



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

BOSTON REGIONAL OFFICE
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10 Causeway Street, Suite 472
Boston, Massachusetts 02222
TEL: (617) 565-5100 - FAX: (617) 565-6262

June 30, 2005

Ms. Carolyn Federoff, President
AFGE, Council of HUD Locals 222
P.O. Box 5961
Boston, MA 02114

Re: U.S. Department of Housing and
Urban Development
Case No. BN-CA-05-0251

Dear Ms. Federoff:

My office has investigated the unfair labor practice charge that you filed. I have carefully considered all of the evidence and conclude that issuance of a complaint is not warranted.

The charge alleges that the U.S. Department of Housing and Urban Development (the Agency or HUD) bypassed the American Federation of Government Employees, Council of HUD Locals 222 (the Union) in violation of sections 7116(a)(1), (5) and (8) of the Federal Service Labor Management Relations Statute (the Statute) when it solicited employee comments about its new Departmental Workforce Plan on HUD's Intranet web site.

The investigation disclosed that on or about March 14, 2005, HUD posted a link to its plan which is called the "Workforce Planning at HUD, A Departmental Implementation and Action Plan for Program Offices" (the Workforce Plan) and asked that employees submit comments to their respective Headquarters Administrative Officers by March 28. HUD has different program offices, each of which has a Headquarters Administrative Officer. As described by the Agency, the purpose of the Workforce Plan is to set forth the direction of workforce planning at HUD. By work force planning, it appears that HUD is referring to succession planning, employee skill levels and staffing requirements. According to the solicitation posted on the website, the plan outlines specific action items for Program Offices to begin immediately. As opposed to seeking general input, this solicitation concerned a specific policy.

Through an e-mail dated March 11, 2005, Norman Mesewicz, Deputy Director, Labor and Relations Division, notified the Union's Executive Vice-President, Perry Casper, that management had developed the Workforce Plan and that it would be posted on the web for employee comment early the following week.

On March 23, 2005, you e-mailed Barbara Edwards, Deputy Assistant Secretary for Human Resource Management, stating the Union's position that by soliciting employee comments about the Workforce Plan, the Agency was illegally bypassing the Union. You asked that the call be removed and that any employee responses be forwarded to the Union. You wrote Edwards that after reviewing the comments, the Union would send her its comments by April 1, 2005, provided that management cooperated with your request. When Edwards had yet to respond by the next day, you notified her that the Union would be filing a ULP charge. Later that day, Edwards forwarded you the e-mail which had been sent to Casper and wrote that she didn't see the solicitation as a bypass since the employees weren't being required to participate. On March 25, Casper wrote Edwards that the Union had not approved the call before it was posted.

The Union asserts that management's call for employee comments is a bypass because rather than merely surveying employees to collect data to develop a plan, it was soliciting input for a specific plan or policy which is already in place. Subsequent to filing the instant charge, the Agency has agreed to provide the Union with the employee comments it has received on the Workforce Plan.

On these facts the evidence does not establish that management bypassed the Union in violation of section 7116(a)(1) and (5) of the Statute, as alleged. Section 7114(a)(1) of the Statute, which provides that the exclusive representative "is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit." U.S. Dep't of Justice, Bureau of Prisons, Fed. Correctional Institution, Bastrop, Tex., 51 FLRA 1339, 1346 (1996). An agency unlawfully bypasses an exclusive representative when it "deals directly" with employees in a unit represented by the exclusive representative concerning any matter affecting the conditions of employment of the unit employees. AFGE, Nat'l Council of HUD Locals 222, 54 FLRA 1267, 1276 (1998). Nevertheless, an agency is free to solicit information from employees, unless it does so in a way which amounts to an attempt to negotiate directly with its employees concerning matters which are properly bargainable with the employees' exclusive representative. Dep't of the Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Indianapolis, Indiana Dist. Office, 31 FLRA 832, 837 (1988)(IRS Indianapolis) citing Internal Revenue Service, 19 FLRA 353, 354 (1985). Specifically, the Authority has held that the polling of employees in anticipation of implementation of changes in working conditions does not necessarily constitute a bypass. Rather, the facts of the case must be analyzed to determine whether the agency has dealt directly with employees in an unlawful manner. IRS Indianapolis, 31 FLRA at 838.

Here, the Agency sought employee feedback concerning its Workforce plan, however, it made it clear that submission of comments was completely voluntary. The Agency did not indicate to the employees that their comments would impact their working conditions. Moreover, the Agency provided the Union with advance notice of its intent to solicit employee input. Subsequently, management has committed to sharing the

employee feedback with the Union. As such, the instant circumstances support a finding that the Agency acted in good faith and did not undermine the Union's status as the employees' exclusive representative. Accordingly, the charge is dismissed.

You may file an appeal from the Regional Director's decision in this case. Your appeal should include the Case Number (BN-CA-05-0251) and be addressed to the:

Federal Labor Relations Authority
Office of the General Counsel
1400 K Street, N.W., 2nd Floor
Attention: Appeals
Washington, DC 20424-0001

You can file your appeal by mail or by hand delivery. Whichever method you choose, please note that **the last day for filing an appeal in this case is August 1, 2005**. This means that an appeal that is mailed must be postmarked, or an appeal must be hand delivered, no later than **August 1, 2005**. Please send a copy of your appeal to the Regional Director. You should also notify the other parties in the case that you have filed an appeal, but you do not have to send them a copy of your appeal.

If you need more time to prepare your appeal, you may ask for an extension. Mail or hand deliver your request for an extension of time to the Office of the General Counsel at the address listed above. You should also notify the other parties in the case that you have requested an extension of time. Because requests for an extension of time must be **received** at least five days before the date the appeal is due, any request for an extension of time in this case must be **received** at the above address no later than **July 27, 2005**.

The procedures and time limits for filing an appeal and the grounds for granting an appeal are contained in Volume 5 of the Code of Federal Regulations at section 2423.11 (5 C.F.R. 2423.11). These regulations may be found at any FLRA Regional Office, public law library, some large general purpose libraries, Federal Personnel Offices, and the FLRA website — www.flra.gov. The attachment to this letter, entitled "Questions and Answers about Unfair Labor Practice Appeals to the Office of the General Counsel," includes an explanation of the appeals review policy and the grounds for granting an appeal, which may be helpful in preparing your appeal.

Sincerely,



Richard D. Zaiger
Regional Director
Boston Region

Enclosure: Appeals Question and Answers

cc: Federal Labor Relations Authority
Office of the General Counsel
1400 K Street, N.W., 2nd Floor
Washington, DC 20424-0001

Ms. Deborah Swann
Department of Housing and Urban Development
451 7th Street, SW
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