National Council of HUD Locals
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO
Council 222

Date: July 29, 2025

To: Scott Turner, Secretary, US Department of Housing and Urban Development

Through: Daniel Raymond, Acting Deputy Director, ELR Division, OCHCO

From: Antonio Gaines, President, AFGE National Council 222 of HUD Locals /s/

Through: Veronica Bobbitt, Chief Steward, AFGE National Council 222 of HUD Locals /s/

RE: Grievance of the Parties/ Unfair Labor Practice - Implementation of Employee Security Policies, Procedures, and Penalties

STATEMENT OF GRIEVANCES

Union Bypass

Pursuant to the provisions of Article 51 of the Collective Bargaining Agreement ("CBA"), the AFGE National Council of HUD Locals 222 ("Union") is filing this National Grievance against the Department of Housing and Urban Development ("HUD" or "Agency"). On or about May 13, 2025, the Agency published an e-mail to all employees announcing the following employee security programs:

> "To improve workplace security and streamline background checks, HUD is implementing Trusted Workforce 2.0 and the Record of Arrest and Prosecution Back (Rap Back) program. These updates make vetting more efficient and help ensure a safe, trustworthy workforce. Trusted Workforce 2.0 simplifies security clearance and background check processes, while Rap Back provides real-time alerts on relevant criminal activity for enrolled personnel."

The May 13, 2025, e-mail contained no timetable for implementation, updates to Handbook 755.1, *Personnel Security and Suitability Policy*, or implications for CBA National Supplement 20, *Implementation of Personnel Security and Suitability Handbook 755.1*. Handbook 755.1 is, traditionally, the reference for supervisors and employees on employee security policy and procedures. The Agency provided a limited and generally uninformative timetable for implementation of Trusted Workforce and RapBack in its August 20, 2024, e-mail to all employees. Agency e-mails to all employs on June 27, August 1, August 6, and September 25, 2024, were less informative.

On June 4, 2025, the Agency rejected the Union's May 28, 2025, Demand to Bargain as untimely:

> "…the Union was made aware of the Agency's implementation of the Trusted Workforce Initiative and Rap Back program during the Labor Management Forum held on April 23 –

> 25, 2024. Specifically, AFGE National Council of Locals 222 received an overview briefing of Trusted Workforce 2.0 and Rap Back during the timeframe labeled as "OCHCO Section" on April 24, 2024, between 9:00am and 10:00am Eastern Time. This overview included an implementation timeline with milestones set for October 2024, September 2025 and March 2026. Additionally, the Agency sent out notices to all HUD employees relating to the Trusted Workforce Initiative Implementation on June 27, 2024, August 1, 2024, August 6, 2024, August 20, 2024, and September 25, 2024…. Consequently, it is well established AFGE 222 knew or should have known of the Agency's implementation of the Trusted Workforce Initiative to include Rap Back over one year ago. Therefore, in accordance with AFGE CBA Section 49.04, this May 28, 2025, Demand to Bargain is well outside the fifteen (15) days the Union has to submit preliminary proposals. This Demand to Bargain is untimely and the Union has waived its [sic] bargaining rights by failing to submit proposals in the agreed upon timeframe in CBA Article 49. As such, the Agency respectfully declines to bargain."

As a general matter, it would have been a fruitless effort to initiate bargaining in April 2024, because the programs were barely conceptual at the time. For Supplement 20, the Union negotiated and bargained the implementation of Handbook 755.1. Until the Agency had a firm idea of what Trusted Workforce and Rap Back would consist of, there would have been no policies, procedures, or projected impacts to bargain the implementation of.

In addition, several specific passages in the Agency's response to the Union's Demand to Bargain require correction.

> *"…the Union was made aware of the Agency's implementation of the Trusted Workforce Initiative and Rap Back program during the Labor Management Forum held on April 23 – 25, 2024. Specifically, AFGE National Council of Locals 222 received an overview briefing of Trusted Workforce 2.0 and Rap Back during the timeframe labeled as "OCHCO Section" on April 24, 2024, between 9:00am and 10:00am Eastern Time. This overview included an implementation timeline with milestones set for October 2024, September 2025 and March 2026."*

The "briefing" at the LMF lasted only a few minutes. The concepts were presented as preliminary. The slide deck accompanying the briefing was only a few pages long, contained no specific elements of the programs, and did not specify a timetable. Furthermore, it has been the Agency's practice to specify employee security measures in Handbook 755.1, *Personnel Security and Suitability.* Neither the briefing nor the notices to employees made reference to the Handbook – so there was no notice of what provisions would be retained, eliminated, replaced, or added. Furthermore, the Agency did not notify the Union of its intent to supersede negotiated agreements in Supplement 20, *Implementation of Personnel Security and Suitability Handbook 755.1*.

Additionally, the Agency sent out notices to all HUD employees relating to the Trusted Workforce Initiative Implementation on June 27, 2024, August 1, 2024, August 6, 2024, August 20, 2024, and September 25, 2024….

Such communications are insufficient. These communications did not notify the Union of the Agency's intent to supersede Supplement 20 or modify Handbook 755.1. Supplement 20 states, in relevant part:

> 6. Notice to Union:
>
> a. When a disciplinary or adverse action is taken against a covered employee, management will follow the requirements of the Collective Bargaining Agreement when notifying the Union.
> b. Management will provide notice to the Union when there is a modification of Handbook 755.1 due to changes in law, government-wide regulations, or government-wide policies.

Like the "briefing" at the LMF, these employee notices provided no program elements or projected impacts. The e-mail contained no reference to Handbook 755.1. Consequently, it is well established AFGE 222 knew or should have known of the Agency's implementation of the Trusted Workforce Initiative to include Rap Back over one year ago.

At best, the "briefing" at the LMF informed the Union of the Agency's intent to change the employee security program. As noted above, the Agency did not present changes in policy, automated systems, employee paperwork burden, procedures, or implications for Union representation – and no implementation timetables. In short, the e-mail messages were uninformative. (See also Paragraph (6) of Supplement 20) It is curious that the Agency did not include the May 13, 2025, email to employees among the "notices" of changes to the employee security policy and procedures.

The legal basis for the Union's demand to bargain comes from statute, administrative decisions, and bargaining. Furthermore, Article 7 of Supplement 20 obligates the Agency to Mid-Term Bargaining: "Management will meet its bargaining obligations in accordance with the Collective Bargaining Agreement." The CBA states at Section 49.02 of Article 49, Mid-Term Bargaining: "During the term of this Agreement, Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment." Trusted Workforce and Rap Back constitute changes in personnel policies, practices, and general conditions of employment. A limited briefing at a 2024 LMR and emails to all employees do not comport with transmission of proposed changes in personnel policies, practices, and general conditions of employment. In addition, Supplement 20 is the culmination of the Agency's established practice to provide detailed personnel security proposals to the Union and negotiate the implementation of the proposed changes.

<u>The Agency's partial and attenuated response to the statutory information request</u>

On May 30, 2025, the Union filed a request for information on this subject – stating particularized need for each item. The Agency has not provided all information requested – including information that the Agency was obliged to provide the Union under Supplement 20 to the CBA. That information is necessary to produce a baseline against which to project the impact of changes to the employee security policies and procedures. The Union reserves the right to

supplement this National Grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary. Based on the information available to the Union at the time of the filing of this National Grievance, it is clear that the Agency has improperly withheld information, by-passed the Union, and implemented changes in employee security policy and procedures in violation of the parties' CBA, including but not limited to, Articles 1, 3, 4, 6, 49 and 53. In addition, the Agency has violated the Federal Service Labor-Management Relations Statute ("Statute"), including but not limited to 5 U.S.C. §§ 7116(a)(1), (a)(5), (a)(7) and (a)(8), and all other relevant articles, laws, regulations, and past practices not herein specified.

The Union initially requested information on May 30, 2025. The Agency provided a partial response to the statutory information request on July 7, 2025. The Agency's actions (and inactions) extended the period of time that the Agency could implement its new employee security policies and procedures without (pre-decisional involvement or consultation – see Section 3.01 of the CBA) or bargaining (mid-term bargaining – see Article 49 of the CBA), and posed a risk of adverse action against BUEs without Union representation (exclusive representation – see Section 1.01 of the CBA).

The legal basis for the Union's information request is grounded in statute and regulations, as well as the Collective Bargaining Agreement (CBA) between the Agency and the Union, as well as recent administrative and judicial decisions. The following authorities establish the legal foundation:

1. 5 U.S.C. § 7114(b)(4): This statute requires agencies to furnish data that is normally maintained in the regular course of business, reasonably available, and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. The law does not say that agencies get to adjudicate what the scope of collective bargaining is or what the Union's particular needs are. In the case of employee security, the Agency and Union agreed implicitly and explicitly that implementation of employee security policies and procedures were subject to bargaining, that the Agency would provide notice to the Union of changes to such policies and procedures, and that the implementation of such policies and procedures were subject to bargaining. The Agency's partial denial are in conflict with the CBA and its Supplement 20, causing unnecessary delay in bargaining and the Union's ability to represent employees.

2. 5 CFR § 293.311: This regulation clarifies that certain employee information, such as names, titles, grades, and duty stations, is publicly available and not subject to Privacy Act restrictions, supporting the Union's right to access this data. The Agency claims it does not have to provide the Union with certain employee information – which denies the employees' exclusive representative the ability to represent the employees. The Agency does not have to take such an extreme posture. There are many administrative and technological means for the Agency and Union to preserve privacy and protect PII.

3. Privacy Act Exception: The Privacy Act permits disclosure of certain employee information when it is necessary for the Union to fulfill its representational responsibilities, as outlined in 5 CFR § 293.311 and supported by FLRA decisions.

4. Federal Labor Relations Authority (FLRA) Precedent: The FLRA has consistently held that unions are entitled to information necessary for representational duties, including investigating and processing grievances. The Agency has failed to provide the Union notice of its activities to investigate, adjudicate, and interview employees whose issues arise during security screening – or to provide summary data on such activities. A portion of the information request is corrective given the Agency's historic lack of compliance with the procedures it agreed to in Supplement 20. The following cases illustrate this principle:

    a. U.S. Department of Justice, Federal Bureau of Prisons, Allenwood Federal Prison Camp, Montgomery, PA, 40 FLRA 449 (1991): The FLRA ruled that unions are entitled to information necessary to evaluate and process grievances.

    b. Internal Revenue Service, Washington, D.C., 50 FLRA 661 (1995): The FLRA emphasized that an agency must provide information that is reasonably available and necessary for collective bargaining purposes.

    c. U.S. Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio, 51 FLRA 1532 (1996): The FLRA held that unions are entitled to information that is necessary to determine whether an agency has complied with applicable laws, regulations, and agreements.

    d. U.S. Department of Veterans Affairs, Veterans Affairs Medical Center, Jackson, Mississippi, 60 FLRA 8 (2004): The FLRA found that unions are entitled to information necessary to assess whether an agency's actions are consistent with its obligations under the collective bargaining agreement.

    e. U.S. Department of the Navy, Naval Aviation Depot, Cherry Point, North Carolina, 42 FLRA 795 (1991): The FLRA ruled that unions are entitled to information that assists in determining whether to file a grievance and in preparing for arbitration.

<u>Insufficient Notice to the Union</u>

On May 13, 2025, the Office of the Chief Human Capital Officer (OCHCO) sent an email message to "All HUD Staff" entitled *Strengthening Workforce Security – What You Need to Know*. The message stated:

> "To improve workplace security and streamline background checks, HUD is implementing Trusted Workforce 2.0 and the Record of Arrest and Prosecution Back (Rap Back) program. These updates make vetting more efficient and help ensure a safe, trustworthy workforce.

Trusted Workforce 2.0 simplifies security clearance and background check processes, while Rap Back provides real-time alerts on relevant criminal activity for enrolled personnel."

Such changes implicate Handbook 755.1, Personnel Security and Suitability (May 2019), which was finalized after the Department and the Union negotiated the implementation of the Handbook and executed National Supplement 20, Implementation of Personnel Security and Suitability Handbook 755.1. Yet, the email did not mention Handbook 755.1. Supplement 20 specifies a range of Agency obligations to notify the Union as to proposed changes in Handbook 755.1 and procedures with respect to individual BUEs. These obligations have not been met.

Handbook 755.1 incorporated the Department's policy and procedures on personnel security and suitability, including the investigation and adjudication of factors that posed a risk to employee suitability. The implementation of the suitability policy and procedures was the subject of bargaining between the Department and Council 222 AFGE. Council 222 filed an unfair labor practice charge against the Department with the Federal Labor Relations Authority (FLRA). On June 5, 2017, the Department and Council 222 entered into a settlement agreement to resolve the charge.

The Agency argues that it provided the Union with appropriate notice of its intent to devise and implement a new employee security policy and procedures. They claim in-person notice at a Labor-Management Forum on April 25, 2024. Yet, these communications lacked policy and procedural detail and implementation timetables. They proceeded without Union consultation. Also, they failed to meet the notice requirements of Supplement 20. (See above.)

The Union therefore brings the following charges:

1. The Agency violated specific employee security provisions of the CBA negotiated with the Agency. The Agency has completely disregarded its contractual obligations.

2. The Agency's actions also violate additional portions of the CBA, including but not limited to the following articles: Article 4 – Rights and Obligations of the Parties; Article 6 – Employee Rights; Article 49 –Midterm Bargaining; Article 53 – Duration and Distribution of the Agreement; as well as any other affected article of the CBA even if not herein specified.

3. The Agency's Action Violate Law, Rule, and Regulations. The Agency's actions violated, and continue to violate, law, rule, regulation, and policy, including but not limited to 5 U.S.C. § 3502 and 5 CFR § 351.201 et seq. The Agency failed to follow these laws and regulations by implementing changes to employee security policies and procedures. These regulations are also expressly referenced and incorporated in Supplement 20 of the CBA.

4. The Agency Committed Unfair Labor Practices Under 5 U.S.C. §§ 7116(a)(1), (5), (7), and (8).

    a. The Agency committed a ULP by repudiating the CBA. By ignoring the bargained-for Mid-Term Bargaining and other relevant procedures under Article 49 of the CBA, the Agency has repudiated the parties' CBA, which is an institutional injury to the Union.

Not only must the agency seek FLRA intervention to address changes in HUD's workplace, but to enforce already bargained-for agreements. The Agency's actions represent a clear patent breach which goes to the heart of the CBA. This includes, but is not limited to, the Agency's failure to provide appropriate notice to employees, failure to provide appropriate notice to the Union, failure to minimize adverse impacts, failure to abide by the provisions of Supplement 20, and the failure to abide by the general Mid-Term Bargaining Article.

b. The Agency committed a ULP by unilaterally changing and implementing the employee security procedures without bargaining. The Agency's actions of altering and ignoring the terms of the parties' CBA regarding implementation of changes to employee security policy and procedures without first bargaining reflect a failure to bargain in good faith. The Agency has a general duty to bargain with the Union under the CBA and a specific duty to bargain the implementation of changes in employee security policy and procedures. Yet, the Agency unilaterally acted without providing sufficient notice to the Union, consulting with the Union, and bargaining in good faith with the Union.

c. The Agency committed a ULP by bypassing the Union and dealing directly with the bargaining unit employees. The Agency unlawfully bypassed the Union by sending communications (albeit vague ones) directly to the bargaining unit – as opposed to the bargaining unit's exclusive representative. (See Section 1.01 of the CBA.) In accordance with the authorities identified above and recent past practice, the Agency must bargain with the Union regarding any proposed changes or alterations to the bargained-for employee security procedures. The Agency failed to provide the appropriate notice to the Union, failed to consult with (pre-decisional involvement) or bargain with the Union regarding the changes to employee security policy and procedures, and instead directly communicated with BUEs. Furthermore, the notice the Agency provided to BUEs (as well as non-BUEs) was vague and failed to inform the bargaining unit of changes to Handbook 755.1 – the traditional repository of employee security policy and procedures, including the risk of adverse action and right to Union representation.

Rejection of Agency Defenses

The Agency argues that it provided sufficient notice to the Union of proposed changes to employee security policies and procedures – i.e., through the minutes-long presentation at the August 24, 2024, Labor-Management Forum (LMF) and a series of email updates to all employees. Contrary to the Agency's assertions, the presentation at the LMF was introduced as preliminary and the Agency told the Union that more information would be forthcoming. It never was. Similarly, notices that there would be changes (without specifying the changes) included no details or implementation timeframes. (August 20, 2024, email contained a vague timetable.) Moreover, none of these communications mentioned Handbook 755.1, which is the principal vehicle for informing supervisors and employees of employee security policy and procedures.

In summary and contrary to the CBA, the brief mention of planned changes to employee security policy and procedures at the LMF and brief emails to all employees failed to provide sufficient notice, opportunity for pre-decisional consultation, and bargaining. As described above, the

Agency's communications to the Union in the August 24, 2024, LMF, and brief all-employee emails did not meet the Agency's bargained for obligations under the CBA. These communications failed to satisfy general requirements in Section 3.01 of the CBA (pre-decisional consultation) and Article 49 (mid-term bargaining) of the CBA. Also, these communications failed to satisfy specific bargained-for provisions of Supplement 20. The Agency's failure to provide information as required under Supplement 20, attenuated and incomplete responses to the statutory information request interfered with the Union's exclusive position to bargain the implementation of workplace policy and procedures and interfered with the Union's ability to represent employees facing the possibility of adverse actions.

Remedies

The Union respectfully seeks the following remedies:

1. Return to status quo ante, rescission of the improperly issued notices, and make whole relief for all affected bargaining unit employees;

2. That the Agency fully implement and fulfill its duties under Supplement 20;

3. That the Agency provides the names of officers and employees charged with developing and implementing Trusted Workforce 2.0 and RapBack;

3. That the Agency fully complies with all terms of the parties' CBA and all laws, rules, regulations, and policies;

4. That the Agency bargain implementation of Trusted Workforce 2.0, RapBack, and changes in Handbook 755.1 in good faith;

5. That the Agency delivers to the Union all information requested in the May 30, 2025 request for information from the Union within 30 days of the settlement or other resolution of this grievance;

6. That the Agency distributes to all bargaining unit employees an electronic notice and makes conspicuous postings in the bargaining unit employees' places of work that the Agency has committed unfair labor practices, a description of the Agency's violations of the Statute, and a statement that it will cease and desist from committing further violations;

7. Tolling time limits on Agency-Union bargaining until all remedies have been fulfilled to the satisfaction of the Union or the determination of the FLRA;

8. Reasonable attorney's and other legal fees and costs; and

9. All other relief deemed appropriate.