



American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

451 7th Street, SW, Suite 3240
Washington, DC 20410

Ashaki Robinson, President
E-mail: Ashaki.Robinson-Johns@hud.gov

Phone: 202-402-7545
Fax: 202-708-7638

January 16, 2020

MEMORANDUM FOR: Monica Matthews, Chief Human Capitol Officer
Joseph Sullivan, Director, Employee & Labor Relations

FROM: Ashaki Robinson, PhD, President /s/
AFGE National Council of HUD Locals #222

SUBJECT: Grievance of the Parties: Management's Proposals on Official time
During Term-Negotiations.

In accordance with Article 51.15 of the HUD-AFGE Council 222 Collective Bargaining Agreement (Agreement or CBA), I am filing this Grievance of the Parties (GOP) with you. This GOP concerns the Department of Housing and Urban Development's (the Agency's) violation of statutory provisions, unfair labor practices and other violations of Federal law that require Management to honor an existing negotiated CBA until a new agreement has been negotiated.

The Agency violated the Federal Labor Relations statute (the Statute), engaged in unfair labor practices and breached the Agreement in the following manner:

1. The Parties currently have a term CBA in place which was the subject of extensive negotiations over a period of 4 years. The current CBA was ratified by the Union membership and approved by a previous Secretary of Housing and Urban Development in July 2015.
2. On May 25, 2018, President Trump signed Executive Order (EO) 13837 titled *Ensuring Transparency, Accountability and Efficiency in Taxpayer-Funded Union Time Use*.
3. The EO specified guidelines to Agencies regarding the use of Official Time by Unions.
4. On or about May 22, 2018, the Agency gave notice of its intent to re-negotiate the term CBA between the Parties.
5. The Parties met for the first time on June 19, 2018 to negotiate the Ground Rules for the new CBA.
6. Each Party submitted initial proposals on February 28, 2019.
7. The Parties began term negotiations for the new CBA on or about March 21, 2019.
8. The Parties negotiated Article 47 - Official Time from December 3 - 4, 2019.

9. In a December 6, 2019 memorandum from Katherine Hannah, Management's Chief Negotiator for the Contract, the Agency stated that the Parties were at Impasse on Article 47.

No Official Time Permitted for 5 U.S.C. § 7131(d) Representation

10. Management's third counterproposal for Article 47 does not allow any Official Time for representation by Union officials other than a brief number of activities permitted under other sections of the Statute. Representation under 5 U.S.C. § 7131(d) includes, but is not limited to, meetings with employees to resolve complaints and grievances, including meetings at preliminary stages before complaints or grievances are formalized; attending grievance meetings with managers and employees; participating as a representative of the Union at an arbitration or in an unfair labor practice hearing related to the AFGE/HUD bargaining unit; and preparing for such meetings or hearings.
11. The Agency, in its proposal for Article 47.01 (2), reflects the prohibition of representational official time included in Section 4(v)(1) of the EO that states:

Employees may not use taxpayer-funded union time ("Official Time") to prepare or pursue grievances (including arbitration of grievances) brought against an agency under procedures negotiated pursuant to section 7121 of Title 5, United States Code, except where such use is otherwise authorized by law or regulation.
12. Under the Statute, both Parties are required to approach negotiations with a sincere resolve to reach a collective bargaining agreement. Failure to negotiate in good faith constitutes an unfair labor practice by the Agency.
13. The Agency's adherence to the prohibition of official time used for § 7131(d) representational purposes is a violation of 5 U.S.C. § 7114(b)(1) (requiring the Agency to approach the negotiations with a sincere resolve to reach a collective bargaining agreement) and an unfair labor practice under 5 U.S.C. § 7116(a)(5) (refusal to consult or negotiate in good faith with a labor organization) of the Statute.
14. The Agency only provided proposals for official time use that is clearly delineated in the Statute but refused to bargain over § 7131(d) official time with the Union. The Agency unilaterally determined that any time used by the Union for the investigation, preparation and filing of a grievance shall not be allocated official time. This is a violation of 5 U.S.C. § 7131 (d) which requires mutual agreement of the Parties.
15. In addition, the exclusion of official time to meet with employees to investigate, prepare, participate in relevant meetings and hearings, and otherwise represent bargaining unit employees in grievances, constitutes a violation of 5 U.S.C. § 7121(b)(1)(C)(i) and 5 U.S.C. § 7121(b)(1)(C)(ii), which provide the Union with the right to present and process grievances and be present at the proceedings.
16. Management has argued that their proposal does not interfere with Union's rights to perform representational duties on personal time (e.g. non-duty time). However, this

clearly has a dampening effect on the ability and willingness of employees to perform statutorily permitted functions and is in conflict with the clear Congressional intent.

17. Management's refusal to negotiate over the amount of official time for 5 U.S.C. § 7131(d) representational functions is contrary to the public interest and violates the Congressional mandate that official time "shall be granted" for those functions.
18. Congress has mandated in 5 U.S.C. § 7121 that procedures for the settlement of grievances be included in every collective bargaining agreement, and HUD's refusal to grant official time for participation in those grievance procedures is a failure to comply with both 5 U.S.C. § 7102 (the right "to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch") and 5 U.S.C. § 7121 ("the right [of the exclusive representative], in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances . . . the right to be present during the grievance proceeding" when an employee presents the grievance on the employee's own behalf").
19. It is *prima facie* bad faith bargaining for the Agency to submit a permissive proposal to impasse. Insisting upon statutory waiver, in this case, the waiver of statutorily guaranteed "reasonable and necessary" official time, is a permissive proposal. Simply by submitting the proposal to impasse, the Agency has violated the law. Combined with other elements, discussed below, the Agency has, by the totality of the circumstances, committed to a bargaining scheme of bad faith.

Unfair Treatment of Union Officials

20. On May 3, 2019 the Parties tentatively agreed to Article 6 on Employee Rights/Standards of Conduct. Within that Article (Section 6.09) the Parties agreed that: "Employees have the right to meet with a Union representative concerning matters addressed in this agreement during duty time or on the employee's own time."
21. The only agreed upon limit is that the request must be for matters addressed in the Agreement. There was no prohibition on employees meeting with Union representatives to discuss a grievance.
22. Management's third counterproposal for Article 47, Section 47.01(2) does not allow any official time for representation by Union officials.
23. Under management's proposal, employees are allowed to use official time to represent themselves and use duty time to see Union representatives. However, Union representatives are not allowed to use official time to meet with employees regarding any representational issues.
24. The Agency committed an unfair labor practice by denying the Union the right to use official time for 5 U.S.C. § 7131(d) representational functions, thereby interfering with employees' rights to representation and restraining the Union from exercising their right

to assist the employees by performing representational duties while on official time. This is a violation of 5 U.S.C. § 7116 (a)(1).

25. FLRA precedents have found that the use of official time for representational activities covered by 5 U.S.C. § 7131(d) is a protected activity under 5 U.S.C. § 7102 (57 FLRA 109). The Agency's proposal violates 5 U.S.C. § 7116 (a)(1) as it prevents Union officials from using official time to perform representational duties.
26. The Agency's refusal to permit designated Union representatives the use of official time to perform § 7131(d) functions violates the Union's right under 5 U.S.C. § 7102 to "assist any labor organization. . . and each employee shall be protected in the exercise of such right." In particular, HUD is interfering with employees' right under 5 U.S.C. § 7102 (1) "to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities."
27. The availability of official time is essential to the Union's ability to perform its representational functions, and Congress specifically intended for official time to be available for the Union to represent employees in a number of different ways, including by preparing and presenting grievances and complaints.
28. 5 U.S.C. § 7121(b)(1)(C)(i) assures a Union the right, on its own behalf, or on the behalf of any employee in the bargaining unit represented by the Union, to present and process grievances. Further, 5 U.S.C. § 7121(b)(1)(C)(ii) assures an employee the right to present a grievance on the employee's own behalf and assures the exclusive representative the right to be present during the grievance proceeding. The Agency violated this section by not providing for 5 U.S.C. § 7131(d) official time.
29. The FLRA has found that depriving employees and the Union of the ability to perform labor-management relation activities at times that are desirable "[p]laces the employees and the Union at a disadvantage in protecting employee interests in the face of Agency action." 45 FLRA 354 (1992).

Reducing 5 U.S.C. § 7131(d) Official Time

30. Management's third proposal for Article 47, Section 47.02(2) reduces the amount of official time available in subsequent fiscal years if any Union representative exceeds Management's stated 15% per person cap in the current fiscal year on the use of official time under 5 U.S.C. § 7114, § 7131(a), or § 7131(c).
31. Although there is no immediate reduction in the current fiscal year of 5 U.S.C. § 7131(d) official time, there will be a reduction in 5 U.S.C. § 7131(d) official time in the next fiscal year, further reducing the amount of official time Union representatives can use for allowable 5 U.S.C. § 7131(d) representational work.
32. The Agency's proposal reflects the mandate in the EO Section 4 (iii) which states:

Any time in excess of one-quarter of an employee's paid time used to perform non-agency business in a fiscal year shall count toward the limitation set forth in subparagraph (1) of this subsection in subsequent fiscal years.

33. The Agency's adherence to the eventual reduction of 5 U.S.C. § 7131(d) if the Union exceeds the Agency's cap of official time due to the Union's use of statutorily mandated 5 U.S.C. §§ 7114, 7131(a), or 7131(c) official time is a violation of 5 U.S.C. § 7114 (b)(1) and 5 U.S.C. § 7116(a)(5) of the Statute and is an unfair labor practice because it contemplates denying official time that may be reasonable and necessary under law. The Department may not lawfully ignore the statutory standard for evaluating the appropriateness of an official time request.
34. The proposal also puts the Agency in the business of selecting which bargaining unit employees are eligible to engage in representational work, which is unlawful interference with internal union business, and a permissive proposal. Insisting upon a permissive proposal, in this case, whom the Union selects to act on its behalf in representational matters, is a permissive proposal. Simply by submitting the proposal to impasse, the Agency has violated the law.

Meeting

AFGE Council 222 is not requesting a meeting with you for resolution pursuant to Article 51.15(2) of the Agreement.

Remedy

1. A finding that the Agency failed to meet its statutory and contractual obligations, and an order, directing that the Agency specifically acknowledge its violations in an electronic message/posting to all bargaining unit employees
2. An order directing the Agency to bargain Article 47 in good faith as required by the Statute and allow for the provision of 5 U.S.C. § 7131(d) official time
3. Attorney's fees related to the preparation and conduct of the arbitration, as well as the full costs of the arbitration, including but not limited to arbitrator's fees and the travel expenses and per diem of Union witnesses who traveled to the arbitration site to testify;
4. Any other remedy available to the fullest extent of the law.

Response

In accordance with Article 51, Section 51.15(3) of the Agreement, please provide your written response within 30 days of receipt of this GOP.