

American Federation of Government Employees

Local 476

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MEMORANDUM TO: Priscilla Lewis, Chief, Labor Relations Branch, Office of Human Resources, Office of Administration, ARHLL

HJR

FROM: Harold J. Rennett, Steward, Local 476, AFGE

SUBJECT: Demand to Bargain – Employee Fitness Center and Related Policies

This serves as AFGE Local 476's demand to bargain over employee fitness programs and services that are provided or supported by HUD for Headquarters and D.C. Field Office employees, as well as the policies applicable thereto.

I. Background

HUD has the authority to establish and subsidize employee fitness programs pursuant to 5 U.S.C. 7901, the same legislation that authorizes HUD's Employee Assistance Program and the Headquarters Health Unit. The statute provides that "[t]he head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction." 5 U.S.C. 7901(a). That legislative authority is implemented by OPM through its Employee Health Services Handbook, which was issued in 2004 and is available at

<http://www.feddesk.com/freehandbooks/061404-1.pdf> (PDF version) or
<http://www.healthierfeds.opm.gov/healthierfedsmanual.asp> (HTML version).¹

The EHS Handbook makes it clear that, under the legislation's authorization for agencies to operate and subsidize "preventive programs relating to health" (5 U.S.C. 7901(c)(4)), agencies

¹ Though these online versions of the Handbook refer to several appendices and lists of resources, those appendices and lists do not accompany the Handbook. We are trying to obtain them from OPM, and should we do so, we will provide them to you if Management does not already have them.

“may establish and operate physical fitness programs and facilities designed to promote and maintain employee health.” See EHS Handbook, Chapter 1, “What Services May We Provide?”, PDF p. 7 (emphasis added). Indeed, physical fitness programs, services, and policies are the exclusive subject matter of Chapter 2 of the EHS Handbook. *Id.*, p. 15.

Beginning with, and continuing well after, the issuance of the EHS Handbook in 2004, the White House and OPM have directed agencies to make the promotion of employee fitness programs a priority. A message from the Director of OPM that serves as a preface to the Handbook notes that

The health and well-being of Federal employees are crucial to Government operations. President Bush recently recognized this with the HealthierUS Initiative which calls on Federal agencies to make special efforts to assist Americans in improving their fitness and health.

EHS Handbook, PDF p. 3.

Contemporaneously with its issuance of the EHS Handbook, OPM announced its “HealthierFeds” Initiative, an offspring of the President’s HealthierUS Initiative, pursuant to which OPM has (1) committed itself to “working with Federal agency fitness and wellness leaders to promote healthy behavior decisions among Federal employees” and (2) endorsed the HealthierUS Initiative’s establishment of physical activity as one of its “Four Pillars.” See http://www.healthierfeds.com/healthierfeds_initiative/index.asp. In support of the Initiative, OPM declared that the potential benefits to the Government of health promotion programs in Federal workplaces include, among other things, “reduc[tion of] increases in health care costs”, “enhance[ment of] employee productivity” and a “reduc[tion] in absenteeism and presenteeism.”² *Id.* But most significantly, consistent with the stated purposes of the HealthierFeds Initiative, OPM’s EHS Handbook declared that

It is your agency’s responsibility to:

- Determine the need for and extent of employee health programs
- Assess employee health needs and interests
- Assess and provide management support
- Assess the health policies and philosophies of the organization
- Identify available resources
- Integrate the program with other organization functions
- Determine the method for operation
- Establish a statement of goals and objectives
- Direct and monitor programs and services

² “Presenteeism” has been defined as “the problem of workers being on the job but, because of medical conditions, not fully functioning” or not functioning with requisite effectiveness. See <http://www.medterms.com/script/main/art.asp?articlekey=40516>; <http://www.webmd.com/mental-health/news/20040423/Presenteeism-Employees-Employers>.

- Assure that programs are safe, appropriate, and meet legal and ethical requirements
- Select qualified personnel
- Develop a program calendar
- Establish a marketing strategy to reach all employees
- Make services convenient and available to all employees
- Develop an ongoing evaluation process
- Revise and improve the program
- Negotiate or consult with unions, as appropriate, on providing services for bargaining unit employees.

EHS Handbook, PDF p. 8 (emphasis added).

By May 2006 – two years after OPM’s statement of these agency responsibilities in the EHS Handbook – OPM noted, in a memorandum to all agency Chief Human Capital Officers, that “many agencies have taken advantage of the opportunities provided under 5 U.S.C. 7901 . . . to establish and operate employee health and fitness programs and facilities.” See http://www.chcoc.opm.gov/transmittal_detail.cfm?ID=737. Nevertheless, OPM urged federal agencies – in light of May’s status as “Employee Health and Fitness Month” each year – both (1) “to reinforce employees with messages about the importance of being physically active” and (2) to inform employees “about sensible ways to get started with an exercise program.” *Id.* Again, more recently, in designating 2007 “the Year of the Healthier Fed” in January 2007, OPM exhorted Federal agency leaders to examine and expand the focus on employee wellness and to promote healthy behaviors – including physical activity – through Federal workplaces. See http://www.healthierfeds.opm.gov/healthierfeds_initiative/2007/index.asp; and <http://www.snewsnet.com/cgi-bin/snews/07916.html>.

Despite these directions and statements from the White House and OPM over the past several years – and notwithstanding initiatives of the Employee Assistance Program and Health Unit that help employees to assess and address health problems that employees may already possess³ – HUD lacks any official agency policy promoting the health of its employees through the preventive measure of physical fitness through exercise.⁴ Though the Headquarters Fitness Center is listed on hud@work on a menu of “Headquarters administrative services”, the only information on the site regarding the Headquarters Fitness Center is its room number and phone number; no other mention of the Headquarters Fitness Center appears on the site. See http://hudweb.hud.gov/includes/menu_admservices.cfm. And while HUD did place on hud@work (see <http://hudatwork.hud.gov/po/arh/eap/healthierfeds.cfm>) an invitation to employees to participate in this year’s HealthierFeds Physical Activity Challenge coordinated by OPM, HHS, and the President’s Council on Physical Fitness and Sports, the 25 HUD employees

³ See <http://hudatwork.hud.gov/po/arh/eap/hlthcare.cfm#hohc>, setting forth the health care services offered by the Employee Assistance Program and Health Unit.

⁴ This contrast in approach is what the HealthierFeds Initiative refers to in stating that one of its goals is to “[s]hift health care from a ‘treatment’ paradigm” to a prevention paradigm. http://www.healthierfeds.com/healthierfeds_initiative/index.asp.

who registered for the Challenge placed HUD a distant last in registration among Cabinet agencies; and even then, only 7 of the HUD employees completed the physical activities that the Challenge called for, again placing HUD in last place in registrant completion by a substantial margin. See <http://www.healthierfeds.com/challenge/results/2007/index.asp#results>.

It is noteworthy that employees in some HUD field offices such as Philadelphia, Miami, and Portland can use fitness facilities at no personal cost, either as a consequence of HUD subsidy or other, more serendipitous circumstances. In the Boston office, employee fees are a nominal \$50 per year. However, Headquarters employees are left on their own to pay substantial initiation and membership fees to use the Headquarters Fitness Center; for most employees, the membership fee is \$330 per year, which is considerably more than is paid by the aforementioned HUD employees located outside of Washington, DC. Information obtained from the Fitness Center (*see* attached) demonstrates that these fees are having a substantial dampening effect on membership among employees below the GS-12 level, who account for only 20 percent (156 out of 763) of the Fitness Center's HUD membership. The Fitness Center's over 600 employees at or above the GS-12 level very likely also have the advantage of larger balances of leave and less monitoring of their hours and activities – advantages that employees below the GS-12 level lack, thereby making it more difficult for those employees to fit a visit to the Fitness Center into their workday.

It is in light of this background that Local 476 presents its Demand to Bargain.

II. Preliminary Proposals

Our preliminary proposals are as follows:

1. Policy Statement: Management will issue a policy statement that provides as follows: "The positive impact of good health and physical fitness on maintaining effective work performance and productivity has been well established. Therefore, promoting good employee health and physical fitness is hereby sanctioned by HUD as being in the interest of the agency, just as it has been sanctioned by the President through the HealthierUS initiative and by OPM through the HealthierFeds initiative. Providing the means to help employees ensure their health and fitness is therefore a very necessary and integral part of HUD's mission. HUD supports and encourages physical fitness and other preventive health programs." The policy statement will be posted on hud@work within 30 days of the effective date of this Supplement.

2. Fitness Center Subsidies: Subsidies will be provided to the HUD Fitness Association (HFA) in the amount necessary to enable HFA to create a HUD Fitness Center membership fee structure that would require HUD employees earning more than GS-9, step 1, to pay \$100 yearly; require HUD employees earning GS-9, step 1, or less to pay \$50 yearly; and require contractors and other federal employees to pay \$28 per month. Subsidies will likewise be provided to HFA in the amount necessary to enable initiation fees to be charged by HFA only to members other than HUD employees. The HUD Headquarters Fitness Center will continue to be located in the Weaver Building, and HFA will be charged no rent or other fee for using the space assigned to the Fitness Center.

3. Official Time: Employees who are members of the Headquarters Fitness Center may request up to one hour of official time per day, three times a week, to exercise in the Fitness Center. Management will grant any such request, and employees will not be charged with any type of leave for this activity. The Union, HFA, and Management will negotiate and agree upon a reasonable means of enabling Management to verify that an employee taking such official time is in fact using the Fitness Center during that time.

III. Other Matters

The following information is needed before the Union can begin negotiations: Any documents that evidence or otherwise reflect the nature and magnitude of any subsidies or other support currently being provided by HUD to the Headquarters Employee Fitness Center; any statements of HUD policy regarding the promotion of physical fitness among employees; and any copy of OPM's EHS Handbook that includes the appendices referred to therein. In addition, the Union needs a list of all Headquarters Fitness Center members who are HUD employees, so that the Union can (1) assess usage of the Fitness Center by bargaining-unit as opposed to non-bargaining-unit employees (including supervisors and managers) and (2) determine whether the pattern of usage suggests that bargaining unit employees face barriers to Fitness Center usage that non-bargaining-unit employees do not.

These are preliminary proposals only and the Union reserves the right to bargain or amend or add proposals, based upon Management's responses to these preliminary proposals, in accordance with Article 5 of the collective bargaining agreement.

Attachment

cc: William H. Eargle, HFA

