



American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

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May 18, 2022

MEMORANDUM FOR: Sonya Gaither, Director, Employee and Labor Relations Division

FROM: Jerry Gross, Midterm Bargaining Committee Co-Chair, AFGE Council
222

SUBJECT: Request for Information: Performance Award Criteria

On May 13, 2022, AFGE Council 222 (the Union) charged the Department of Housing and Urban Development (HUD) with committing unfair labor practices and violating the HUD-AFGE Collective Bargaining Agreement (CBA) by instituting a policy of granting performance awards only to employees who completed the full rating cycle (October 1 through September 30) without notice to the Union or providing an opportunity to bargain. The requirement is not stated in the HUD policy handbook 2195.1 of July 2015, which only requires that recipients of performance awards must still be federal government employees, nor was it mentioned at the time the 2015 CBA was bargained and signed.

The Union requests that HUD provide the information identified below pursuant to 5 U.S.C. § 7114(b)(4). 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.” The Union “is entitled to information that is necessary to enable it to carry out effectively its representational responsibilities, including information which will assist it in the investigation, evaluation and processing of a grievance.” *National Labor Relations Board and National Labor Relations Board Union Local 6*, 38 FLRA 506 (November 28, 1990). 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). According to FLRA case law, information requested under 5 U.S.C. § 7114(b)(4) is not limited to documentation and can be in the form of describing information. See *U.S. Veterans Administration and AFGE Local 3314*, 28 FLRA 260, 261 (July 29, 1987).

1. All information related to the establishment of the requirement that performance awards are to be granted only to employees who have completed the full rating cycle (October 1 through September 30). This information may include but is not limited to correspondence, emails, policy announcements, and other material that addresses the establishment of the new criterion.

Statement of Particularized Need: The Union requires this information for the following reasons:

(1) [*Why the Union needs the requested information*]: The Union requires the requested information to support its charge that HUD violated the CBA, including but not limited to

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Article 49, Sections 49.02 and 49.03, and committed unfair labor practices, including but not limited to violations of §§ 7116(a)(1) and (5). The Union also requires the information in order to evaluate whether to pursue arbitration, if necessary. Please be advised that for a § 7114(b)(4) information request, a union is not required in its statement of 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).

(2) [*How its use of the information relates to the Union's representational responsibilities*]: The Union will use the information as evidence to support its Grievance of the Parties regarding OGC's unfair labor practices and violations of the collective bargaining agreement, laws, and regulation. The Union needs the information to assess when and to what extent HUD violated its contractual obligations, to determine how to support and pursue its grievance, and, if necessary, to assess whether to arbitrate or settle the grievance. The Union also needs the documentation requested to meet its preponderance of evidence burden of proof that HUD OGC management in fact violated the Federal Service Labor-Management Relations Statute and the HUD-AFGE collective bargaining agreement as alleged in the Grievance of the Parties and possibly in arbitration.

2. For the FY 2021, FY 2020, and FY 2019 rating cycles, a list of any and all bargaining unit employees throughout HUD who began work in their rated position after October 1 of the relevant fiscal year and received a performance award for that rating cycle. For each fiscal year rating cycle, please provide the following information for each employee:

- a. Name, title, grade.
- b. Office and geographic location.
- c. Date employee began work in the rated position.
- d. Type of award (e.g., cash or time off), and amount of award.

Pursuant to U.S. Office of Personnel Management (OPM) regulations at 5 CFR § 293.311, a federal employee's name, title, grade, occupational series, annual salary rate, awards, bonuses, position description, job elements and performance standards, and duty station are publicly available information not subject to the Privacy Act.

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provisions of the CBA and the Labor-Management Statute were violated. Please be advised that for a § 7114(b)(4) information request, a union is not required in its statement of 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).

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3. For the FY 2021, FY 2020, and FY 2019 rating cycles, a list of any and all bargaining unit employees who began work in their rated position after October 1 of the fiscal year who received a rating of fully successful or higher and did not receive a performance award for that rating cycle. For each fiscal year rating cycle, please provide the following information for each employee:

- a. Name, title, grade.
- b. Office and geographic location.
- c. Date employee began work in the rated position.
- d. Reason given (if any) for not granting award.

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4. For the FY 2021, FY 2020, and FY 2019 rating cycles, a list of any and all employees who began work in their rated position after October 1 of the fiscal year who did not receive a rating for that rating cycle. For each fiscal year rating cycle, please provide the following information for each employee:

- a. Name, title, grade.
- b. Office and geographic location.
- c. Date employee began work in the rated position.
- d. Reason given (if any) for not issuing a rating.

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5. For the FY 2021, FY 2020, and FY 2019 rating cycles, a list of any and all bargaining unit employees who left their rated position before September 30 of the fiscal year who received a performance award for that rating cycle. For each fiscal year rating cycle, please provide the following information for each employee:

- a. Name, title, grade.
- b. Office and geographic location.
- c. Date employee left the rated position.
- d. Performance rating.
- e. Type of award (e.g., cash or time off), and amount of award.

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6. For the FY 2021, FY 2020, and FY 2019 rating cycles, a list of any and all bargaining unit employees who left their rated position before September 30 of the fiscal year who did not receive a performance rating for that rating cycle. For each fiscal year rating cycle, please provide the following information for each employee:

- a. Name, title, grade.
- b. Office and geographic location.
- c. Date employee left the rated position.
- d. Reason given (if any) for not issuing a rating.

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Deadline to Provide Requested Information: Please provide the requested information no later than June 1, 2022. 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.**

As a reminder, the Federal Labor Relations Authority held in *National Labor Relations Board*, 38 FLRA 506, 523 (1990) (NLRB), *aff'd sub nom. NLRB v. FLRA*, 952 F.2d 523 (D.C. Cir. 1992), that § 7114(b)(4)(C) "does not exempt from disclosure guidance, advice, or counsel to

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management officials concerning the conditions of employment of a bargaining unit employee, for example: the personnel[] policies and practices and other matters affecting the employee's working conditions that are not specifically related to the collective bargaining process.” The FLRA reiterated that position in *Department of the Army, Army Corps of Engineers, Portland District, Portland, Oregon and United Power Trades Union*, 60 FLRA 413, 416 (2004), again stating explicitly that “Section 7114(b)(4)(C) does not exempt from disclosure guidance, advice, or counsel to management officials concerning the conditions of employment of bargaining unit employees.”

Furthermore, the Union hopes that HUD does not resort to its usual assertion that “The union has failed to establish a particularized need for the above information.” The Union has clearly articulated why the Union needs the requested information and how its use of the information relates to the Union’s representational responsibilities. As the Authority has stated: “We reject the argument that a union has failed to articulate its need with requisite specificity, where . . . the information request referenced a specific agency action and specified that the union needed the information to assess: (1) whether the agency violated established policies, and (2) whether to file a grievance, even though the union did not explain exactly how the information would enable it to determine whether to file a grievance.” *Department of Veterans Affairs, Veterans Affairs Medical Center, Decatur, Ga. and NFFE, Local 2102*, 71 FLRA 428, 430 (2019).

Finally, you are reminded of your obligation to inform the Union explicitly if any requested information does not exist.