May 24, 2024

TO:  Sonya Gaither, Director, Employee and Labor Relations

FROM:  James P. Flynn, Executive Vice President, AFGE National Council of HUD Locals 222

Subject: Cease and Desist/Demand to Bargain the implementation of Artificial Intelligence (AI) at the U.S. Department of Housing and Urban Development – Federal Housing Administration.

Pursuant to Article 49, Section 49.04(1)(2) of the HUD/AFGE Collective Bargaining Agreement (the Agreement), this memorandum serves as AFGE Council 222's (the Union) Demand to Bargain the above subject matter.

On May Tuesday, May 21, 2024, the Union met with the Agency to discuss "AI at HUD". During the meeting, the Agency presented the Union with a draft employee message that the Agency stated it planned on transmitting to all bargaining unit employees (BUE) regarding Artificial Intelligence (AI) at the Agency.  During the meeting, the Union inquired as to whether a new version of MS TEAMS with MS Copilot, an AI-powered assistant that uses generative AI technology, had been implemented at the Agency.  The Agency replied to the Union on Thursday, May 22, 2024, confirming that Microsoft Copilot had been enabled in MS TEAMS.

Status quo shall remain and no changes shall take place until the Agency has satisfied its contractual and statutory bargaining obligations.

The Union is offering the following preliminary proposals for consideration and negotiation:

- National Supplement # TBD

- Scope: This Supplement covers the agreement between the Parties regarding the implementation of Artificial Intelligence (AI) at the U.S. Department of Housing and Urban Development – Federal Housing Administration.

1. Negotiations shall begin on a mutually agreeable date and time.

2. This Supplement shall not diminish or waive any rights that the affected employees have under the AFGE Agreement, law, rule or regulation.

3. No employee or position will be removed from the bargaining unit as a result of the above subject matter.

4. Annual leave and/or sick leave previously approved will not be rescinded as result of the above subject matter.

5. There shall be no adverse impact to employees' alternative work schedules as a result of the above subject matter.

6. There shall be no adverse impact to employees telework/flexiplace/remote work agreements as result of the above subject matter.

7. There shall be no adverse impact to existing reasonable accommodations as a result of the above subject matter. If the Agency believes that a reasonable accommodation must be altered, it will inform the employees and provide Article 49 notice to the Union in a confidential manner.

8. In accordance with the terms of Article 49 of the Agreement, midterm bargaining will be conducted at the Local level concerning local issues related to the impact and implementation of the above subject matter.

9. The implementation of the above subject matter shall be deemed as a factor beyond an employee's control and will not negatively impact an employee's performance evaluation. In the application of performance elements and standards to affected bargaining unit employees (BUEs), the Agency shall take into account factors beyond employees' control.

10. There shall be no adverse impact to employees' duty station.

11. There shall be no change to employees official position description or job functions.

12. No BUEs will be involuntarily separated or downgraded as result of the implementation of the PA-ARPWT.

13. The Parties agree that AI will be used to augment, not replace, the work done by the bargaining unit employees.

14. The Parties agree the Agency will provide bargaining unit employees with an annual notice of
what information is collected, how it will be used, how it can impact bargaining unit employees, what legitimate business purposes it serves, and how the Agency will ensure that the information is accurate.

15. The Parties agree that all use of AI in the Agency has a more than de minimis impact on the conditions of employment of bargaining unit employees.

16. The Parties agree that bargaining unit employees should be fully involved in the design and development of AI program(s) that they will be required to use.

17. The Agency will engage the Union in pre-decisional involvement concerning the introduction of AI, including any pilot program(s) that impacts conditions of employment. This involvement will begin when the Agency begins internal discussions about the possible use of AI.

18. The Parties agree that any use of AI impacting the conditions of employment of bargaining unit employees must be run as a pilot program before being implemented Agency-wide.

19. The Agency agrees to engage in negotiations to the fullest extent possible by law, rule, regulation, and executive order with the union concerning the substance, impact, and implementation of the pilot program(s).

20. The duration of AI Pilot programs will be one full year and will be evaluated at the end of that year for: efficiency, cost effectiveness, accuracy, and impact on the working conditions of bargaining unit employees.

21. The pilot program(s) may be extended for an additional term of one year or subject to collective bargaining in a term or mid-term agreement.

22. The Parties agree to create an AI committee that shall include one or more Union representatives but shall at least have an equal number of union representatives as there are Agency representatives.

23. The AI committee shall evaluate the pilot program(s) and have access to all relevant data to accomplish that task. The AI committee shall also make recommendations where it finds necessary improvements need to be made to the pilot program(s).

24. Union participation in the AI committee does not waive any bargaining rights held by the Union.  Annually, the Agency will provide the Union Executive Board with a list of all uses of AI throughout the Agency, specifically noting which uses are directly connected with bargaining unit work.

25. The Parties agree that due to the potential of negative impact to bargaining unit employees, AI will not be used to create performance reviews of bargaining unit employees.

26. The Parties agree the Agency must disclose any models, code, and/or data created by AI that was used in evaluating a bargaining unit employee's performance.

27. AI will not be used in place of a deciding official in either disciplinary or adverse action decisions or to communicate with bargaining unit employees about either disciplinary or adverse action decisions.

28. The Parties agree the Agency will provide basic training for all bargaining unit employees on how AI works and how it is being use in the workplace.

29. The Parties agree that when new AI program(s) are implemented, the Agency will provide training on use of the AI program(s) to bargaining unit employees and one or more Union representatives.

30. The Parties agree that training in the use of Agency AI program(s) will be open to bargaining unit employees both already using the programs and employees who may be required to use the program(s) in the future either in their current position or any future position in their job series.

31. The Parties agree that employees whose use of AI program(s) as part of their essential functions will be given at least six months to become fully successful in the use of the AI program(s). If an employee is not fully successful after the initial 6-month period, they will be provided an additional 6-month period which will include additional training and/or mentoring in areas they are not fully successful.

32. The Parties agree that it is best practice for Agency officials, who conduct annual performance evaluations, to receive training on the AI program(s) used by the bargaining unit employees before they can evaluate bargaining unit employee(s) use of the program(s).

33. The Parties agree that AI program(s) will not be used in the evaluation process for hiring bargaining unit employees unless the Agency has completed an impact assessment showing that the AI program(s) will not lead to unbiased selections (i.e., EEO disparate impact issues) and that the selections will reflect all rules applicable to federal hiring (e.g., veterans' preference or diversity goals). This assessment will be made available to Union representatives.

34. The Parties agree that the Agency will conduct an impact assessment annually on AI program(s) used in the evaluation process for hiring bargaining unit employees to ensure that the program(s) remain unbiased and that selections reflect all rules applicable to federal hiring (e.g., veterans' preference or diversity goals). This assessment will be made available to Union representatives.

35. The Parties agree that any use of AI augmented evidence produced in a disciplinary or adverse action will be disclosed to the employee prior to the issuance of either a proposal for disciplinary or adverse action or the issuance of a disciplinary or adverse action.

36. The Parties agree that, before the Agency contracts, or begins the process of contracting, for any service which includes AI, the Agency will make a written determination that the services do not include any amount of work currently or last performed by bargaining unit employees. The written determination should be made available to the Union and included as part of the official contract file required by Federal Acquisition Regulation (FAR) Part 4.803.

37. The Parties agree not to synthetically and/or digitally reproduce, replicate, simulate, model, data capture, convert to code by means of natural language processing, machine learning, and/or future AI capabilities the voice, likeness, human intelligence, or problem-solving abilities of bargaining unit employees for any use.

38. The Parties agree that any documentable savings resulting from the implementation of AI at the Agency shall be utilized for special cash awards and/or within-grade pay increase for bargaining unit employees that contribute wholly or partially to the generation of AI models, code, and data.

39. The Parties agree that BUE rights as they relate to the Agency sharing AI models, code, and data that was generated wholly or partially by bargaining unit employees human intelligence and/or problem-solving abilities will adhere to existing and future law, rule, regulation,

government-wide policy or guidance, and contractual obligations and agreements between the Parties.

40.  As AI is a technology that learns and is constantly changing, this Supplement will remain in full force and effect for periods of one (1) year at a time. At the end of each one (1) year period, either Party may reopen the Supplement by providing notice to the other party.  Negotiations will commence within 30 days of such notice unless an extension is mutually agreed upon by the Parties.  Bargaining will be in accordance with Article 49 Mid-Term Bargaining of the Parties current Collective Bargaining Agreement (CBA). The Parties agree that this Supplement will be retained as a Supplement to succeeding Collective Bargaining Agreements between the Parties and reopening negotiations pertaining to this Supplement will be in accordance with the succeeding CBA  Mid-Term Bargaining Article(s).

These are preliminary proposals for the purpose of negotiating the changes under the subject line above and additional proposals may be added prior to the start of any necessary negotiations.

I will be serving as Chief Negotiator for the Union.

Thank you.