



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

October 19, 2021

MEMORANDUM FOR: D'Andra Hankinson, HUD Deputy Director of Labor & Employee Relations Division, AHEDB

FROM: Salvatore T. Viola, President 
AFGE National Council of HUD Locals No. 222

SUBJECT: Grievance of the Parties: HUD's Implementation of COVID-19 Vaccination Policies and Procedures and Related Changes Without Notice or Bargaining

Pursuant to Article 51, Sections 51.01(2), 51.01(3), and 51.15 of the 2015 HUD–AFGE Agreement (Agreement, collective bargaining agreement, or CBA) and the Federal Service Labor-Management Relations Statute (Statute) at 5 U.S.C. § 7103(a)(9)(B) and (C), 5 U.S.C. § 7121(b)(1)(C)(i), and 5 U.S.C. § 7116(d), I am filing this Grievance of the Parties (GOP) on behalf of AFGE National Council of HUD Locals No. 222 (AFGE Council 222 or Union) with you concerning the Department of Housing and Urban Development's (HUD's) violations of our collective bargaining agreement and unfair labor practices (ULPs) related to HUD's implementation of the Coronavirus (COVID-19) vaccination mandate, vaccine attestation, testing requirements, reasonable accommodation procedures, and other related changes prior to bargaining with AFGE Council 222 and while ignoring AFGE Council 222's demand to bargain on these issues.

Chronology

On September 8, 2021, at 12:02 p.m., D'Andra Hankinson, HUD's Deputy Director for the Employee and Labor Relations Division, notified the Union regarding the Agency's intention to have employees to attest to their COVID vaccine status. See attached [Exhibit 1](#). Despite Ms. Hankinson's misleading language asserting that HUD management was "hoping to engage in PDI [pre-decisional involvement] with AFGE," HUD did not give the Union adequate time to respond and engage in bargaining. Instead, the HUD Office of Administration sent an email at 1:10 p.m. that same day (updated at 2:48 p.m.) to all HUD employees announcing that they had until September 17, 2021, to attest to their vaccination status. See attached [Exhibit 2](#). HUD implemented this COVID-19 vaccination status attestation without adequate notice to and prior to bargaining with AFGE Council 222.

In response to HUD's action, AFGE Council 222 Chief Negotiator for COVID-19 issues, Ricardo Miranda, sent an email to Ms. Hankinson at 2:56 p.m. that same day, requesting that

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HUD cease and desist from implementing the COVID-19 vaccination status attestation until after completion of bargaining in accordance with Supplement 28, Article 49, and Article 41 of the HUD-AFGE Agreement. See attached Exhibit 3. As noted in Mr. Miranda's email to Ms. Hankinson, HUD failed to adequately notify the Union regarding the change in conditions of employment; the Union also offered to expedite the submission of proposals in order to bargain immediately.

As Mr. Miranda pointed out in his September 8 email, the Safer Federal Workforce Task Force's model workplace safety principles, which discussed requirements related to vaccination of federal employees, directed agencies to satisfy their collective bargaining obligations:

Collective Bargaining Obligations

Consistent with President Biden's policy to support collective bargaining, agencies are reminded to satisfy applicable collective bargaining obligations under 5 U.S.C. Chapter 71 when implementing workplace safety plans. Agencies are also strongly encouraged to communicate regularly with employee representatives on workplace safety matters.

[Agency Model Safety Principles - September 13, 2021 \(saferfederalworkforce.gov\)](https://www.saferfederalworkforce.gov/faq/vaccinations/) at 7.¹

On September 9, 2021, President Biden issued Executive Order No. 14043, establishing the COVID-19 vaccination mandate for Federal employees. See [Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees | The White House](https://www.whitehouse.gov/briefing-room/executive-orders/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/).²

On September 14, 2021, Mr. Miranda emailed Ms. Hankinson with a demand to bargain and preliminary bargaining proposals on the COVID-19 vaccination mandate, attestation, and testing requirements. See attached Exhibit 4. On September 14, 2021, Ms. Hankinson responded to Mr. Miranda's email, ambiguously alluding to bargaining "as soon as practicable" in accordance with Article 41, Section 41.04.C of the HUD-AFGE Agreement, but failing to commit to providing formal notice or to explain what would be "practicable." See attached Exhibit 5.

On September 20, 2021, AFGE Council 222 Chief Negotiator for COVID-19 issues, Ricardo Miranda, sent HUD the Union's revised and updated preliminary bargaining proposals that incorporated and were consistent with the Safer Federal Workforce Task Force's implementation guidance (<https://www.saferfederalworkforce.gov/faq/vaccinations/>) issued from September 13–16, 2021, in support of President Biden's COVID-19 vaccination mandate, Executive Order No. 14043. See attached Exhibit 6.

In a subsequent email exchange between Ms. Hankinson and Mr. Ricardo that day, HUD again alluded to engaging with the Union in pre-decisional involvement, while simultaneously delaying actual bargaining, and justifying notifying the bargaining unit of changes to conditions

¹ <https://www.saferfederalworkforce.gov/downloads/updates%20to%20model%20safety%20principles%209.13.21.pdf>.

² <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/>.

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of employment without first notifying the Union. See attached Exhibit 7. Echoing her language of September 8, Ms. Hankinson wrote on September 20,

We . . . want to make sure we are prepared before coming to the table. We want to engage in PDI [pre-decisional involvement] with AFGE to get your in-put and feedback on the development of that program before coming to the table and request that you provide us with dates of your availability to meet for PDI discussions. Nonetheless, we will fulfill our required bargaining obligations.

Exhibit 7 at 2.

On October 7, 2021, the HUD Office of Administration again engaged in unilaterally implementing changes in AFGE bargaining-unit employees' conditions of employment by announcing via email the deadlines for employees to receive the doses of the Moderna, Pfizer, and Johnson and Johnson COVID-19 vaccines. See attached Exhibit 8. Although the Safer Federal Workforce Task Force had announced those deadlines for first doses of the Moderna (October 11, 2021) and Pfizer (October 18, 2021) vaccines on September 16, 2021, HUD failed to notify or bargain with the Union over its implementation of those deadlines during the three weeks before the Office of Administration's email of October 7, which provided employees with only four- or seven-days' notice to comply.

Furthermore, HUD's October 7 announcement failed to comply with President Biden's Executive Order No. 14043 and the Safer Federal Workforce Task Force's guidance by omitting both information about benefits offered by the government (i.e., using duty time to get vaccinated) and any mention of permitting employees to request reasonable accommodations from the COVID-19 vaccination mandate based on sincerely held religious beliefs and observances and for medical disabilities.

On October 13, 2021—after the deadline for the first Moderna dose, and almost a week after HUD announced the vaccination deadlines—the HUD Office of Administration finally announced procedures for obtaining exceptions to the vaccine mandate as reasonable accommodations for medical (disability) reasons or due to sincerely held religious beliefs and observances. See attached Exhibit 9. HUD failed to engage with the Union during the four weeks between the issuance of government-wide guidance and its own directive. As a result, HUD failed to provide proper notice to and bargain with the Union regarding new procedures for requesting exemptions to the vaccine mandate as reasonable accommodations based on religious beliefs. HUD also violated the CBA by directing employees to follow procedures contrary to Article 45, Section 45.01 and others, to request exemptions to the vaccine mandate as reasonable accommodations based on disability/medical reasons.

It was not until October 15, 2021, that HUD distributed an email with guidance about vaccine-related leave to employees (see attached Exhibit 10)—one of the points that the Union had raised in its September 20 proposals, four weeks earlier, based on the Safer Federal Workforce Task Force's September 16 guidance. Despite the fact that the Task Force provided guidance on September 16 regarding proof of vaccination, and the Union provided related proposals on September 20, as of October 15, HUD advised employees, "Additional information regarding the submission of accepted documentation will be provided in the near future." This month-long

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delay in providing information is further indication that HUD has no intention of engaging in good-faith pre-implementation bargaining with the Union. Instead, management is waiting until the last minute to announce its procedures, thereby precluding bargaining.

Despite Ms. Hankinson's earlier assertion that "we want to work with AFGE," (Exhibit 7 at 2), HUD management ignored the Union's September 20 demand to bargain and preliminary bargaining proposals for four weeks. Despite the contractual requirement in Article 49, Section 49.04(2), to begin negotiations within ten days from the Union's submission of its bargaining proposals, Ms. Hankinson did not respond with any willingness to negotiate until October 15, 2021, despite numerous emails from the Union. See attached Exhibit 11. Without committing to beginning negotiations promptly, Ms. Hankinson wrote, "Please let me know when your team is available to commence bargaining, then I'll coordinate dates with the Management Team and we can finalize logistics for bargaining." HUD's failure to offer a specific date in the coming week is another indication of bad faith unwillingness to bargain.

At 8:08 p.m. on the night of October 15, Ms. Hankinson sent another email identifying the members of the management team and a call-in number for bargaining. See attached Exhibit 12. The next day, Saturday, October 16, 2021, Ms. Hankinson sent an electronic invitation to meet with the Union at 12:30 p.m. on October 18 about a message going out to staff that afternoon. See attached Exhibit 13.

On Monday, October 18, 2021, the Union representatives met by telephone with Ms. Hankinson. She informed the Union that HUD was going to send out a message to the employees about returning to the office. During the conversation, Ms. Hankinson never mentioned a date. At 1:11 p.m. on October 18, 2021, HUD sent an email from Secretary Marcia Fudge to all employees announcing that employees would return to HUD offices on January 3. See attached Exhibit 14. HUD had not provided the Union with any notice of that return date before announcing it to the bargaining unit.

On Tuesday, October 19, 2021, Ms. Hankinson emailed the Union to say that HUD would be ready to begin "negotiations on implementation of EO [Executive Order] 14043 and updates to the Safe Federal Workplace Plan" on Tuesday, October 26. See attached Exhibit 15. HUD continued to fail to provide proper notice of either the implementation of the vaccine attestation and mandate, the return to work, or the update to the "safe federal workplace plan", as required under the CBA Article 49, Sections 49.02 and 49.03. HUD also failed to respond to the Union's September 14 and 20 demands to bargain and proposals regarding the vaccination mandate, attestation, and testing requirements. Consequently, the Union responded to Ms. Hankinson asking for proper "notice regarding Workplace Flexibilities, Employee Well-being, and January 3rd deadline [for] HUD Re-entry" and stating that the Union will bargain over the vaccination mandates and exceptions to those mandates on October 26. See attached Exhibit 15.

Contract Violations and Unfair Labor Practices

HUD unilaterally implemented changes to AFGE Council 222's bargaining-unit employees' conditions of employment related to the COVID-19 vaccination mandate, vaccine attestation, testing requirements, and reasonable accommodation procedures. As early as January 20, 2021,

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President Biden had made clear that agencies must “promptly consult, as appropriate, with . . . Federal employee unions . . . concerning the implementation of this section” (i.e., complying with “CDC guidelines with respect to wearing masks, maintaining physical distance, and other public health measures”). Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing. Although the Safer Federal Workforce Task Force subsequently stated that agencies could bargain post-implementation if bargaining could not be *completed* by the November 22, 2021, deadline for employees to be fully vaccinated, the Task Force emphasized that agencies should give unions timely notice and begin bargaining as soon as possible: “agencies should **engage with employee unions at their earliest opportunity** regarding the requirement for agency employees to be vaccinated . . . bargaining that has **not been completed** by the time implementation must begin will have to be finished post-implementation” (emphasis added). See attached Exhibit 16. HUD has offered no legitimate reason why HUD management must *begin* bargaining with AFGE Council 222 post-implementation on these COVID-19 vaccination issues; the Union had submitted preliminary bargaining proposals on September 20 and was prepared to begin bargaining expeditiously. By waiting as late as possible to issue its directives and new policies, HUD acted in bad faith to create a situation that justified unilateral implementation, ignoring its bargaining obligations with AFGE Council 222 prior to implementation.

HUD's actions that violate the CBA and the Statute include but are not limited to:

- Unilaterally establishing and implementing procedures on September 8, 2021, without adequate notice to or bargaining with AFGE Council 222, by which all HUD employees are to attest to their vaccination status.
- Failing to bargain in response to the Union's September 14 and September 20, 2021, demands to bargain over the COVID-19 vaccination mandate, documentation, and testing requirements.
- Unilaterally implementing changes on October 7, 2021, without notice to or bargaining with AFGE Council 222, in AFGE bargaining-unit employees' conditions of employment by announcing deadlines for employees to receive the doses of the Moderna, Pfizer, and Johnson and Johnson COVID-19 vaccines.
- Failing to comply on October 7, 2021, with President Biden's Executive Order No. 14043 and the Safer Federal Workforce Task Force's guidance related to reasonable accommodations from the COVID-19 vaccination mandate for sincerely held religious beliefs and observances and for medical disabilities.
- Unilaterally establishing and implementing new procedures on October 13, 2021, without notice to or bargaining with AFGE Council 222, for obtaining exceptions to the vaccine mandate as reasonable accommodations due to sincerely held religious beliefs and observances without notice to or bargaining with AFGE Council 222.
- Unilaterally establishing and implementing new procedures on October 13, 2021, without notice to or bargaining with AFGE Council 222 and in violation of established provisions

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in the CBA, for obtaining exceptions to the vaccine mandate as reasonable accommodations for medical (disability) reasons.

- Unilaterally establishing and announcing to employees that HUD employees would return to HUD offices on January 3, 2022, without notice to or bargaining with AFGE Council 222.

Therefore, through the actions described above, AFGE Council 222 alleges that HUD violated the HUD-AFGE Agreement including, but not limited to the Preamble, Article 6 and Sections 6.01 and 6.05, Article 38 and Section 38.04, Article 41 and Section 41.04, Article 45 and Section 45.01, Article 49 and Sections 49.02, 49.03, 49.04, Article 59 and Sections 59.01 and 59.03, Supplement 28, etc.

Through its unilateral implementation of COVID-19 vaccination mandate, attestation and testing requirements without proper notice to or bargaining with the Union, HUD management also committed ULPs in violation of the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7116(a)(1) and (5). It is a ULP for an agency to fail to provide a union with reasonable notice of a planned change and an opportunity to bargain before implementing the proposed change in conditions of employment. The agency's notice to a union must be sufficiently specific or definitive regarding the actual change contemplated so as to adequately provide the union with a reasonable opportunity to request bargaining. It also is a ULP for an agency to implement its management's rights under 5 U.S.C. § 7106(a) prior to bargaining procedures and appropriate arrangements pursuant to 5 U.S.C. § 7106(b)(2) and (3).

Furthermore, an agency violates 5 U.S.C. § 7116(a)(1) and (5) when it fails to provide the Union with an opportunity to bargain over the impact and implementation of the change before the implementation date. Even in cases where an agency corrects an unlawful past practice, it must give prior notice of the change and to bargain, to the extent consistent with law and regulation, concerning the impact of the required change and, where possible, its implementation. In this matter, HUD is not correcting a past practice inconsistent with the law but instead is implementing new rules for which it had sufficient notice to bargain before meeting external deadlines. For example, although President Biden announced on July 29, 2021, his plan to have employees attest to their vaccination status, HUD did not notify the Union of its intent to implement a vaccination attestation form—one that did not conform to the form recommended by the Safer Federal Workforce Task Force—until September 8, a mere hour before implementation. Similarly, HUD announced its implementation of the government-wide vaccine mandate on October 7, a full four weeks after President Biden's executive order, three weeks after the Safer Federal Workforce Task Force issued its government-wide implementing guidance, and 17 days after the Union sent its revised demand to bargain and proposals—a week after HUD failed to meet its deadline to begin midterm bargaining under CBA Article 49, Section 49.04. HUD thus has no excuse that justifies delaying bargaining until after implementation. Agencies must meet their bargaining obligations whenever doing so will not delay implementation of lawfully required practices.

OPM has noted, "In an emergency, management has the right to alter working conditions without bargaining prior to implementing the change. However, post-implementation bargaining may be

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required.” [Is there any flexibility on labor-management agreements during an emergency? - OPM.gov](#).³ In the present case, however, where HUD has had weeks to bargain with the Union prior to implementation, there was no “emergency.” Furthermore, post-implementation bargaining eliminates the opportunity to engage in meaningful negotiation, contrary to the intent of the Statute that “collective bargaining [is] in the public interest.” 5 U.S.C. § 7101. Post-implementation bargaining eliminates the ability to bargain over most, if not all, of the aspects of implementation before they affect bargaining unit employees, thereby negating the purpose of collective bargaining. Post-implementation bargaining is contrary to the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7113(b)(2) and (c), § 7114(a)(4) and (b), and § 7117(a) and (b)(1). There is long history of Federal Labor Relations Authority (FLRA) case law precedent dating back to 1985 that even in situations of noncompliance with a government-wide regulation, an agency must notify and bargain impact and implementation with an exclusive representative prior to implementing a change as long as a union’s bargaining proposals are not contrary to the government-wide rule or regulation. Additionally, limiting negotiations to post-implementation bargaining generally requires the Union to waive its right to bargain prior to implementation, which the Union has not done in this case. HUD’s refusal to engage in pre-implementation bargaining is an act of bad faith and an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5).

The Union may choose to file a ULP under the negotiated grievance procedures pursuant to the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7116(d). In accordance with Article 51, Sections 51.01(2) and (3), of the HUD-AFGE Agreement and the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7103(a)(9)(B) and (C), the Union reserves the right to raise and grieve **any** violation, misinterpretation, or misapplication of **any** provision of the HUD-AFGE Agreement or any law, rule, or regulation affecting AFGE Council 222 bargaining-unit employees’ conditions of employment related to HUD’s failure to provide proper notice to and bargain with the Union prior to HUD’s unilateral implementation of the COVID-19 vaccination mandate, attestation, and testing requirements in this GOP and/or arbitration.

There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes in the Union’s allegations regarding HUD’s violations of the collective bargaining agreement, law, rule or regulation concerning the subject matter being grieved. The Union reserves the right to modify this GOP based on additional information that may become available before the matter is resolved.

Remedies

- (1) HUD shall cease and desist from implementing or enforcing any policies and procedures related to the COVID-19 vaccination mandate, attestation, and testing requirements until HUD and AFGE Council 222 complete bargaining.

³ <https://www.opm.gov/FAQs/QA.aspx?fid=b48bf83b-440c-4f1e-a88c-3cdc9d802ac8&pid=f06f72aa-fd1d-4cd1-aa27-370ad6ccc519>

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- (2) The Department shall cease and desist from communicating plans for changes in AFGE Council 222 bargaining-unit employees' conditions of employment prior to completion of bargaining with the Union.
- (3) HUD management shall begin negotiations within 5 workdays of the date of the filing of this GOP. HUD and AFGE Council 222 shall follow the mid-term bargaining ground rules in Article 49 except for the deadline to commence negotiations within 5 workdays from the filing of this GOP.
- (4) HUD management shall hold in abeyance/rescind all disciplinary/adverse actions against AFGE Council 222 bargaining unit employees based on failure to meet the COVID-19 vaccination or other deadlines until HUD and AFGE Council 222 complete bargaining over COVID-19 vaccination issues; this is an appropriate remedy due to the minimal notice provided to employees and bad-faith failure to bargain with the Union in violation of the HUD-AFGE Agreement and the Federal Service Labor-Management Relations Statute. Any disciplinary/adverse actions taken shall be consistent with terms upon which the parties have agreed.
- (5) HUD shall not deny any AFGE Council 222's bargaining unit employees' reasonable accommodation exemption requests for the COVID-19 vaccination mandate, attestation, and testing requirements prior to completing bargaining with AFGE Council 222 as an appropriate remedy due to the minimal notice provided to employees and baith-faith failure to bargain with the Union prior to implementation in violation of the HUD-AFGE Agreement and the Federal Service Labor-Management Relations Statute. Any denials shall be consistent with the terms upon which the parties have agreed. Deadlines to comply with vaccination requirements shall be reset after the denial of reasonable accommodation request(s).
- (6) HUD shall follow the procedures in the CBA for all reasonable accommodation requests based on medical/disability reasons, including reasonable accommodations for exemptions from the COVID-19 vaccination mandate, attestation, and testing requirements. HUD shall complete bargaining with the Union before implementing any change to those procedures related to COVID-19 and before implementing any new procedures for receiving and evaluating reasonable accommodations for exemptions from the COVID-19 vaccine requirements based on sincerely held religious beliefs.
- (7) The Department shall send an email posting to all AFGE bargaining unit employees nation-wide as well as a physical posting in all HUD offices in which AFGE Council 222 is the national consolidated exclusive representative that HUD committed an Unfair Labor Practice (ULP) and will not change bargaining unit employees' conditions of employment prior to bargaining with the Union. An electronic posting is an appropriate remedy available for a ULP violation. *See U.S. Department of Justice, Federal Bureau of Prisons, Federal Transfer Center, Oklahoma City and American Federation of Government Employees (AFGE), Council of Prison Locals 33, Local 171, 67 FLRA 222 (January 31, 2014).* AFGE Council 222 shall subsequently provide HUD management the

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posting language consistent with standard language in Federal Labor Relations Authority (FLRA) case law for failure to bargain ULP postings to account for the facts in this case.

- (8) HUD shall pay AFGE Council 222's attorneys' fees to recover any affected AFGE Council 222 bargaining-unit employee's back pay, allowances, differentials and interest for the unilateral implementation of changes in employees' conditions of employment, disciplinary/adverse actions related to noncompliance with any orders, instructions or deadlines to comply with the COVID-19 vaccination mandate, etc. in accordance with the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(i) and (ii) and (b)(2).
- (9) Management shall pay all arbitration fees and expenses in accordance with Article 52, Section 52.04 of the HUD-AFGE Agreement.
- (10) Any other remedy available to the fullest extent of the law, rule, regulation, policy, HUD-AFGE Agreement, past practice, or arbitrator's award. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes in remedies requested. Please be advised that arbitrators have discretion in fashioning appropriate remedies for violations of provisions of a collective bargaining agreement, law, rule or regulation. *See U.S. Department of Justice (DOJ), Federal Bureau of Prisons (FBP) and American Federation of Federal Employees (AFGE), Local 817, Council of Prison Locals #33, 70 FLRA 398 (February 22, 2018); See U.S. Veterans Affairs Hospital, Newington and National Association of Government Employees (NAGE) Local R1-109, 5 FLRA 64, 66-67 (1981); U.S. Railroad Retirement Board and AFGE Local 375, 61 FLRA 320, 321 (2005); National Treasury Employees Union (NTEU) Chapter 68 and U.S. Department of the Treasury, Internal Revenue Service (IRS), 57 FLRA 256, 257 (2001); U.S. Department of the of Navy, Mare Island Naval Shipyard and Federal Employees Metal Trades Council (FEMTC) Local 127, 53 FLRA 390, 399 (1997); U.S. Department of the Air Force, Kelly Air Force Base and AFGE Local 1617, 51 FLRA 1624, 1631 (1996); AFGE Local 916 and U.S. Department of the Air Force, Oklahoma City Air Logistics Center, Tinker Air Force Base, 46 FLRA 846, 852 (1992); U.S. Department of the Navy, Marine Corps Logistics Base, Albany and AFGE Local 2317, 39 FLRA 576, 579 (1991); and United States Department of Veterans Affairs, Cleveland, Ohio and AFGE Local 2823, 59 FLRA 248, 252 (2003).*

The above remedies are reasonably and proportionately related to the violations of the HUD-AFGE Agreement and Federal Service Labor-Management Relations Statute cited above and do not excessively interfere with management's rights provisions in 5 U.S.C. § 7106(a) in accordance with *U.S. Department of Justice (DOJ), Federal Bureau of Prisons (FBP) and American Federation of Federal Employees (AFGE), Local 817, Council of Prison Locals #33, 70 FLRA 398 (February 22, 2018) (DOJ)*. The remedies merely seek HUD management's compliance with the HUD-AFGE Agreement and Federal Service Labor-Management Relations Statute provisions cited above. Alternatively, should an arbitrator award the Union's remedies requested above and the Department files exception(s) with the Federal Labor Relations Authority (FLRA), AFGE Council 222 requests that the FLRA reconsider its existing case law precedent in *DOJ* and revert back to the abrogation test for arbitrators' authority to enforce appropriate-arrangement provisions negotiated pursuant to 5 U.S.C. § 7106(b)(3) even if it

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affects management's rights at § 7106(a), [*Environmental Protection Agency (EPA) and American Federation of Government Employees (AFGE), Council 238*, 65 FLRA 113 (September 29, 2010)] and re-establish the broader discretion of arbitrators to fashion remedies even if it affects management's rights [*Federal Deposit Insurance Corporation (FDIC) and National Treasury Employees Union (NTEU), Chapter 273*, 65 FLRA 102 (September 29, 2010)].

Meeting

The Union is not requesting a meeting to discuss this GOP. However, we are willing to meet with HUD management if the Department is sincerely willing to commence mid-term negotiations with AFGE Council 222 within 5 workdays of the filing of this GOP and negotiate a settlement of this grievance prior to the 30-day deadline for management to provide its written response to the grievance in Article 51, Section 51.15(3) of the HUD-AFGE Agreement. Otherwise, please provide your written response within 30 days.

Please be advised that AFGE Council 222 intends to invoke arbitration in this case should HUD management deny the Grievance of the Parties. The Union will not accept HUD's establishing a precedent of post-implementation bargaining on an arbitrary and capricious bases given that AFGE Council 222's September 20, 2021, preliminary bargaining proposals are not contrary to President Biden's Executive Order No. 14043 or the Safe Federal Workforce Task Force's COVID-19 vaccination implementation guidance.

cc: Ricardo Miranda, AFGE Council 222 COVID-19 Chief Negotiator
Jerry Gross, AFGE Council 222 Steward
Lori A. Michalski, HUD Chief Human Capital Officer
Sonya Gaither, Director, Employee and Labor Relations Division

Exhibits

1. HUD Notice to Union - Vaccine Attestation - 9-8-2021.pdf
2. HUD Email and Update - Vaccine Attestation Process for Employees - 9-8-2021
3. AFGE Email - Cease and Desist - COVID Vaccine Attestation - 9-8-2021
4. AFGE Email - Union DTB and Preliminary Proposals for Vaccination Mandate, Attestation and Testing- 9-14-21
5. Hankinson response to AFGE demand to bargain - 9-14-21
6. Union DTB and Proposals for vaccination issues revised 9-20-21
7. Union-HUD Email Exchange - AFGE Council 222's demand to bargain & preliminary bargaining proposals – 9-20-2021
8. HUD Email - Benefits of COVID-19 Vaccine and Vaccination Deadline Reminder 10-7-2021
9. HUD Email - Vaccine Requirement - Religious and Medical Exceptions - 10-13-2021
10. HUD Email - Workplace Safety - Vaccination Requirement Reminder 10-15-2021
11. HUD Email - Dates to Begin Bargaining Implementation of EO 14043 - 10-15-2021
12. HUD Email - Dates to Begin Bargaining - 10-15-2021 808PM
13. HUD Email - Briefing on Message to Staff - 10-16-2021
14. HUD Email - Workplace Updates -10-18-2021

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15. Union-HUD Email Exchange - Dates to Begin Bargaining - 10-19-2021
16. Safer Federal Workforce FAQ Labor Relations Related to Vaccination - 9-16-21