



American Federation of Government Employees

National Council of HUD Locals 222

Affiliated with AFL-CIO

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March 1, 2013

MEMORANDUM FOR: Karen Newton Cole, Acting Chief Human Capital Officer, A
FROM: Eddie Eitches, President, AFGE Council 222
SUBJECT: Demand to Bargain: HUD's Notice of Proposed Furlough for Less Than 30 Days

This memorandum is in response to the U.S. Department of Housing and Urban Development's (HUD's) Notice of Proposed Furlough for Less Than 30 Days, dated February 26, 2013. That Notice informed AFGE Council 222 of HUD Locals (the Union) that HUD has determined it is necessary to furlough all employees for a period not to exceed seven workdays (56 hours) due to a reduction in salaries and expenses (S&E) funding, and to avoid a deficit of funds in FY 2013.

Pursuant to Article 5, Section 5.02 of the HUD-AFGE Council 222 Collective Bargaining Agreement (Agreement), this memorandum serves as the Union's Demand to Bargain the impact and implementation of the budget cuts to the Department's Salary and Expense accounts. The Union demands that the Department not implement any furloughs until bargaining and required advance notice take place. Consistent with Section 5.02(2) of the Agreement, we request that bargaining take place within ten calendar days; due to the severity of the situation, the Union will be available to bargain immediately. I will serve as Chief Negotiator for the Union.

Our bargaining proposals are attached in the form of a Memorandum of Understanding. The Union retains the right to add proposals until bargaining begins, and to subtract and amend proposals pursuant to applicable Federal Statutes and Articles 3 and 5 of the HUD-AFGE Agreement.

Additionally, I bring the following information to the Department's attention:

The Collective Bargaining Agreement (Agreement) between HUD and the Union cover general procedures for furloughs for thirty days or less in Article 16. These procedures include permitting employees "an opportunity to submit a schedule identifying their preferences in accomplishing the necessary number of days off. These schedules shall be accommodated as much as practicable giving due consideration to workload and staffing and office coverage requirements." Agreement, Section 16.04 - Scheduling Furlough Days. HUD's proposed plan is a contract violation and employees must be provided an opportunity to schedule their furlough time in accordance with the terms of our Agreement. The Union does not agree to change the terms of the existing Article 16 of the Agreement. Furthermore, the scheduling of furlough time is a mandatory subject of bargaining. It is not inconsistent with government-wide regulation and does not interfere with management's right to assign work. *NAGE Local R1-203 and U.S. Fish*

and Wildlife Service, 55 FLRA 1081, 1096-1098 (1999). See also *AFGE Local 32 and OPM*, 22 FLRA 307 (1986), affirmed sub nom. *OPM v FLRA*, 829 F.2d 191 (1987).

HUD has proposed that furlough dates be set for the following discontinuous days: May 10, May 24, June 14, July 5, July 22, August 16 and August 30. Notwithstanding the Union's demand that HUD permit employees to choose other dates in keeping with the Agreement, the Union proposes that no furlough be imposed before May 24, 2013. This will reduce the financial burden on employees by allowing more time during which Congress could resolve the budget issues before the first furlough day is imposed, as well as giving employees additional time to prepare.

HUD stated that the fixed furlough days ensure that the Department is able to meet its workload. The Union reminds the Department that having seven fewer workdays will result in less work produced. Consequently, assuming our staffing levels do not have any surplus, HUD will not meet its workload unless the Department expects employees to work more for less pay. Performance standards need to be adjusted in response to employees' reduced ability to meet workload requirements.

HUD's plan announces that for each pay period with a furlough day, employees must be on a regular work schedule and compressed work schedules will be suspended for those periods. This requirement imposes an additional, onerous burden on employees who have established long-standing commuting and dependent care arrangements. This would require many employees to assume the cost of establishing new means of transportation and to pay for an additional day of dependent care—if it is even available on a temporary basis. There is negligible, if any, gain for the Department by imposing this burden. The Department's needs may be met through more flexible means, as proposed in the attached Supplement.

Enclosure
Memorandum of Understanding

Memorandum of Understanding
Between
U. S. Department of Housing and Urban Development
And
American Federation of Government Employees
National Council of HUD Locals 222

SUBJECT: Department-Wide Administrative Furloughs of Less Than 30 Days

SCOPE: This Memorandum of Understanding encompasses the implementation of Department-wide bargaining unit employee furloughs as a result of severe reductions in the Department's budget or sequestration.

PURPOSE: The parties agree that it is essential for the Department to avoid a deficit of funds that might result if the present rate of spending is not curtailed. Both parties will endeavor to carry out HUD's essential functions while minimizing the adverse impact that furloughs will have on employees. The parties agree that the terms of this Memorandum update the terms of the existing 1998 Collective Bargaining Agreement between HUD and AFGE Council 222, and intend for applicable terms to be included in the Article regarding Furloughs upon completion of a subsequent Agreement.

Section 1. No Waiver of Rights. This implementation of the Department's budget cuts or sequestration does not diminish any contractual and/or statutory rights the union or bargaining unit employees may have under the HUD/AFGE Master Agreement, law, rule or regulation. All provisions of the Agreement and its Supplements remain in force.

Section 2. Financial and Budget Reviews.

- (1) Before imposing any furloughs, HUD shall first review its budget and expenditures, and shall reduce costs through all other possible means, including but not limited to:
 - a. Imposing an immediate hiring freeze on all positions.
 - b. Imposing an immediate freeze on all travel and training.
 - c. Imposing an immediate freeze on paid overtime for all employees.
 - d. Not entering into any new contracts, nor renewing existing contracts.
 - e. Canceling or suspending existing contracts, with the exception of contracts that provide specialized services that cannot be performed by employees.
 - f. Freezing all equipment purchases and other expenditures.
 - g. Freezing all cash awards with the exception of any that may have been awarded as a legal or administrative remedy.
- (2) HUD shall not use contracts to provide services to compensate for or supplement reduced employee productivity due to furloughs.

- (3) If, after a thorough review of the Department's financial situation, HUD determines that furloughs are required to avoid Anti-Deficiency Act violations, the Department shall conduct a second, follow-up review by June 30 to determine whether subsequent furlough time is still required. The Department shall inform employees and the Union of the result of its review.
- (4) The Department will inform the Union will be informed of all means of managing the budget reductions that have been utilized or rejected and the Union will be given the opportunity to discuss this with the Department prior to the imposition of any furloughs, in order to recommend actions that were not considered or argue why a particular action should be utilized.

Section 3. Furlough Time to Be Served.

- (1) Furlough time shall be expressed in hours.
- (2) In FY 2013, HUD shall not require full-time employees to take more than 56 hours from April 1 through September 30, 2013.
- (3) Part-time employees shall be required to take furlough hours that are equivalent on a pro-rated basis to the furlough imposed on full-time employees (e.g., a 20-hour/week employee shall be required to take no more than 28 furlough hours during the same furlough period).
- (4) Managers, contractors and SES Principal Organization Heads will be subject to the same furlough requirements as all other full-time employees unless they are statutorily exempt.
- (5) To the extent practicable, all employees will serve furloughs of equal length. The Department shall ensure that bargaining unit employees have no more furlough days than non-bargaining unit employees or contractors.
- (6) All employees after the furloughs begin will serve a proportionate amount of time on furlough. The Department shall advise such employees of the furlough status at the time a job offer is extended.
- (7) To the extent practicable, the Department shall review and strongly consider implementation of all potential cost savings measures in an attempt to reduce the amount of furlough time.

Section 4. Affected Organizations and Personnel.

- (1) All HUD employees, with the exception of nine employees who are appointed by the President and confirmed by the Senate (PAS Officials), are subject to furlough. Schedule C, non-career SES, and career SES are subject to furlough. The only exceptions shall be:
 - a. Employees who are otherwise in a non-pay status during the furlough times.
 - b. Employees under an Intergovernmental Personnel Act mobility assignment.

- c. Personnel on an assignment that does not cause an expenditure of funds to the Department.
 - d. Personnel whose absence during furlough times would reasonably cause harm to or loss of life or property.
- (2) The Department shall strongly consider encouraging PAS employees to donate to the Treasury an amount equal to what their pay reduction would have been if they were subject to the same furlough requirements as other Departmental employees.
 - (3) Before issuing any notices of planned furloughs, the Department shall bargain at the local level to establish a list of essential employees who will not serve furloughs because they meet the above criteria. The Department shall inform all employees deemed essential of that status in writing.
 - (4) Only the Council will determine Union essential employees and the use of any official time during the furlough.

Section 5. Official Time. The amount of official time allocated to Union representatives shall not be affected by a furlough. It is recognized that furlough conditions affect employee morale and generally increase the demand for Union representation and counseling. Thus, it is essential that the Union be able to use all official time available under the Agreement and its Supplements.

- (1) Union representatives who are subject to the furloughs shall use their allocated official time during non-furlough time.
- (2) Supervisors shall not deny the use of official time due to a furlough. There shall be no adverse actions taken against a Union representative for using allocated official time.
- (3) Union representatives may volunteer for the Union on furlough time, but may not use official time to do Union work on furlough time unless they are declared essential by the Council, nor may they perform voluntary work for the Department on furlough time.
- (4) Union officials may continue to use space, equipment and systems provided by the Department to the Union throughout the furlough period, including on furlough time.

Section 6. Liberal Leave Without Pay/Furlough Volunteer Policy. The Department will announce and implement a liberal Leave Without Pay (LWOP) policy before issuing a furlough notice to HUD's bargaining unit. HUD shall direct supervisors to consider and approve LWOP under the same terms as annual leave approval. Use of LWOP shall not count towards meeting the furlough requirement but will factor into additional budget savings that may reduce the amount of additional furlough time for all employees.

Section 7. Hiring Freeze, Merit Promotions and Within-Grade Increases.

- (1) The Department's hiring freeze shall apply to all Program Areas and all positions and grade levels. It shall include all internal hiring as well as hiring from outside the Department.

- (2) The Department shall provide merit promotions for employees in career ladder positions and within-grade increases as employees become eligible during the furlough period.
- (3) Promotions and back pay that have been awarded as a legal or administrative remedy shall be exempt from the freeze; the Department shall process all such personnel actions promptly.

Section 8. Advance Notice. The Department will provide each employee with at least 30 days' advance written notice of a proposed furlough. Management shall be responsible for ensuring that each employee receives the notice. If notices are sent by certified mail, it shall be assumed that notices have been received no sooner than seven business days after the date of the postmark. The advance notice, in addition to providing detailed information about planned implementation of a furlough, shall also include information about:

- (1) How the furlough will affect employees' holiday pay.
- (2) How a proposed or selected furlough schedule will impact coverage under the Federal Employee Health Benefits Program (FEHB) and other Federal benefits programs, such as TSP and retirement.
- (3) The impact of the furlough on the accrual and use of leave, compensatory time, and credit hours.
- (4) The impact of the furlough on withholding from pay.
- (5) The impact of the furlough on planned or scheduled LWOP taken under the Family and Medical Leave Act.
- (6) The impact of the furlough on retirement.
- (7) Whom to contact regarding specific questions about or problems with pay, leave, and other benefits.
- (8) Procedures that need to be followed to request a change in work schedules due to furloughs.
- (9) Procedures to follow to adjust transit subsidies due to furloughs.
- (10) Employee rights to respond to the furlough notice, including to whom and by when responses must be sent. Management will consider all employees' responses before issuing decision letters.
- (11) Employee rights to grieve Departmental actions that result from imposing furlough time.
- (12) How to obtain explanatory letters from the Department to creditors, if they are needed.
- (13) Types of assistance that may be provided by the Employee Assistance Program that would be relevant to the imposition of furloughs.

Section 9. Bargaining Unit Briefing. The Department will conduct one or more briefings for the employees who will be subject to the furlough. The Department will inform the employees the reasons for the furlough, what alternatives to enacting the furlough were considered, why they were not adopted, and the total length of the furlough. The Department also shall provide the employees with these explanations in writing. The Department shall provide time during the briefing for employees to ask questions and hear answers. The Department shall inform the Union in advance of the employee briefing and provide the Union with an opportunity to participate and ask questions.

Section 10. Furlough Start Date. In order to allow the maximum amount of time for budget issues to be resolved, the earliest furlough time shall be scheduled as late as possible in the fiscal year. In FY 2013, no furloughs shall be scheduled earlier than May 24, 2013.

Section 11. Furlough Schedules. The Department shall provide employees with an opportunity to submit a schedule identifying their preferences in accomplishing the necessary amount of unpaid furlough time in accordance with Article 16 of the HUD-AFGE Agreement. These schedules shall be accommodated as much as practicable.

- (1) The parties recognize that variable furlough schedules may be managed effectively through WebTA, much as holiday, leave, training, and other schedule variations are handled.
- (2) Employees may request furlough schedules that are contiguous or discontinuous. This shall include taking one or more days in a single pay period, taking furlough time in hourly increments or in half days, and taking one furlough day per pay period. Employees who take furlough time as partial workdays may do one of the following for the balance of their scheduled work hours.
 - a. Report to work in the office.
 - b. Telework, provided that the employee has an established telework agreement in place prior to the applicable pay period.
 - c. Take leave.
- (3) If the Department's buildings are open during the furlough period for any designated employees to work, the buildings shall be considered safe and suitable for all employees to work. Building "closure" shall not be the basis for denial of a furlough schedule request. This includes leased space or space shared with other organizations.
- (4) In reviewing furlough schedule requests, supervisors shall take into consideration employee circumstances, such as transportation needs and dependent care needs that may impose an additional financial burden if flexibility is not allowed, leave plans, scheduled LWOP due to medical or family matters covered by the Family and Medical Leave Act.
- (5) Supervisors who deny an employee's requested furlough schedule shall provide the employee with a written explanation of why the denied furlough schedule would have a harmful effect on fulfilling the Department's mission.

- (6) Employees and supervisors will use WebTA as a mechanism to record furlough time served. The Department shall modify WebTA with correct codes to account for furlough time served during a pay period.
- (7) The Department may establish dates by which employees must use a minimum amount of furlough time. For example, the Department may determine that full-time employees must use at least 24 hours of furlough by pay period 12 and 56 hours by pay period 17. Supervisors and employees shall be responsible for ensuring that such requirements are met. Supervisors shall audit employees' furlough use during the preceding pay period, and shall schedule the unmet furlough hours for the employee.
- (8) The Department may establish preferred furlough days when the Department is officially closed for business. Such preferred furlough days may be set as the default in WebTA. Employees who select furlough schedules other than the preferred furlough days shall be responsible for adjusting their WebTA appropriately. Employees who select furlough time other than the preferred shall do one of the following on the preferred furlough day:
 - a. Report to work in the office, provided that work on a non-business day such as Saturday or Sunday is routinely permitted or that any personnel who have been declared essential will be working in the building. The Department is under no obligation to heat or cool the building on non-work days, nor to provide any support (e.g., IT support). This option may not be permitted if all building security is shut down.
 - b. Telework, provided that the employee has an established telework agreement in place prior to the applicable pay period.
 - c. Take leave.
- (9) The Department shall advise employees who choose to take furlough time earlier than required of the possible consequences should the Department later cancel additional furlough requirements. The Department shall provide advance information as to how taking excess furlough time shall be handled.

Section 12. Alternative Work Schedules. Employees may continue to work alternative work schedules during the furlough periods. Both parties recognize that employees have established schedules, living arrangements, commuting arrangements, appointments, medical care, and dependent care around established alternative work schedules. Both parties shall endeavor to minimize the disruption and onerous burdens that may be caused by changing employees' established schedules. The Department will permit employees to adjust their work schedules before any furlough takes place to avoid an undue burden.

- (1) Flexitour schedules. Employees' flexitour schedules that consist of five eight-hour days per week shall not be affected by a furlough.
- (2) Compressed Work Schedules. Employees may not take compressed days off in lieu of furlough time. Furloughs must be taken in lieu of normal work hours. Employees on compressed schedules may take furlough time as partial work days if that is permitted for employees on regular work schedules.

- (3) 5-4/9 Compressed Work Schedule. Employees who work eight nine-hour days and one eight-hour day per pay period will be permitted to adjust their schedule so that their eight-hour day falls on a furlough day.
- (4) 4-10 Compressed Work Schedule. Employees who work four ten-hour days per week will be permitted to adjust their schedules on a weekly basis, as is permitted in training or travel situations, so that they work a 4-10 schedule one week of the pay period and a 5-8 schedule the other week, in which one eight-hour work day will be a furlough day.
- (5) Length of Workday. The 6:00am start time and existing end times shall remain in effect as established by the Agreement and its Supplements.

Section 13. Part-time Employees. Part-time employees shall be required to use a proportionate amount of furlough time based on the number of hours they are regularly scheduled to work per week. For example, a 20-hour/week employee shall be required to take 50% of the furlough hours as a full-time employee. Part-time employees must ensure that furlough time is used on a scheduled work day. Furlough time cannot be applied to scheduled non-work days.

Section 14. Leave. Employees may not take leave on furlough days or in lieu of furlough time.

- (1) The Department shall not deny employees the use of any leave due to the furlough, other than leave that overlaps or coincides with furlough time.
- (2) The Department shall not reverse approval of leave requested and approved prior to any furlough announcement. To minimize the burden that furloughs impose on employees, supervisors will be encouraged to allow maximum flexibility to employees who submit leave requests during the furlough period.
- (3) Employees who have submitted leave requests for time off during a furlough period shall be permitted to retract those requests. The Department shall provide advice on how to do so; supervisors shall assist employees by fulfilling all applicable WebTA actions.
- (4) Employees generally shall continue to accrue leave at the regular rate. Employees shall be advised that if they reach a total of 80 hours of LWOP during a leave year, including furlough time and other LWOP time, their leave accrual may be affected. The Department shall provide guidance on leave accrual and use.
- (5) Furloughs shall be scheduled so that employees receive their regular pay for federal holidays. Furloughs scheduled so that only one day next to a holiday, either the day before or the day after but not both, is unpaid shall not affect holiday pay.
 - a. The Department shall be responsible for ensuring that employees who take furlough time on the Department's preferred furlough days do not lose holiday pay. The Department shall advise employees who schedule other furlough days that the employee is responsible for ensuring there is no loss of holiday pay.
 - b. Supervisors shall advise employees who schedule contiguous furlough days if the proposed schedule will result in a loss of holiday pay.

- c. Supervisors shall help employees who take “in-lieu-of” days for holidays that fall on compressed days off to develop a furloughs schedule that does not result in the loss of holiday pay.

Section 15. Telework. Telework agreements shall not be rescinded due to planned furloughs. The Department shall encourage supervisors to permit telework as much as possible to minimize the burden imposed on employees due to furloughs. All provisions in the Telework Supplement of March 24, 2011, and the Department’s Telework Handbook 625.1 shall remain in effect throughout the furlough period.

Section 16. Reasonable Accommodations. No established reasonable accommodation shall be eliminated or otherwise adversely affected due to planned or implemented furloughs. The Department shall continue to process requested reasonable accommodations as normal during the furlough period. New requests for reasonable accommodations shall not be denied due to the furlough.

Section 17. Use of Departmental Facilities, Equipment, and Systems. The Department shall advise employees that they may not perform government work on an unpaid basis during furlough time, just as they may not on any other non-workday such as Saturday, Sunday, or compressed days off. Both parties recognize that employees rely on and regularly use Departmental e-mail and network systems on non-work days to remain informed about Departmental matters, and that HUD has an established policy (Information Resources Management (IRM) Policies, Handbook 2400.1, Chapter 8) permitting employees to make limited personal use of government equipment such as telephone and e-mail during non-work times.

- (1) Employees shall be permitted to use Departmental e-mail and access Departmental systems while on furlough to obtain information, communicate with Union representatives, and otherwise make de minimus use of such systems.
- (2) Employees shall be advised that such systems shall not be used to perform Departmental work.
- (3) The Union shall be permitted to use Departmental e-mail, office space, equipment and other services for Union business during furlough time.
- (4) No adverse actions will be taken against employees who use Departmental e-mail or access Departmental systems while on furlough.

Section 18. Performance Management and Appraisals. Furloughs shall be deemed as a factor beyond an employee’s control and will not negatively impact an employee’s performance evaluation. To the extent practicable, employees’ performance plans shall be modified, adjusted and extended before an employee’s scheduled furlough commences. The rating period for new or modified elements will begin at the time the employee’s furlough commences. Any modified or additional elements shall not be applied retroactively in an adverse manner. Standards implemented after the beginning of the furlough commences shall be achievable by the end of the rating period.

Section 19. Change in Furlough Status. The Department shall provide the Union with monthly reports on expenditures and savings in the S&E budget. By June 30, 2013, the Department shall evaluate all cost savings to date, including but not limited to LWOP used, furloughs imposed, reduction in contract costs, as well as the Department's current budget status. The Department shall determine if the remaining furlough time can be eliminated or reduced. Should the Department's situation change so that furloughs can be shortened, the Department shall act promptly to cancel additional furlough time. The Department shall notify employees of its findings and the results to the employees on or before July 1, 2013.

Section 20. Retroactive Compensation. The Department shall ensure that employees who are furloughed will be retroactively paid and otherwise compensated when appropriations are approved to the extent permitted by law and regulation. Once an appropriation is enacted, the Department will grant employees who lost pay and did not receive retroactive pay subsequently, an amount of administrative leave equal to the amount of paid time lost through furlough. Such leave shall include lost differentials and premium pay the employee would have otherwise earned.

Section 21. No Adverse Actions. Imposition of furlough time shall not cause any additional adverse actions, including the removal of rights and privileges currently afforded under existing policies, handbooks, agreements, or practices. Any changes to existing policies or practices shall be subject to negotiation procedures as described in the Agreement.

Section 22. Other Actions. Internal reorganizations, transfers of function, realignments, Reductions in Force, Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive program (VSIP) as a result of any Departmental budgetary reduction or sequestration shall be conducted in accordance with law, rule, regulation and the terms of the Agreement.

- (1) Upon request by an employee, the Department shall provide the employee with an explanatory letter to creditors.
- (2) The Department shall allow employees additional time to seek advice and assistance through the Employee Assistance Program.
- (3) The Department shall separately negotiate with the Union allowing extensions to EEO and grievance deadlines due to imposition of furlough time.
- (4) The Department will arrange to have representatives of the Unemployment Insurance Agencies from all states in which employees might file claims come to the Department and make presentations regarding benefits, eligibility requirements, and application procedures. Employees who are to be furloughed will receive eight hours of administrative leave in order to apply for unemployment benefits.

Karen Newton Cole
Acting Chief Human Capital Officer

Eddie Eitches
President, Council 222

Date _____

Date _____