

 <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL LABOR RELATIONS AUTHORITY</p> <p style="text-align: center;">CHARGE AGAINST AN AGENCY</p>	FOR FLRA USE ONLY
	Case No.
	Date Filed
Complete instructions are on the back of this form.	
1. Charged Activity or Agency Name: U.S. Department of HUD Address: 451 7th Street, S.W., Suite 2160 Washington, D.C. 20410-3000 Tel.#: (202) 708-2000 Ext. Fax#: (202) 619-8129	2. Charging Party (Labor Organization or Individual) Name: AFGE Local 476 Address: 451 7th St. SW, Suite 3143 Washington, DC 20410-3000 Tel.#: (202) 402-3077 Ext. Fax#: ()
3. Charged Activity or Agency Contact Information Name: Karen Newton Cole Title: Actg. Chief Human Capital Officer Address: 451 7th Street, S.W., Suite 6100 Washington, D.C. 20410 Tel.#: (202) 708-0940 Ext. Fax#: (202) 619-8129	4. Charging Party Contact Information Name: Eddie Eitches Title: President, AFGE Local 476 Address: 451 7th St. SW, Suite 3143 Washington, DC 20410-3000 Tel.#: (202) 402-3077 Ext. Fax#: ()
5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? [See reverse] (1) and <u>(1), (2), (7), and (8)</u>	
6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles. See attached	
7. Have you or anyone else raised this matter in any other procedure? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, where? [see reverse] _____	
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 THE PERSON IDENTIFIED IN BOX #3 BY [check "x" box] <input checked="" type="checkbox"/> Fax <input type="checkbox"/> 1st Class Mail <input type="checkbox"/> In Person <input type="checkbox"/> Commercial Delivery <input type="checkbox"/> Certified Mail	
Eddie Eitches Type or Print Your Name	<i>Eddie Eitches</i> Your Signature
	10/27/2011 Date

Item 6, continued

The Department of Housing and Urban Development has issued performance appraisal ratings to one or more employees who are unratable because they spend a significant amount of time as labor representatives. The Department did not assign departmental work during the appraisal period, so there is no actual job performance on which to base the rating of record. The Department has assumed levels of performance by the employee(s).

On October 20, 2011, a final rating review was issued to [NAME OMITTED], of HUD Headquarters, Washington, D.C. [NAME OMITTED] was not assigned and did not perform agency duties at any time during the rating period. [NAME OMITTED] solely performed duties as a steward for AFGE Local 476 during the rating period. The rating official's final comments state,

[NAME OMITTED] was detailed full time to the Union, during the rating period. Per direction of OGC Operations, [NAME OMITTED]'s rating is therefore input as "full [sic] successful."

The rating of record issued is entered as "Summary Rating: 3 - Fully Successful." In an email dated October 26, 2011, the Deputy General Counsel for Operations stated, "We ... want to follow Departmental policy."

HUD's actions violate 5 C.F.R. § 430.208, Rating Performance, and OPM guidance, which states:

When an employee is serving as the representative of a labor organization, he or she is performing duties for that labor organization. To intermingle performance of the representational duties into the appraisal program would be inappropriate because appraisal of the employee's performance must be based solely upon the employee's performance of agency duties. For employees who spend 100 percent of their time as labor representatives, and **for employees who spend a significant amount of time** as determined by the agency, this means that they cannot, and should not, be given performance appraisal ratings of record.

<http://www.opm.gov/lmr/html/labrmgmt.asp#Treatment%20of%20Employees%20on%20Official%20Time>.

This is also explained in OPM's introduction to the current performance appraisal regulations "The regulations at part 430 continue to preclude a 'presumptive' or 'assumed' rating of record and such employees are considered 'unratable.'" 60 Fed. Reg. 43937.

HUD's issuance of performance ratings of record to employees who spend a significant amount of time on work for and on behalf of the labor union violates subsections (1), (2), (7) and (8) as follows:

- (1) Management's issuance of performance ratings of record for employee(s) who have performed work only for and on behalf of the labor union interferes with and restrains employees' rights to serve as labor representatives.
- (2) HUD's issuance of such performance ratings of record encourages or discourages active membership in the labor organization by discriminating in connection with performance appraisal, which is a condition of employment. The action is discriminatory because the issuance of a performance rating of record to employees who spend a significant amount of time on work for and on behalf of the labor union must be subjective because, unlike ratings for other employees, it is not based on work which management assigns, oversees, or evaluates. Such subjective ratings provide management with a way to encourage or discourage membership in the labor organization.
- (3) HUD's issuance of such performance ratings of record enforces a newly established Departmental policy which is in conflict with the HUD – AFGE Agreement, which pre-dates the Departmental policy. Section 3.01 of the HUD – AFGE Agreement states: “In the administration of all matters covered by this Agreement, the parties are governed by existing and future laws, existing Governmentwide regulations, and existing and future decisions of outside authorities binding on the Department.” The Department's establishment of a policy to issue performance ratings of record for employee(s) who have performed work only for and on behalf of the labor union conflicts with the HUD – AFGE Agreement by violating 5 C.F.R. § 430.208 and OPM guidance.
- (4) By issuing of such performance ratings of record to employees who are unratable, HUD has additionally failed or refused to comply with 5 U.S.C. § 7102, which grants employees the right to “join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.”