



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO
Council 222

December 19, 2008

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 in the Offices of Administration, Housing, General Counsel, Chief Financial Officer and Policy Research and Development. The Council as exclusive representatives' 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. Also, 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)*. However, the Union is entitled, under succeeding sections 7106(b)(2) and (3), to negotiate with the Agency the procedures management will observe in exercising its authority under 7106; or appropriate arrangements for bargaining unit employees adversely affected by such management decisions.

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

1. **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.
2. **Waiver of Article 13, Section 08**: Through March 31, 2009, 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.
3. **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."

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,

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dated December 18, 2008, 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.