



## U.S. Department of Housing and Urban Development

**DATE:** May 16, 2025

**MEMORANDUM FOR:** Antonio Gaines, President AFGE National Council of HUD Locals 222

**FROM:** Lori Michalski, Chief Human Capital Officer

**SUBJECT:** Violation of Article 28 and Related Provisions of the HUD/AFGE Collective Bargaining Agreement

In accordance with the U.S. Department of Housing and Urban Development (HUD) and the American Federation of Government Employees (AFGE), Collective Bargaining Agreement (“CBA” or “Agreement”), Article 51, Grievance Procedures, this memorandum serves as response to the Grievance of the Parties (“GOP”), that was received April 17, 2025, from AFGE Council 222 (“the Union”), regarding HUD’s decision to issue management directed reassignments (MDRs) to bargaining unit employees (BUEs) with duty stations more than 50 miles from their assigned HUD office and those previously identified as mobile and remote workers. The GOP was filed in accordance with Article 51, Section 51.15 of the Agreement. No meeting was requested or held regarding the GOP.

### **ALLEGED VIOLATIONS:**

The GOP indicates that it was filed due to the following reasons:

AFGE claims that the Agency is in:

1. *Violation of Article 28, Section 28.03 – Notice and Bargaining Obligations* Article 28, Section 28.03 requires HUD to provide advance notice to the Union and engage in impact and implementation (I&I) bargaining for matters not directly addressed in Article 28. The Union requested an Article 49 notice (April 1, 2025) for I&I bargaining regarding the reassignments, as aspects of the reassignments—such as the reevaluation of mobile and remote work positions to office-based positions and the impact on employees’ remote work agreements—are not explicitly covered by Article 28. HUD’s assertion that Article 49 notice is not required because the reassignments are “expressly covered by Article 28” is incorrect. The reevaluation of mobile work positions and the unilateral modification of existing Flexiplace agreements constitute changes to conditions of employment that trigger bargaining obligations under Article 49, Section 49.02. By refusing to issue an Article 49 notice and engage in I&I bargaining, HUD has violated the CBA;
2. *Violation of Article 28, Section 28.02 – Consideration of Employee Circumstances* Article 28, Section 28.02 requires HUD to consider individual employee

*circumstances, such as hardship, when directing reassignments to new locations. The email notification does not indicate that HUD conducted an individualized assessment of the affected employees' circumstances, including potential hardships caused by requiring employees on "Remote Work – Outside Commuting Area" agreements to report to an office more than 50 miles from their current duty station. This failure to consider employee circumstances violates the CBA and undermines the collaborative spirit outlined in the Preamble and Article 3.*

- 3. Violation of Article 18 – Telework Agreements The affected employees, particularly those on "Remote Work – Outside Commuting Area" Flexiplace agreements, have established telework arrangements under Article 18. HUD's unilateral decision to require these employees to report to an office-based duty station effectively modifies or terminates their telework agreements without following the procedures outlined in Article 18, Section 18.04, which requires notice and an opportunity for employees to address changes to telework arrangements. This action constitutes a substantive change to conditions of employment, further necessitating I&I bargaining under Article 49.*
- 4. Violation of Article 4, Section 4.01 – Pre-Decisional Involvement Article 4, Section 4.01, consistent with Executive Order 13522, mandates pre-decisional involvement of the Union in workplace matters to the fullest extent practicable, regardless of whether those matters are negotiable under 5 U.S.C. § 7106. HUD failed to involve the Union in the decision-making process regarding the reevaluation of mobile and work positions and the reassignment of employees on remote work agreements. This lack of predecisional involvement violates the CBA and deprives the Union of its right to provide input on matters affecting BUEs.*
- 5. Violation of Federal Regulations and Statutory Requirements HUD's actions may also violate federal regulations, including 5 C.F.R. § 531.605, which governs the determination of an employee's official worksite for pay and telework purposes. By reassigning employees without proper consideration of their existing remote work agreements, HUD risks misapplying locality pay adjustments and other entitlements, potentially causing financial harm to employees. Additionally, the failure to engage in good-faith bargaining over these changes violates 5 U.S.C. § 7116(a)(5), constituting an unfair labor practice under the Federal Service Labor-Management Relations Statute.*

**REQUESTED REMEDIES:**

The Union is requesting the following remedies:

- 1. Cease and Desist: HUD must immediately cease implementation of the management directed reassignments until all contractual and statutory obligations are met.*
- 2. Status Quo Ante: Restore the affected employees to their prior duty stations and telework agreements pending resolution of this grievance and completion of required bargaining.*
- 3. Bargaining: Engage in good-faith I&I bargaining under Article 49 regarding the*

*reassignments, including the reevaluation of mobile work positions and modifications to telework agreements.*

*4. Pre-Decisional Involvement: Provide the Union with pre-decisional involvement in any further decisions related to these reassignments, consistent with Article 4.*

*5. Individual Assessments: Conduct individualized assessments of affected employees' circumstances, including potential hardships, as required by Article 28, Section 28.02, and provide documentation of such assessments to the Union.*

*6. Make Whole: Compensate any affected employees for financial losses (e.g., relocation costs, commuting expenses, or locality pay adjustments) incurred as a result of HUD's improper actions.*

*7. Posting: Post a notice to all employees acknowledging the violation and affirming HUD's commitment to comply with the CBA.*

*8. Attorney Fees and Costs: Reimburse the Union for reasonable attorney fees and costs incurred in pursuing this grievance, as authorized by applicable law.*

#### **AGENCY RESPONSE:**

After fully considering all the information provided, I am responding to the alleged contractual, informational, and statutory violations cited in the GOP as follows:

#### **ALLEGED CONTRACTUAL VIOLATIONS**

##### **Union Notification**

The GOP alleges that the Agency violated Article 28, Section 28.03, which states:

*Prior to issuing notices to employees of a management directed reassignment to a location outside of the commuting area covered in this article, management will provide the Union a copy of present and planned organizational charts showing the actual employees' relocation, including but not limited to organizational assignment, current position title, new position title, current position pay grade, new position pay grade, and current and planned geographic location of the employees' office(s). The Department shall provide notice according to Article 49 for impact and implementation negotiations for matters not directly addressed in this article.*

The parties negotiated an extremely comprehensive article governing Management Directed Reassignment procedures. An agency is not required to bargain over matters already covered by the parties' collective bargaining agreement (*National Association of Government Employees and VA* (64 FLRA No. 19)). While the contract does provide procedures for bargaining, if necessary, the MDRs are not an exception to what was negotiated and appears to be "covered by" all the negotiated procedures outlined in Article 28.

As articulated in the email notifications from Daniel Raymond dated March 31, 2025, and April 2, 2025, Subject: CBA Section 28.03 Notice of Management Directed Reassignments, Management can agree with your highlighted portion of 28.03, that an Article 49 notice for I&I

would be required “for matters not directly addressed in this article.” The original notice and the updated notice informed you that these reassignments will comply with Article 28, therefore Article 49 notice is not required, as these reassignments are expressly covered by Article 28. Also, the Agency complied with all of the cited contractual obligations in these notices to the Union (see attached email: CBA Section 28.03 Notice of Management Directed Reassignments) including organizational assignment, current position title, new position title, current position pay grade, new position pay grade, and current and planned geographic location of the employees' office(s). As such, I find that the Agency's response to the Union declining to bargain was appropriate and I do not find merit to this allegation.

### **Employee Rights**

The GOP alleges that the Agency violated Article 28, Section 28.02, which states:

*This Article shall not diminish or waive any rights that bargaining unit employees have under the current collective bargaining agreement, law, rule or regulation. The Department shall not impose any prohibitions or limitations on employee rights, entitlements, or benefits unless expressly prohibited or limited under law or government-wide regulations.*

The Union states that it considers this language in Article 28 as requiring Management to conduct individualized assessments of whether each MDR would create a hardship on the employee. Article 28, Section 28.02 does not require HUD to conduct an individualized assessment of the affected employees' circumstances. This language in Article 28 merely ensures that bargaining unit employees retain the rights and benefits that they are otherwise entitled to under the law, and management in no way has impeded on these rights in the exercise of these management directed reassignments. Employees who are experiencing a hardship may certainly voice these concerns to their supervisor; however, Management retains the right to determine the organization and make decisions in accordance with operational needs. Considering this, I do not find merit to this allegation.

### **Modification of Telework Agreements**

The GOP alleges that the Agency violated Article 18, Telework in particular 18.04 (with language from 18.06):

*Supervisors must give reasonable advance notice for permanent or long-term modifications to telework agreements and, under normal circumstances, no less than one full pay period. The modification must be in writing and provide the reason(s) for the modification.*

Phase 4 employees received notice of the requirement for the return to in-office work on 04/01/2025 which was a follow-on for notices that went out on 1/24, 1/30, 2/6 and 2/20/2025 meeting any contractual time periods under Article 18 for reasonable advance notice and a change in teleworking agreements. Also, in a case involving changing agreements and increased office presence, FMCS Case No. 241002-02347, Arbitration between HUD and AFGE Local 3972, the decision noted the Union's demand to bargain in this instance is

misplaced. The procedures for changing telework arrangements were established through bargaining, and the procedures were followed. The Agency met its obligation to bargain when it negotiated the terms of Article 18 and Supplement 34 of the Collective Bargaining Agreement.

Considering these facts, I do not find merit to this allegation.

### **Pre-decisional involvement**

The GOP alleges that the Agency violated Article 04, Section 04.01, which states:

*Governing Authorities. In the administration of all matters covered by this Agreement, the parties are governed by existing and future laws, existing Government-wide regulations, and existing and future decisions of outside authorities binding on the Department. The parties also recognize the importance of pre-decisional involvement to the fullest extent practical without regard to whether those matters are negotiable subjects.*

Article 04, Section 04.01 does not mandate pre-decisional involvement. Furthermore, the Executive Order 14119 was revoked and any reference to it outside of the CBA is moot. The Union participated in all negotiations of the CBA and Flexiplace Policy that govern the allegations made in this grievance. As Management believes these actions are “covered by” and no negotiated agreements or contractual violations occurred, I find no merit to this allegation.

### **ALLEGED STATUTORY VIOLATIONS**

#### **Determining an employee's official worksite**

The Union alleges that by committing the contractual violations mentioned above, the Agency/ HUD’s actions *may* also violate federal regulations, including 5 C.F.R. § 531.605, which governs the determination of an employee’s official worksite for pay and telework purposes.

This allegation is meritless and speculative because neither the Union nor Management can address every hypothetical situation that has qualifying language, such as “may”, where no real violation of Statute has occurred. The Union alleges that through its reassignment actions, it “may” miss locality pay adjustments. In fact, the specific situation of misapplying locality pay is covered by Article 18 Section 28.09 (4), which once again solidifies Management’s assessment of “covered by,” and states:

*“The Department agrees that errors in locality pay are beyond an employee's control. However, it is the responsibility of the employees to review their Personnel Actions and earnings and leave statements. The Department will take immediate and appropriate action to resolve/correct errors. The Department will notify the employee of any applicable waiver*

*process.”*

Consequently, I find no merit to this allegation.

**Good-faith bargaining**

The Union alleges that by committing the contractual violations mentioned above, the Agency/ HUD’s actions may also violate federal regulations and violate 5 U.S.C. § 7116(a)(5), constituting an unfair labor practice under the Federal Service Labor-Management Relations Statute. As indicated throughout my decision, Management did not violate any portion of the CBA or 5 U.S.C. § 7116(a)(5) constituting an unfair labor practice under the Federal Service Labor-Management Relations Statute. Any allegation of what the Agency “may” have done or “may” do is speculative, not specific in nature and cannot be addressed.

As outlined in my analysis above, I find that the Agency conducted this action in accordance with the Agreement. Furthermore, I do not find that the Agency’s actions were in violation or contrary to the applicable HUD policies, the Agreement, law or regulation. As such, the grievance and all remedies requested are denied.

If you are dissatisfied with my decision, arbitration may be invoked by the Union in accordance with Article 52 of the Agreement.

Encls.

1. Email thread for original notice and both responses
2. AFGE Remote-Outside Commuting Distance List of Employees
3. AFGE MDR Updated List of Employees