



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

April 1, 2011

MEMORANDUM FOR: Norman Mesewicz, Deputy Director

Labor and Employee Relations Division, ARHL

FROM: Russell Varnado, President

Council 222

SUBJECT: Demand to Bargain (Potential Furloughs)

It has come to the attention of the Council that budget shortfalls have the potential of resulting in the necessity of furloughs for employees within the unit. The Council as exclusive representative demand to bargain the issue of furloughs.

For the record, "conditions of employment" is the term used to refer to the physical, environmental and operational features, personnel policies, practices, and matters, whether established by rule, regulation or otherwise, affecting working conditions, see 5 USC 7103 (a)(14), affecting employees' daily work lives. Conditions of employment encompass "working conditions" which can range from the size of an employee's work cubicle to the system for calculating employee incentive awards. Other conditions of employment take the form of "fringe benefits." Conditions of employment can be established through agency policies, collective bargaining agreements or unwritten workplace practices that develop over time. **Matters "specifically provided for" in "federal law" fall outside the definition of conditions of employment and are therefore not subject to bargaining.**

Where a union is the exclusive representative of employees of a federal agency, the Federal Service Labor-Management Relations Statute imposes upon the agency a general obligation to negotiate in good faith over the conditions of employment of the represented employees. See 5 USC 7114, 5 USC 7117.

To determine whether a proposed action concerns a condition of employment, the Federal Labor Relations Authority (FLRA) applies a two-prong test explained in *Antilles Consolidated Education Association*, 92 FLRR 1-1377; 1) does the proposed action pertain to bargaining unit employees; 2) what is the nature and extent of the effect of the proposed action on the working conditions of the employees. More specifically, is there a nexus between the proposed action and the work situation or employment relationship of bargaining unit employees. See *Broadcasting Board of Governors*, 103 LRP 53112. In any event, where a "law" is general in nature it will not remove a subject or topic from the definition of conditions of employment. See *IRS*, 27 FLRA 132, 87 FLRR 1-1231.

When there is a decision by an agency to change conditions of employment of unit employees, even if a protected management right is involved, **there is a duty to notify the union**. Addition, upon request by the union, there is a duty to bargain on the procedures that management will follow in implementing its decision as well as on appropriate arrangements for employees expected to be adversely affected by the decision. This is the basis of "impact and implementation" bargaining.

I recognize Management's right to decide whether to take actions listed in *5 USC 7106 (a)*, and is protected from collective bargaining; however, furlough is viewed as a change in working conditions and the U.S. Department of Housing and Urban Development "must" bargain over "impact and implementation" of the decision and over appropriate arrangements for employees adversely affected by the furlough, under succeeding sections 7106(b)(2) and (3).

In anticipation of bargaining the Union offers the following preliminary proposals:

- 1. Advance notice:** Employees will be provided advance notice of a furlough within HUD. For furloughs of 30 calendar days or less (up to 22 workdays), employees should be provided 30 days written notice. For furloughs of more than 30 calendar days (more than 22 workdays), employees should be provided 60 days written notice. The Union will be provided a copy of the OPM approval, if the agency intends to shorten the notice for a furlough effected under *5 CFR Part 351* from 60 to 30 days.
- 2. Meeting between Union and bargaining unit members.** The agency shall provide for a "mandatory" meeting between the Local representative and the bargaining unit, before notice of any furlough actions by the management.
- 3. Immediate Hiring Freeze:** The agency will implement an immediate hiring freeze in affected cylinders, including all internal hiring. Provided, however, that the agency continue hiring to resolve grade disparities for support staff in all applicable cylinders.
- 4. Waiver of Article 13, Section 08:** Through Jun 30, 2011, and for cylinders facing furloughs, the Union will consider granting a waiver to Section 13.08 to allow cylinder-only hiring of positions with no grade promotion potential beyond GS-9.
- 5. Liberal Leave Policy:** The agency will announce and implement a liberal LWOP policy, approving LWOP under the same terms as annual leave approval. Affected areas that have in the past enforced policies against LWOP should be "directed to consider and approve LWOP under the same terms as annual leave."
- 6. Essential Employees:** Management shall bargain at the local level to establish a list of essential "bargaining unit" employees prior to notice of any furlough

actions by the management. Only the Council will determine the union essential employees and the use of any official time during the potential furlough.

- 7. Use of Agency Email during Furloughs:** As a means of communications, any furloughed employee shall continue the use of HUS's email systems as a essential communications means.

This is a preliminary proposal only and the union reserves the right to amend, add, or delete provisions in accordance with Article 5 of the HUD/AFGE Agreement. Lisa Lowery or I will notify you of the Chief Negotiator.

Cease and Desist:

The Union demands that the Agency ceases and desist implementation of any potential furloughs until bargaining on impact and implementation is completed.

Request for Information

To enable the Union to fully represent the members of the bargaining unit, and pursuant to 5 U.S.C. § 7114(b)(4), the Union has requested certain information in a separate request, dated April 1, 2011, as time is of the essence, the Union requests that the specified information be furnished as soon as possible, but prior to bargaining.

Thank you in advance for your cooperation and assistance. If you have any questions about the above items, please do not hesitate to contact me at (202) 402-8033.

ARTICLE 16

FURLOUGHS FOR THIRTY (30) DAYS OR LESS

Section 16.01 - Purpose. This Article sets forth procedures which shall be followed if Management determines it is necessary to furlough employees for thirty (30) days or less due to:

- (1) Lack of work;
- (2) Lack of funds; and/or
- (3) Unforeseeable circumstances such as a sudden breakdown of equipment, acts of God or sudden emergencies requiring immediate curtailment of activities including a lapse of appropriations. Unforeseeable circumstances, in addition to meeting the definition of emergency, also include the inability of Management to continue operations to a practical extent.

These procedures shall be carried out in accordance with law and Governmentwide regulations. Furloughs of thirty (30) days or more must be carried out according to reduction-in-force procedures.

Section 16.02 - Notification to Union and Impact Bargaining.

- (1) Before Management furloughs employees, except where an unforeseeable circumstance arises, Management shall provide written notification to the Council President of:
 - (a) The reason for the furlough(s);
 - (b) The organizational segments affected by the furlough(s); and
 - (c) The estimated number of employees to be furloughed.

This notice shall also be provided simultaneously to the Local representative in the affected office.

- (2) Impact and implementation bargaining which is necessitated by a Management decision to furlough employees shall take place at the local or National level as appropriate. If differences arise, the procedure for handling an impasse shall be resolved during impact bargaining.

Section 16.03 - Volunteers. Once Management determines the number, types, and grades of employees necessary to accomplish the work, Management shall notify employees at the work site and shall solicit volunteers for furlough. If a sufficient number of volunteers do not come forth, then Management shall select employees for furlough on a fair and equitable basis. Any employees not furloughed must be qualified to perform the functions that are to continue to be performed during the period of furlough.

Section 16.04 - Scheduling Furlough Days. When Management has made a decision to furlough employees for a specified number of days during a specified period of time, employees shall be provided an opportunity to submit a schedule identifying their preferences in accomplishing the necessary number of days off. These schedules shall be accommodated as much as practicable giving due consideration to workload and staffing and office coverage requirements.

Section 16.05 - Notice to Employees. Except in cases of unforeseeable circumstances, Management shall provide written, individual notices to those employees who are to be furloughed thirty (30) days prior to the effective date of the furlough.

Section 16.06 - Employee Benefits During a Furlough.

- (1) **Continuous Furlough.** Life insurance and health benefits enrollment shall continue without cost to the employee on consecutive and continuous furlough of thirty (30) days or less.
- (2) **Discontinuous Furlough.** Life insurance and health benefits enrollment shall continue. Contributions by the employee shall continue if the salary in the pay period is sufficient to cover the full deduction.

Section 16.07 - Employee Compensation During Lapse of Appropriation.

- (1) Employees who are required to report for duty during a lapse of appropriations shall be fully compensated in accordance with law and regulation.
- (2) Employees who are furloughed because of lapse of appropriations shall be retroactively paid and otherwise compensated in accordance with law and regulation and the availability of funds.

Section 16.08 - Leave During Lapse of Appropriation.

- (1) When a furlough is required due to a lapse in appropriation, employees on approved annual leave shall be permitted to complete the approved leave. Upon expiration of the approved leave, if the absence of an appropriation persists, the employee shall be furloughed. Under no circumstance shall an employee be allowed to take unaccrued annual leave during a lapse of appropriation.
- (2) When a furlough is required due to a lapse in appropriation, employees on sick leave which commenced prior to the furlough may continue on sick leave to the extent of the employee's accrued sick leave and as long as the employee remains sick.

Delegation of Authority

This communication provides the delegation of authority to negotiate the issue of Potential Furloughs, under the authority of American Federation of Government Employees ("AFGE") Council 222.

The Establishment of Potential Furloughs is a national issue, and as such negotiated under the authority of AFGE Council 222. Effective immediately, _____ is delegated the authority to negotiate Potential Furloughs. In this capacity the Chief Negotiator will act under the authority of the AFGE Council 222, in accordance with the Agreement between The U.S. Department of Housing and Urban Development and the American Federation of Government Employees, Council 222, and the Constitution and Bylaws, National Council of HUD Locals, Council 222.

This delegation may not be redelegated without my written approval of the President of the Council.

Respectfully,

Russell D. Varnado
President, Council 222

GROUND RULES

Negotiation Ground Rules for Collective Bargaining

Between

The U.S. Department of Housing and Urban Development

And

AFGE Council 222

On

Potential Furloughs

Management and labor mutually agree to the following ground rules governing the upcoming Mid-Term bargaining of Potential Furloughs. Both parties agree to bargain in good faith and will make every effort to reach agreement.

TEAM STRUCTURE

Spokesperson and Number of Participants

Negotiations will be conducted with one Chief Spokesperson for each side, plus up to four (4) additional Team members participating at the negotiation table. The Team shall be composed of up to three Negotiation Team members and one (1) Technical Advisor.

The Chief Negotiator for Management will be _____. The Chief Spokesperson will have full authority to negotiate and sign a supplement to the Agreement. The negotiating team will consist of:

- _____ Negotiation Team Member
- _____ Negotiation Team Member
- _____ Negotiation Team Member
- _____ Negotiation Team Technical Advisor

The Chief Spokesperson for the Union will be _____. The Union's Chief Spokes Person will have the authority to enter into an agreement. The Union's negotiating team will consist of:

- _____ Negotiation Team Member
- _____ Negotiation Team Member
- _____ Negotiation Team Member
- _____ Negotiation Team Technical Advisor

Management and the Union mutually agree to the following ground rules governing negotiations of the Establishment of Potential Furloughs, which begin on or about _____.

1. Authority to negotiate shall be brought to the table. The Union negotiation team shall have the authority to enter into an agreement.

2. Alternative negotiation method, such a telephonic, or video conferencing will be utilized only upon the written approval of the Council 222 President; the authority to approve such alternative is not delegated to the Chief Negotiator.
3. Each party shall designate a chief negotiator to whom all proposals will be submitted, including requests for information, and general concerns. Negotiations will be conducted by the chief negotiator for each side. Only the chief negotiator will speak for their side unless the negotiator designates a person on a specific topic.
4. Both parties will bargain in good faith and will make every effort to reach agreement.
5. Both parties acknowledge that open communications is essential to the process. Both chief negotiators should encourage members of their negotiating teams to provide input during the negotiations.
6. In the interest of reaching a new agreement as soon as possible, at the conclusion of each session, the parties will establish the date, time, and agenda for the next session.
7. Parties will agree to three (3) negotiation days, during the week of negotiations (Tuesday, Wednesday and Thursday); Monday and Friday will be travel days for members located outside of the headquarters. Additional sessions may be added by mutual agreement of the parties.
8. Contract language, which is tentatively agreed to, shall be initialed by the chief negotiator for each party and put aside. All tentative agreements reached on Articles or sub-sections of Articles are subject to change prior to final agreement on all items. Throughout the negotiations, counter proposals shall be presented in written form, using legislative format for additions and deletions.
9. If the parties reach impasse on a particular article or issue, they agree to move forward with discussion of other articles and to return to the impasse articles at a later time in the negotiation process before requesting the services of a mediator.
10. With one day's notice to the other side's chief negotiator, either party may invite specialists or subject matter experts to present and to respond to questions during negotiation sessions when pertinent topics are under discussion. Only one specialist or subject matter expert for each party may attend the negotiations at any one time. Specialists or subject matter experts who attend negotiation sessions at the request of the union will be granted administrative leave if they are scheduled to work on the date of the session. The cost of required travel to and/or from the formal negotiation sessions shall be paid for by the side requesting the attendance of the specialist or subject matter expert.

11. Bargaining sessions shall be closed to the public. Observers shall be allowed, provided the parties mutually agree. Observers shall be non-participants. Both parties shall refrain from discussing specifics regarding ongoing negotiations outside of the negotiation area. Each team may communicate with its respective constituency. No negative personal characterizations will be made.
12. Each party is responsible for keeping its own notes. No audio recording devices shall be used in negotiations.
13. Each party reserves the right to caucus, as it deems necessary. Any person has the ability to call a caucus.
14. Each side shall name their negotiating team members before the beginning of negotiations. The Union bargaining team shall be equal to the number of management team members.
15. The Agency Head review will commence promptly at 12:01 a.m. following the last day of negotiation, unless a written agreement between the parties is arrived upon.

The ground rules are agreed to.

Management Chief Negotiator

Date:

Council 222 Delegated Chief Negotiator

Date: