

UNITED STATES OF AMERICA FEDERAL LABOR RELATIONS AUTHORITY CHARGE AGAINST AN AGENCY	FOR FLRA USE ONLY Date Filed: Case Number:
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Charged Activity or Agency**Name:** DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Headquarters**Address:** Washington, DC**Phone No.:** **Fax No.:****Charged Activity or Agency Contact Information****Email:** Secretary.Carson@hud.gov**Name:** Dr. Benjamin Carson**Title:** Secretary**Address:** 451 7th Street SW, Room 10000, Washington, DC 20410**Phone No.:** (202) 708-0417 **Fax No.:****Charging Party (Labor Organization or Individual)****Name:** AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, Council 222**Address:** 451 7th Street SW**Phone No.:** (202) 402-5243 **Fax No.:****Charging Party Contact Information****Email:** holly.salamido@hud.gov**Name:** Ms. Holly Salamido**Title:** President, Council 222 of HUD Locals**Address:** 451 Seventh Street, SW, Room 3240, Washington, DC 20410**Phone No.:** (202) 402-5243 **Fax No.:****5. Which subsection(s) of 5.U.S.C. 7116(a) do you believe have been violated?**

(a)(1), (a)(5), (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), (5), and (8) and § 7114(b)(4) by refusing to provide information concerning negotiations and the cost of bargaining with AFGE Council 222 of HUD Locals (the Council).

Background

The Council had demanded to bargain with HUD in 2016 over the agency's recognition of a group of employees, the Presidential Management Fellows Council (PMFC). HUD initially refused to bargain, asserting that HUD did not have an obligation to bargain over union-initiated changes, as it characterized the Council's demand. The Council filed an unfair labor practice complaint, Case No. WA-CA-16-0549. Pursuant to the settlement agreement in that case, the agency was required to bargain over negotiable union-initiated mid-term proposals regarding the PMFC.

The Council subsequently attempted to schedule a date to begin negotiations. HUD then refused to pay for the travel expenses of the Union negotiating team, arguing that the relevant provision in the collective bargaining agreement applied only to management-initiated changes. The Union filed a grievance, and then invoked arbitration on the matter, as the agency knows.

In support of the Council's position that the agency violated the collective bargaining agreement by refusing to pay for Union negotiators to travel, on July 28, 2017, the Council requested pertinent information under § 7114(b)(4) of the Federal Service Labor-Management Relations Statute and provided a statement of particularized need, noting that the requested information will help the Union to show past practices, document that the Union has not abused its right to initiate negotiations with excessive demands to bargain, and used allotted travel funds judiciously. The Council specifically asked for information on the amounts paid by HUD for travel and lodging expenses for union and management negotiators over the past three years, and an indication of whether each negotiating session resulted from proposed changes initiated by management or the union.

HUD's Refusal to Provide Information

(1) On August 11, 2017, HUD provided a preliminary response to the Council's July 28 request for information, asserting, "This statement of particularized need is insufficient to support the scope of your request, specifically, in terms of the three-year time period covered by the request and the travel expenses incurred by management negotiators."

(2) HUD provided a partial response to the Union's request on September 5, but refused to provide information regarding Union negotiators' expenses for more than two years prior to the request. The agency alleged that the Council had not established that the requested data is necessary for the union

to carry out its representational functions. The agency also argued that the period in contention, July 28, 2014 through July 23, 2015, was atypical because the agency and Council were engaged in term negotiations for a new contract at that time.

The Council has reiterated that three years of data is a reasonable span for determining averages, norms, and trends. The Council did recognize that national negotiations for a new contract had gone on for several years prior to July 2014, and in fact by late July 2014, the parties were at the stage of reviewing an overall draft, which was ultimately signed a year later. The Council pointed out that the first couple of years under a new contract generally involved less bargaining, as most major issues extent and anticipated had just been addressed. In contrast, during the final year of the previous contract there were several supplements that were negotiated, as was typical of most mid-term years.

(3) HUD also refused to provide any information regarding management's travel expenses, claiming that documenting the travel costs of management personnel is not a representational function of the union, and that the management negotiators' travel expenses is not the subject of a dispute.

The Council has explained the obvious: that as management negotiators' travel expenses are part of the expense of bargaining, there is a clear relationship between the requested data and the Council's ability to show that we have not caused the agency to spend excessive travel funds for the purpose of bargaining, in support of our position that management's refusal to pay travel funds for Union-initiated bargaining is a violation of the contract and unreasonable.

(4) Knowing that the Council has invoked arbitration in the matter of HUD's refusal to pay the Council's travel expenses for negotiations over union-initiated midterm changes, it is disingenuous for HUD to argue that there is no particularized need for the information. The Union is not required to demonstrate in detail how the information will be used, although its usefulness to the Council should be relatively clear to the agency.

(5) HUD does not argue that the information they refused to provide is unavailable. On August 1, the Council had also filed a request for the same information under the Freedom of Information Act as had been requested under the Statute. In fact, although HUD refused to provide the information in response to the request for information under the Statute, on October 30, the agency stated that HUD is willing to provide the information for a fee, under FOIA. In order to obtain the necessary information, Council 222 was required to pay \$1176 to HUD. At that time, HUD advised that it would take eight more weeks to respond to the Council's FOIA request.

(6) HUD's refusal to provide information in this matter continues the agency's long history of refusing to comply with the Statute. For example, looking only at cases in the Washington area, in 2014, HUD was required to post a notice settlement of Case No. WA-CA-14-0568 promising to respond timely to requests for information. In July 2016, in settlement of Case No. WA-CA-16-0031, HUD was required to

post a similar notice (and deliver it electronically) as a result of management s failure to respond to the Council s request for information. More recently, in Case No. WA-CA-17-00082, HUD again was required to post and distribute a notice promising to respond timely to requests for information.

Relief Requested

(1) That HUD be ordered to refund the fees charged to the Council, as the available information should have been provided to the Union under § 7114(b)(4) of the Federal Service Labor-Management Relations Statute.

(2) 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 respond timely to requests for information made by the American Federation of Government Employees, Local 476 and Council 222, AFL-CIO as required by Section 7114(b)(4) of the Federal Service Labor-Management Relations Statute.

(3) 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
In Person

Fax
Comm.Delivery

First Class Mail
Certified Mail

Jerry Gross

Signed: Jerry Gross

Type or Print your name

Your Signature

Date