HUD COVID-19 Response Return to Safe Workplace Plan dated March 2022

cc: AFGE Council 222 President Salvatore T. Viola

AFGE Local 1568 President Antonio Gaines
Sharon Jackson, HUD Human Resources President