

UNITED STATES OF AMERICA FEDERAL LABOR RELATIONS AUTHORITY CHARGE AGAINST AN AGENCY	FOR FLRA USE ONLY Date Filed: 1/26/2018 Case Number:
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Charged Activity or Agency**Name:** DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Headquarters**Address:****Phone No.:** **Fax No.:****Charged Activity or Agency Contact Information****Email:** towanda.a.brooks@hud.gov**Name:** Ms. Towanda Brooks**Title:** Chief Human Capital Officer**Address:** 451 Seventh Street, SW, Washington, DC 20410**Phone No.:** (202) 402-6955 **Fax No.:** (202) 401-4433**Charging Party (Labor Organization or Individual)****Name:** AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, COUNCIL OF HUD LOCALS 222**Address:****Phone No.:** **Fax No.:****Charging Party Contact Information****Email:** [REDACTED]**Name:** Jerry Gross**Title:** National Steward**Address:** [REDACTED]**Phone No.:** [REDACTED] **Fax No.:**

5. Which subsection(s) of 5.U.S.C. 7116(a) do you believe have been violated?

(a)(1), (a)(7), (a)(8)

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles:

The Department of Housing and Urban Development (HUD) has violated 5 U.S.C. §§ 7116(a)(1), (7), and (8) by enforcing rules, and directing managers to enforce rules, that are in conflict with the HUD-AFGE collective bargaining agreement, which was in effect before the date the rules were prescribed.

Background:

On October 24, 2017, HUD presented training to members of its Senior Executive Service entitled Addressing Poor Performance. The presentation, conducted via satellite to all national offices including the Boston Regional Office, provided directions for taking performance-based personnel actions. During the presentation, delivered by Employee and Labor Relations Specialists, the instructors announced that they were also giving the same presentation to the agency's managers, supervisors, and non-bargaining unit team leads.

AFGE Council 222 of HUD Locals (Union) officials also heard the broadcast. The Union subsequently received a copy of the Instructor Guide for the training.

Violation of the Labor-Management Statute:

The training and Instructor Guide for Addressing Poor Performance (hereafter, Guide) violate the Statute by enforcing rules that are in conflict with the HUD-AFGE collective bargaining agreement of 2015 (the CBA). The CBA was placed in effect almost two years before Addressing Poor Performance was implemented. The Union has identified approximately three dozen instances in the Instructor Guide where HUD has contradicted the provisions of the CBA.

A few examples include:

1. The Guide (at 18) advises management, You may use items from the previous performance period towards the current performance period if those items are still problematic. This violates CBA section 13.02(2): Unacceptable performance prior to the rating period will not be considered in the current rating period.
2. The Guide also gives erroneous advice in its examples: For Example if the FS [fully successful] standard is to complete 20 reports per year and the U [unacceptable] standard is the employee completes 10 or less reports per year, the M [marginally successful] standard does not have to be 15. In fact, the Marginal standard can be the employee completes 19 reports per year. Guide at 19. This violates CBA section 30.09(1)(d): which states, Level 2 (Marginally Successful): Job performance exceeds the performance standards established for the Level 1 (Unacceptable) level, but does not meet the performance standards for the Level 3(Fully Successful) level. Thus, the Marginally Successful

standard must be 11 or more reports/year i.e., in excess of the unacceptable level in the Guide's example.

3. Regarding the approval of leave for an employee, on page 25 the Guide states, Annual leave should be approved using the same considerations you would use for any other employee. . . leave without pay is discretionary. . . and may be denied. . . However, sick leave must be approved. This violates CBA section 15.15 regarding the use of leave without pay for regulatory entitlements such as FMLA, USERRA, etc. This section also fails to mention compensatory time off for religious observance (CBA section 15.18).

4. On pages 40 and 46, the Guide violates CBA section 36.06(3) by neglecting the requirement to have SMART (specific, measurable, attainable, relevant, and time-bound) performance standards, not just clear standards.

In numerous other places, the Guide violates the CBA by imposing new requirements (such as for an employee to sign documents or maintaining acceptable performance in the same critical element for a year) for a topic that is covered by the CBA, ignores the CBA's requirements that employees be allowed representation in specified situations, ignores the requirement that unacceptable performance be documented by substantial evidence, and provides misleading or inaccurate examples and sample letters to supervisors.

Relief Requested:

- (1) That HUD be ordered to cease and desist from all activities, training, and instruction that violate or direct violation of the CBA.
- (2) That HUD be ordered to correct the Guide to ensure conformance with the CBA in order to avoid personnel practices that will violate the provisions of the CBA, and issue the correction to all personnel who were provided the erroneous training that violated the CBA.
- (3) That HUD be ordered to provide corrected satellite training that complies with the CBA to SES managers.
- (4) That HUD be ordered to post a Notice to All Employees, and deliver the Notice by email to all employees represented by Council 222 (the primary form of communication with employees is via email, many of whom do not work in the HUD building), acknowledging its obligation to abide by the provisions of the Collective Bargaining Agreement between HUD and the American Federation of Government Employees, Council 222, AFL-CIO as required by Section 7114(a) of the Federal Service Labor-Management Relations Statute.
- (5) Any other remedies permitted under the law that the Authority considers appropriate and that will encourage HUD to comply with the Statute in the future, especially in light of the agency's repeated failure to respond in a timely manner.

7. Have you or anyone else raised this matter in any other procedure?

No

If yes, where?

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON ALL PERSONS IDENTIFIED IN BOX #3 BY:

Email

Fax

First Class Mail

In Person

Comm.Delivery

Certified Mail

Jerry Gross

Signed: Jerry Gross

1/26/2018

Type or Print your name

Your Signature

Date
