



**UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST AN AGENCY**

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Case No. _____

Date Filed _____

Complete instructions are on the back of this form.

1. Charged Activity or Agency

Name: HQ, Dept. Housing & Urban Develop
Address: 451 7th Street
Washington, DC 20410
Tel.#: 2024020417 Ext.
Fax#: ()

2. Charging Party (Labor Organization or Individual)

Name: AFGE HUD Local 476
Address: 451 7th Street
Washington, DC 20410
Tel.#: (202)402-3077 Ext.
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3. Charged Activity or Agency Contact Information

Name: Norm Mesewicz
Title: Dep. Director, Empl & Labor Rel & F
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4. Charging Party Contact Information

Name: Eddie Eitches
Title: President, AFGE HUD Local 476
Address: 451 7th Street, Room 3143
Washington, DC 20410
Tel.#: 2024023077 Ext.
Fax#: ()

5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? [See reverse] (1) and see attached

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles. See attached.

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7. Have you or anyone else raised this matter in any other procedure? No Yes If yes, where? [see reverse] _____

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX #3 BY [check "x" box] Fax 1st Class Mail In Person
 Commercial Delivery Certified Mail

Harold J. Gross
Type or Print Your Name

Harold J. Gross
Your Signature

11/19/2010
Date

Introduction

AFGE Local 476 (the Union) brings this unfair labor practice complaint against the U.S. Department of Housing and Urban Development (the Agency). The Union is the exclusive representative of all bargaining unit employees. (Agreement between U.S. Department of Housing and Urban Development and American Federation of Government Employees (1998) (Agreement), §§ 1.01 and 3.02.¹) On September 28, 2010, the Agency announced that it would perform major renovations to its Headquarters building, as described below.

In connection with the announced Headquarters renovation and construction plans, the Agency has improperly bypassed the Union, failed to provide required Union notice, failed to consult the Union in accordance with the terms of a collective bargaining agreement, and failed to negotiate. The FLRA is authorized to resolve complaints of unfair labor practices under 5 U.S.C. § 7116 and issues relating to the duty to bargain in good faith under 5 U.S.C. § 7117(c).

Question 5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated?

The Agency violated 5 U.S.C. §§ 7116(a)(1), (5) and (8) when it refused to involve the Union in the planning process and when it bypassed the Union in announcing the renovation to bargaining unit employees. The Agency also violated Articles 1, 3, 5, and 26 of the Agreement and Supplement 69 to the Agreement by these actions and omissions.

Question 6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

On September 28, 2010, via e-mail, Deputy Secretary Ron Sims Agency officials notified Headquarters employees of plans to renovate the building (Exhibit 1). The Agency announced that it will perform major renovations on its Headquarters building, including:

1. transforming a portion of the second floor of its Headquarters into an open space layout representing what the rest of the building will look like after a total building modernization (second floor demonstration project);
2. implementing an Energy Savings Performance Contract (ESPC project) that allegedly will upgrade the building's critical systems and equipment; and
3. a lobby renovation project.

The second floor and ESPC projects will require employees to temporarily move outside of the Headquarters building. The ESPC project will require eight groups of people of 450–500 employees per group to move to rented office space for approximately four months, as described in Exhibit 1.

Failure to Notify Union and Bypassing Union

The Agency failed to notify the Union before notifying employees of the renovation and construction plans. The Agency improperly bypassed the Union and failed to provide the Union with a timely opportunity for input on the plan or involvement in the “overall planning process” on space alterations as required by Supplement 69 (provisions 4 and 24) (Exhibit 2). Supplement 69, section 4, states, “The Local Union shall be consulted and given the opportunity to provide

¹ A copy of the Agreement is available at <http://afgecouncil222.tripod.com/contract.doc>.

input in the development of the plans. Management will be provided a copy of the plan for concurrence.” Section 24 states, “The Local Union shall be consulted and included in the overall planning process of any space alterations.”

The Union is the HUD employees’ exclusive representative to negotiate in good faith over “conditions of employment” “except for those particular matters that are excluded from the duty to bargain by federal law or government-wide rules or regulations. The term “conditions of employment” is defined broadly to include “personnel policies, practices, and matters affecting working conditions.” (5 U.S.C. § 7103(a)(14)).

The September 28 e-mail states that, “Planning meetings involving the various affected offices will be held beginning in approximately two weeks.” The Agency violated Agreement § 3.03, Union Presence at Formal Discussions, and § 3.04, Proper Notice, because the Agency failed to invite the Union to a discussion with employees that concerned general work conditions and because the Agency failed to provide any notice to the Union of a formal meeting.² The violation of these sections resulted in harmful error because employees were denied Union representation and the Union was denied the opportunity to provide input to the Agency during the planning stages, which would have included expressions of concern over employee health and safety, the ability of employees to perform their work efficiently and effectively, and information security.

Although the Agency invited the Union to send a representative to a November 4, 2010, meeting called a charrette, at which the Agency and its consultant discussed the second floor layout project, the Union was not provided any opportunity to participate in any decision making. The Agency’s unwillingness to negotiate is demonstrated by its allocation of less than one hour to identify, discuss, and provide decisions to the consultant—all without Union involvement other than as an observer (Exhibit 3).

Failure to Provide Required Information in Accordance with Agreement

The Agency has violated Section 5.04 of the Agreement, which states with regard to mid-term bargaining that:

Section 5.04 - Information to the Union on Mid-Term Changes. The following information, if available, shall be included in the notices of proposed Management mid-term changes at the National, Geographic Area, or local level. Any further requests for information by the Union shall not delay the commencement or completion of negotiations.

- (1) Change in a policy or past practice.
 - (a) Copy or statement of the current policy or practice.
 - (b) A statement of the reason(s) for the change.
 - (c) A copy or statement of the proposed new policy or practice.

² Section 3.03 states in part, “The Union shall be informed of and be entitled to be present at ‘all formal discussions’ between one (1) or more representatives of Management and one (1) or more unit employees, or their representatives, concerning any ... general conditions of employment.” Section 3.04 states, “Notice to the Union of a formal meeting shall be provided to the designated Union representative ..., but generally not less than forty-eight (48) hours in advance of the meeting, except in unusual circumstances.”

(2) Moves.

- (a) Name, room numbers, grade, title, and position of all affected bargaining unit employees.
- (b) New room number for each affected bargaining unit employee.
- (c) Current space plan (with names, average number of square feet per employee, and total number of square feet for the office being moved).
- (d) New space plan (with same information as above).
- (e) Name and phone number of the move coordinator.
- (f) Whether employees will be able to keep their current office furniture.
- (g) Description of any plans to install modular furniture, lay carpet, shampoo carpet, install partitions, paint walls, exterminate, lay computer lines, move phone jacks or electrical outlets, or take out or install walls. If any such activity is planned, when the activity will take place and how the employees will be accommodated, if necessary.
- (h) Names of any employees in the affected office known by Management to have disabling conditions that need to be accommodated in the move. If so, how will they be accommodated?
- (i) Estimated cost.

The Agency has asserted that such information is not available because the renovations are still in planning stages. The Agency suggested that such information should be provided at the end of the negotiation process. Such a delay would make any negotiations impossible, because the Union would not have the necessary information to negotiate effectively on behalf of the bargaining unit employees.

In a statement dated October 28, 2010, the Agency responded to questions that the Union had submitted earlier that month (Exhibit 4). The Agency's responses are inadequate. For example, as Exhibit 3 shows, in response to questions about exact spaces or rooms that will be affected by the renovations, the Agency provided "stacking floor plans" related to the ESPC project but did not provide a list with a description of the work that was planned for each room, nor did the Agency provide such information with regard to the second floor demonstration project.

Similarly, in response to questions related to identifying affected bargaining unit employees, the Agency provided a personnel list of all personnel, bargaining unit and otherwise, in some of the affected areas. The lists did not provide all the requested information; in spite of the fact that the Agreement specifically requires "Name, room numbers, grade, title, and position of all affected bargaining unit employees," and the Agency therefore had adequate notice that it needed to obtain such information, the Agency presented the excuse that it would "need to obtain bargaining unit status from Human Capital Services...need to obtain title/grade information and bargaining unit status from program offices involved."³

The Agency also avoided directly answering questions regarding employees with disabling conditions who might be affected by the planned work, as shown by Exhibit 4. Once again, the Agency provided a general answer that did not directly address the question and that failed to

³ Exhibit 4.

identify whether there were any such personnel. As a result, the Union is unable to ensure that bargaining unit employees' the rights and welfare are protected.

The Agency so far has failed to provide a copy of all safety plans as requested by the Union. The Union asked for specific information as to construction methods and procedures that would provide reassurance to the Union and employees that there are no health and safety concerns posed by continued occupancy of the Weaver building during construction. The Agency has said that it will make safety documentation available when it is complete, but failed to include the Union in any discussions or to provide preliminary information to the Union. For example, the Agency stated (in Exhibit 4) that GSA has already begun and will be reviewing with HUD the ESPC contractor's safety and accident prevention plans, yet such information has not been provided to the Union in spite of several requests.

Refusal to Negotiate in Good Faith

Although the Agency insists that it is just beginning the planning process, its own documentation negates the truth of that and demonstrates the failure of the Agency to negotiate in good faith. For example, when the Union attended the November 4, 2010, charrette meeting, the Agency provided an October 2009 contract proposal from Honeywell related to the ESPC project. That year-old proposal is approximately 150 pages long. Although it was dated over a year ago, the Agency has given the Union less than a month to absorb the contents: On Thursday, November 18 (one week before Thanksgiving), the Agency provided the Union with a draft announcement titled, "Transformation of the Weaver Building Begins November 29" (Exhibit 5). The Union has had no opportunity to properly negotiate the ESPC project, to which the draft announcement relates, other than to request slightly different contractor work hours.

The Agency has also failed to negotiate in good faith with regard to the second floor demonstration project; notes from the November 4 charrette meeting suggest that HUD will approve a contractor's design only two business days after the design is submitted (Exhibit 6). The Agency's rush to implement plans prevents the Union from negotiating and from raising legitimate questions and receiving responses in a reasonable time frame.

The Agency has ignored or discounted the Union's input although the Union has attended some charrette meetings and reviewed some charrette plans. For example, the Union has repeatedly raised objections to the proposed open floor plan that provides employees with only 36 or 37 square feet of space per person. The Agency has ignored Supplement 69, section 13, which requires that if the office space cannot accommodate 64-square-foot (8x8) workstations, the workstations provided to employees may not be less than 56 square feet (7x8). The Union has objected to the reduced amount of personal work space with regard to both the temporary space through which personnel will be moved as construction progresses (sometimes called swing space), and the permanent space in the Headquarters building. Nevertheless, the Agency has refused to consider any alternative plans or any suggestions put forth by the Union.

The Agency violated 5 U.S.C. § 7116(a)(5) by refusing to consult or negotiate in good faith with a labor organization; and subsection (8) by otherwise failing or refusing to comply with the provisions of § 7116. The Agency's activities should not be allowed to proceed until the procedural and substantive issues have been resolved. While employees have been informed that the work will proceed, the Agency has failed to inform either the Union or employees of any

health and safety assessments of the proposed work or of any precautions that will be taken other than moving some employees from the immediate construction area temporarily.

Request for Injunctive Relief

The Union requests injunctive relief in the form of a cease-and-desist order and/or temporary restraining order that will require the Agency to suspend its announced construction and renovation work because the Agency's continued implementation of its planned major renovations will:

- a) expose employees to adverse indoor environmental conditions,
- b) upset the status quo while there are unresolved procedural issues before the FLRA, as well as substantive issues under discussion such as the relative cost of Agency and Union proposals, changes in working conditions that will adversely affect the ability of employees to perform their work, and health and safety concerns,
- c) violate the Agreement and Supplement 69, and
- d) result in an irrevocable harm to and an adverse action against employees.

The major renovations constitute an imminent risk of health, safety, and other adverse impact on employees. The FLRA has authority to provide injunctive relief under 5 U.S.C. § 7123(d). The Union asserts that the Agency's violations of the Labor-Management Relations Statute and Agreement are serious, and that the adverse affects on employee health and working conditions justify the temporary relief allowed under § 7123(d). This matter entails repeated instances of the Agency bypassing the Union, thereby undermining the exclusive right of the Union to represent employees and engage in collective bargaining over working conditions.

This request for an injunction does not apply to upcoming repairs to the roof of the Headquarters building that were also announced on September 28, 2010. The Union supports all efforts to repair the roof as soon as possible. The roof's leaks have produced high levels of mold within the Headquarters building. Entire offices have been moved due to illness caused by the mold. The Union applauds the Agency's move to remediate the situation.

Injunctive Relief Requested due to Agency's History of Failing to Negotiate in Good Faith

The Agency has a history of failing and refusing to negotiate in good faith with the Union in violation of §§ 7116(a)(1) and (5), as noted by the FLRA in its October 29, 2010 Notice of Hearing in Case No. WA-CA-09-0063 (Exhibit 7). In that case, the Agency notified the Union that the Agency would renovate and reconfigure office space of bargaining unit employees in the Office of Policy Development and Research. After the Union requested to negotiate, the Agency implemented the changes in conditions of employment without completing negotiations as required.

In the current case, the Agency has failed to provide much of the basic information that is necessary for both parties to negotiate in good faith, yet it has announced a start date that is imminent. The Union has tried to obtain information since the Agency's first announcement of renovation and construction plans, which was made without proper notification to the Union.

Injunctive Relief Requested due to Agency's Past Disregard for Employee Health

Injunctive relief is necessary because the Agency has demonstrated a long-standing pattern of disregard for the health of employees at Headquarters.

The EPA, the World Health Organization (WHO), National Academy of Sciences, and other experts on public health have accepted that poor indoor air quality adversely affects the people who have long-term exposures.⁴ Poor indoor air quality affects and triggers asthma, respiratory allergies, depression, and stress. It also has a detrimental effect on worker productivity.

The Agency's own Office of Healthy Homes and Lead Hazard Control have recognized that "poor indoor air quality" can trigger asthma and allergies.⁵ Nevertheless, the Agency has a long history of ignoring the air quality in its own Headquarter building and compromising its Headquarters employees' health. Exhibit 8 provides examples of the Agency's failure to implement widely accepted health and safety practices.

The Agency's inability to implement basic health and safety practices, illustrated by the examples provided in Exhibit 8, is not due to lack of funding. During the period mentioned above, the Agency spent \$7 million to renovate its cafeteria and auditorium.

Injunctive Relief Requested because Agency Continues to Ignore Requests to Protect Employee Health and Safety

None of the construction or renovation activities, other than the roof repairs, should be allowed to proceed until the procedural and substantive issues have been resolved. The Agency continues to deny or otherwise avoid responding to requests from the Union for descriptions of any health and safety assessments of the proposed work and of precautions that will be taken to protect employee health and safety beyond moving some employees from the immediate construction area temporarily.

It does not appear that the Agency has prepared or circulated an Injury and Illness Prevention Program as is reasonable and customary prior to the start of a construction project where employees will remain in the building. The Agency has failed to provide an Injury and Illness Prevention Program for either the ESPC project due to start on or about November 29, 2010, or the second floor construction that will start in February 2011.

The Centers for Disease Control (CDC) report that, "Construction and renovation projects in office settings can adversely affect building occupants by the release of airborne particulates, biological contaminants, and gases. Careful planning for IEQ [indoor environmental quality] and the prevention of exposure during these activities is essential" (Exhibit 9). As the CDC explains, liquid finishes such as paints, sealers, and adhesives release volatile gasses during the period

⁴ For a current bibliography, see: Singh, Amanjeet et al. (2010) "Effects of Green Buildings on Employee Health and Productivity," *American Journal of Public Health* 100, 1665- 1668. The National Academy of Sciences found that there was sufficient evidence to conclude that there is an association between the presence of mold and the following health effects: upper respiratory tract symptoms, wheeze, cough, asthma symptoms in sensitized persons, and hypersensitivity pneumonitis in susceptible persons (available at: <http://www.surgeongeneral.gov/topics/indoorenv/researchneeds.htm>); see also the 2008 GAO report titled "Indoor Mold: Better Coordination of Research on Health Effects and More Consistent Guidance Would Improve Federal Efforts" GAO-08-980.

⁵ See page 6 at http://www.hud.gov/offices/lead/library/hhi/hh_strategic_plan.pdf.

following installation. They cling to and adhere to carpets, gypsum board, and other porous surfaces and are then released over time. Dusty operations, such as finishing gypsum board, installing insulation and ceiling tile, and sanding or grinding hard floor surfaces leave large residues of nuisance or hazardous dust that accumulate on interior finishes, in ceiling cavities and ducts, which are released later into the occupied zone. The Agency has not provided the Union with an Injury and Illness Prevention Program that is designed to protect employees from off-gassing of VOCs or formaldehyde after construction is completed.

Article 26 of the AFGE/HUD Agreement specifically calls for the formation of a Health and Safety Committee at Headquarters that is charged with oversight of health and safety practices. On or about October 14, 2010, the Health and Safety Committee invited Charles Mace, Director of the Space and Assets Management Division of the Office of Facilities and Management Services, to make a presentation to the Committee regarding the job specifications and/or the work plan for the upcoming construction that will ensure conformity to ANSI/SMACNA 008-2008, "IAQ Guidelines for Occupied Buildings Under Construction," and ASHRAE 62-1989, "Standards for Acceptable Indoor Air Quality." The Health and Safety Committee also asked Mr. Mace to provide the job specifications or work plan that will ensure employees are protected from off-gassing after construction. Even though Mr. Mace received and read the emailed invitation, to date he has declined to respond.

Injunctive Relief Requested Because Agency Continues to Ignore Documented Threats to Employee Health and Safety

The presence of indoor environmental contaminants in the Headquarters building has been documented. Within the past year, employees on the tenth floor were relocated to another floor because black mold was found filtering through ceiling vents onto desks, computers, and papers. Tenth floor employees have become so ill from building contaminants that they were moved to the fifth floor while testing was underway. There are areas on the tenth floor where employees still have not returned to their offices. Testing by the Union on the third and ninth floors found toxic mold. The Agency never complied with requests to test ducts for mold and other indoor contaminants – despite widespread respiratory illness.

The HVAC in the Headquarters building recycles air throughout the building. HVAC ducts have never been systematically cleaned at Headquarters, although there has been spot cleaning in response to complaints. (See Exhibit 8 for examples.) Exposure to molds from the contaminated HVAC system during construction poses a serious health and safety hazard to employees. Construction and renovation pose the imminent risk of releasing contaminants through the HVAC system and wall systems, not just for the immediate construction areas, but through the ventilation system into other employee work space.

The Agency's plans for the second floor demonstration project call for demolition of office walls beginning in February 2011. The walls are made of gypsum, which provides a source of moisture and an ideal environment for molds to reproduce. Mold spores, even if they are not toxins, contain substances that irritate the human respiratory tract and can elicit allergic systems in sensitized individuals. The demolition phase of construction is thus expected to release significant amount of additional mold into the building. In spite of past evidence of the presence of toxic molds, the Agency has refused to address Union concerns related to protecting

employees' health. The Agency has merely indicated that employees will not be allowed in major construction zones. This indicates the Agency's continued refusal to respond to actual threats to employee health and safety.

Given the documented problems of mold in the Agency's HVAC system, it would be expected that the Agency, at a minimum, would follow the advice of the Environmental Protection Agency (EPA). The EPA's guidance addresses the remediation and containment of mold to limit release of mold into the air and surroundings during demolition and construction, in order to minimize the exposure of building occupants to mold and to prevent the spread of mold and moldy debris to other areas in the building. Regardless of whether limited or full containment is necessary, the EPA states,

All supply and air vents, doors, chases, and risers within the containment area must be sealed with polyethylene sheeting to minimize the migration of contaminants to other parts of the building...The containment area must be maintained under negative pressure relative to surrounding areas. This will ensure that contaminated air does not flow into adjacent areas.⁶

Particles, dust and vapors from a construction zone are easily transported from construction zones to employee-occupied zones by air currents, persons moving between zones, and the HVAC system itself. Both the CDC and EPA recommend the use of negative air pressure and buffer zones around actual construction/demolition areas, which the Agency has not addressed.

The Union is concerned about several other contaminants that are expected to be present in the building, the exposure to which may put all of the Headquarters building's occupants at risk. The Agency continues to ignore requests for description of the measures that will be taken to protect employee health during and after construction.

Asbestos. The Headquarters building was constructed in 1965, when asbestos was the insulation of choice in large buildings. Very small doses of asbestos are known to cause mesothelioma, an aggressive form of lung cancer, and other diseases.⁷ It is critical for employee health that the Agency ensures proper venting to the outside when any work that might disturb the insulation starts or the Agency should provide proof that asbestos was never used.

Fiberglass. The Union also is concerned about the adverse health effects of inhaling fiberglass particulate released during construction. Fiberglass is contained in insulation materials used in buildings, and HVAC ducts as well as other construction materials. Fiberglass particulate can irritate the skin, eyes and respiratory tract when disbursed in the air and/or inhaled (Exhibit 9).

Lead. The Union is concerned about the presence of lead, which was commonly used in paint before 1978. Exposure to lead may cause a range of health effects, from behavioral problems and learning disabilities, to seizures and death. Two of the most common sources of lead poisoning are deteriorating lead-based paint and lead-contaminated dust. Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and

⁶ <http://www.epa.gov/mold/i-e-r.html#Containment>.

⁷ See: <http://www.mesotheliomasos.com/mesoWhatIs.php>.

chips by disturbing lead-based paint, which can be harmful to adults and children.⁸ The Agency has not provided any plans that show how Headquarters personnel will be protected against the risk of exposure to lead dust or particles. On May 6, 2010, the EPA announced plans to regulate the renovation, repair, and painting of public and commercial buildings, including government buildings, including lead-safe work practices, thereby indicating the importance of protecting people from exposure to lead contaminants.⁹

Impact of Lead Dust on Child Care Center. The Union is also concerned about the welfare of children of employees at the Headquarters building child care center. Under current EPA rules, contractors performing renovation, repair and painting projects that disturb lead-based paint in child care facilities must be certified and must follow specific work practices to prevent lead contamination.¹⁰ Even if the construction work is not in the child care facility, since that facility shares the same air recirculated through the HVAC system as the rest of the Headquarters building, the Agency needs to provide specific plans for protecting the children from exposure to lead.

The Agency also has consistently failed to address adequately the Union's concerns regarding the effect of the proposed increase in the density of work areas. The second floor demonstration project and the swing space (the temporary relocation space) will increase the density of the work environments from approximately 18 people per 1000 square feet to 28 people per 1000 square feet. Increasing the density of open office space will increase the spread of influenza, colds, and other contagious airborne diseases. As a recent example, approximately 11,000 Americans died from H1N1 in 2009, and most of the victims were of working age.¹¹ The greater the density, the greater is each individual's exposure to bacteria and viruses. The Agency has rejected all of the Union's efforts to discuss the effects of Agency construction plans on airborne illness in the workplace.

In addition to increasing risk of contagious airborne disease, the Union also objects to the increased density because of the elevation of noise levels. The average workstation shown in the second floor proposed plan is an open workstation with no walls whatsoever separating an employee from three others who share the space. The walls between the groups of four employees are only about waist high. The Agency has not identified any noise abatement plans, such as noise absorbent carpeting, noise absorbing partitions, or ceiling or wall baffles that would reduce noise. The CDC identifies noise levels as hazardous if you have to raise your voice to speak with someone an arm's length away.¹² The Union has expressed concern that employees in a crowded, open space layout, with cross talk throughout the day, telephones ringing and the constant hum of computers, air conditioners and fans, will be faced with the increased stress and threats to health and safety that noise creates.

⁸ <http://www.epa.gov/lead/>.

⁹ Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings, 75 Fed. Reg. 24848 (May 6, 2010). Available at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480ac7eb8>.

¹⁰ <http://www.epa.gov/lead/pubs/renovation.htm>.

¹¹ http://www.cdc.gov/h1n1flu/estimates_2009_h1n1.htm.

¹² <http://www.cdc.gov/niosh/topics/noise/faq/faq.htm>.

Injunctive Relief Requested because Agency Habitually Refuses to Negotiate Space Reconfiguration

The construction on the second floor is the first phase of a conversion of the entire Headquarters to an open space layout, a change in conditions of employment that the Agency never negotiated with the Union. The Agency has refused to negotiate the change in work space in accordance with Supplement 69.

There is ample precedent to show that the type of construction proposed by the Agency is negotiable. A variety of FLRA decisions clarify that space configuration and space allocation are working conditions and, therefore, negotiable. In *NTEU Chapter 83 and Dept. of Treasury, IRS*, 35 FLRA 398, 403-413 (1990), the Authority held that “proposals concerning reductions in space, space allocation, and the arrangement of space concern conditions of employment and are negotiable unless an agency demonstrates that the proposals are inconsistent with applicable law or regulation.” Quoting from *Library of Congress v. FLRA*, 699 F.2d 1280 (D.C. Cir. 1983), the Authority went on to describe office environment in general as a matter “at the very heart of the traditional meaning of ‘conditions of employment.’” 699 F.2d at 1286. Under *AFSCME Local 2477 and Library of Congress*, 7 FLRA 578, 583 (1982), the Authority stated that, absence a showing that a technical relationship existed between office size and the performance of agency work, office size was merely incidental to the performance of an agency’s work but was principally related to matters affecting working conditions. In accordance with these authorities, the Agency’s consolidation and conversion proposals are negotiable.

As Exhibit 7 (the October 29 Notice of Hearing in FLRA Case No. WA-CA-09-0063) demonstrates, the Agency’s refusal to negotiate space is typical. Although the Union had requested the Agency negotiate its proposed changes in conditions of employment – the renovations and reconfiguration of the Office of Policy Development and Research – the Agency implemented the changes in conditions of employment without completing negotiations as required.

In this case, the Agency has failed to respond to the Union’s repeated objections to reduction of personal space from a minimum of 56 or 64 square feet, as negotiated and provided in Supplement 69, section 13, to only 36 or 37 square feet of space per person. The Agency has refused to consider alternative plans or give consideration to any suggestions put forth by the Union.

Discussion and Conclusion

The Agency’s announcement of a November 29 start date, absent the conclusion of negotiations, is an indication of its unwillingness to negotiate in good faith.

HUD’s building managers have not taken any of the health and safety issues into consideration as plans to demolish office walls head toward realization. The move to temporary (“swing”) space and the Headquarters construction pose significant risks of harm to employees. Failing injunctive relief, employees are likely to become fearful for their health.

This request for injunctive relief is consistent with FLRA’s guidance on injunctive relief:

- (1) the matter is serious because the imminent work would result in a change in the status quo in working conditions while there are unresolved issues between the Agency and the

Union, and because there is a serious risk of adverse health and safety impact on employees;

- (2) the Agency has not bargained over the past year;
- (3) granting temporary relief will not interfere with the work of the Agency (it is far more likely that the proposed construction would disrupt work of the Agency); and
- (4) the Agency's refusal to bargain undermines the right of the Union to represent the employees.

It appears from the Agency's conduct that the Agency will ignore its obligation to negotiate in good faith, and that it persists in refusing to acknowledge reconfiguration of work space, moves to other works space, and the construction's impact on employees' working conditions, to be subject to bargaining. The Agency repeatedly violated the Agreement's procedural requirements to notify and consult with the Union. The Agency bypassed the Union by consulting with employees without informing the Union, failing to involve the Union in planning, failing to provide all required information in its written notice to the Union, and failing to negotiate. The Agency has ignored health and safety warnings by employees and the Union, and ignores readily available advice and instruction from authorities such as the CDC and EPA. The Agency continues to ignore these concerns by proceeding with plans. The Union has no choice but to seek immediate injunctive relief to stop the upcoming construction on the second floor, the ESPC project, and the lobby renovation.

This request for an injunction does not apply to upcoming repairs to the roof of the Headquarters building that were also announced on or about September 28, 2010. The Union supports all efforts to repair the roof as soon as possible. The roof's leaks have produced high levels of mold within Headquarters.

Requested relief

1. Issue a cease and desist or temporary restraining order preventing the relocation of employees, the demolition of walls, and the construction of redesigned office space for the second floor of the Headquarters building, the Headquarters lobby, and the ESPC project.
2. Order the Union and Agency to commence negotiations.
3. Declare the Agency in violation of 5 USC 7116(a)(1), (5), and (8) for bypassing the Union and interference in the Union's right as exclusive representative of employees.
4. Declare the matters of "open space layout" and implementation of the lobby renovations and ESPC program in the Headquarters building to be negotiable.

Exhibits

1. Construction Announcement
2. Supplement 69 to AFGE-HUD Agreement
3. Agency Open Space Layout Agenda - Nov 4
4. Agency Response to Union Questions/Requests for Information, October 28, 2010

FLRA Form 22, Continuation Page 12
AFGE Local 476 Unfair Labor Practice Complaint Against
Department of Housing and Urban Development

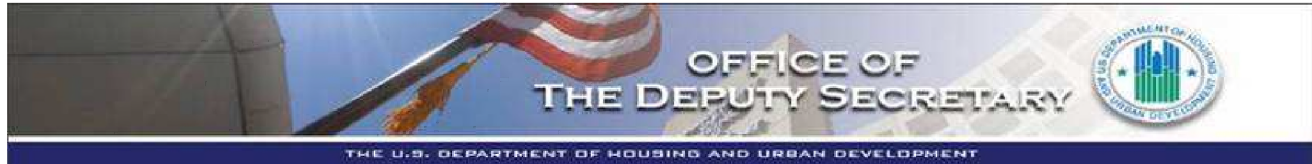
5. Draft Transformation Announcement
6. Charette Meeting Notes, November 4, 2010
7. FLRA Notice, Case No. WA-CA-09-0063 – PD&R
8. HUD's Failures to Implement Air Quality Health and Safety Measures (with 3 attachments)
9. CDC IEQ During Construction

AFGE Local 476 and HUD, Exhibit 1
Construction Announcement

YOU SPOKE, AND WE HEARD YOU - RENOVATIONS TO IMPROVE HEADQUARTERS WILL SOON BEGIN; ALL EFFORTS BEING TAKEN TO MINIMIZE DISRUPTION TO EMPLOYEES

Deputy Secretary Sims

Sent: Tuesday, September 28, 2010 10:26 AM



YOU SPOKE, AND WE HEARD YOU – RENOVATIONS TO IMPROVE HEADQUARTERS WILL SOON BEGIN; ALL EFFORTS BEING TAKEN TO MINIMIZE DISRUPTION TO EMPLOYEES

Dear Colleagues,

As both the Federal Employee Viewpoint Survey and the Best Places to Work rankings showed, HUD has considerable room for improvement when it comes to our physical work environment here at the Weaver Building.

Well, HUD leadership has heard your desire for improvements loud and clear, and that's why four major projects to improve the HUD workplace will shortly be underway: the energy savings performance contract (ESPC), the 2nd floor demonstration project, the roof replacement, and the lobby renovation. These projects are just the first steps that HUD is taking to eventually remodel the entire Weaver Building.

However, we know these exciting changes will bring about many changes for all of us who work in the Weaver Building. That's why while all of the details and timelines for renovation have not been finalized, we wanted to take this opportunity to update you on what we know right now – and let you know that we're making every effort to minimize disruptions to employees in the weeks and months to come.

- **Energy Savings Performance Contract (ESPC):**

The ESPC project is a three year greening effort that will provide significant improvements to the building's critical systems and equipment – helping us realize substantial energy savings while also improving indoor air quality for employees.

The ESPC project will get underway in mid-November 2010, beginning with lighting and water conservation improvements. Work will be performed after hours and will not require employees to move during the first wave of the project. A schedule and further details will be provided within the next couple of weeks.

- **Roof Replacement:**

Using Recovery Act funding, GSA will replace the Weaver Building's entire roof. Work should start by April 2011, and be completed by November 2011 – and GSA will keep us apprised of the usability of the roof during that time period.

- **2nd Floor Demonstration Project:**

The six month 2nd floor demonstration project, which begins in February 2011, is a GSA initiative that will transform a portion of the 2nd floor of the Weaver Building into a state-of-the art, open space layout. The new look, featuring enhanced natural lighting, will represent what the rest of the building can look like with a total building modernization. This project is part of HUD's effort to create a healthy, open, flexible work environment that reflects the values of our mission.

- **Lobby Renovation:**

Currently in concept development, the lobby renovation project, which addresses both the north and south lobbies, will provide a more open and inviting feel, and greater ease of movement through the spaces. Design will be completed by spring of 2011.

So, what will all of these projects mean for you as an employee?

Since both the ESPC and demonstration projects will at some point require employees to temporarily move outside of the Weaver Building, HUD has secured temporary office space in the nearby Capitol View Building. The Capitol View Building is located at 425 3rd Street, SW, three blocks from the Weaver Building. HUD will provide shuttle service between the buildings for employee convenience. While move schedules have not been finalized, the first temporary move into Capitol View is tentatively scheduled for mid to late January 2011.

During the ESPC project, planners estimate it will require eight swings (eight groups of people) to/from Capitol View. Each swing will involve 450 – 500 employees, with each group of occupants staying at Capitol View for approximately four months. We will share details about this entire process—who will move and when—as soon as they become available. Planning meetings involving the various affected offices will be held beginning in approximately two weeks.

We understand that these moves will create some disruption, but we will work closely with GSA to make it as painless to everyone as possible, and provide you with consistent and timely updates as schedules and timelines are better defined. We greatly appreciate your cooperation as we move forward to build a better HUD.

Regards,



Deputy Secretary Ron Sims

AFGE Local 476 and HUD, Exhibit 2
Supplement 69 to AFGE-HUD Agreement

NATIONAL SUPPLEMENT
Between
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
And
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL COUNCIL OF HUD LOCALS 222

SUBJECT: HUD Handbook 2200.01, Chapter 13 – Space Management

SCOPE: This supplement encompasses the implementation and impact of HUD Handbook 2200.01, Chapter 13 - Space Management on bargaining unit employees.

1. **Definition:** The term “systems furniture” includes, but is not limited to, ergonomic chairs, computer equipment support, and work surfaces.
2. **Local Bargaining:** Impact and implementation will be negotiated at the Local level in accordance with Article 5 of the HUD/AFGE Agreement.
3. **Americans with Disabilities Act (ADA) Requirements:** All HUD space designs and alterations shall comply with ADA requirements.
4. **Planning Process:** The Local Union shall be consulted and given the opportunity to provide input in the development of the plans. Management will provided a copy of the plan for concurrence.
5. **Space Plan Changes:** The local Union will be notified of any proposed changes to the original space plans regarding local issues affecting bargaining unit employees, in accordance with Article 5 of the HUD/AFGE agreement.
6. **Selection of Site:** Security will be used as one of the preferences when selecting site location. This will include but is not limited to, surveillance equipment, security screening, and parking checks. In accordance with Section 45.06(4) of the HUD/AFGE Agreement, the Department shall coordinate with GSA to assure that Government-owned or leased buildings are provided appropriate security.
7. **Space Allocation:** Management shall consider the Department’s organizational mission and the functions necessary to perform that mission efficiently when determining space allocations for work and common areas. This is to include, but not limited to, such items as file cabinets, storage areas and other items necessary to perform the job.
8. **Acquisition of Space:** Management agrees that the Local Union shall be consulted and included in the overall space planning process so all relevant space needs can be known.
9. **Office Environment:** Management agrees, on a case-by-case basis, to provide environmental standards, e.g., HVAC and lighting, etc. until 7:30 p.m. local time.


10. **Space Allowances:** Management agrees that any request for a workspace that deviates from the standard will require an analysis by SMD and/or ARD of the tasks performed and the size and amount of equipment required to perform those tasks. If the analysis determines more space is required it will be provided if available.
11. **Utilization of Systems Furniture:** Management agrees that whenever possible, the Department will utilize systems furniture in its offices as it requires the least amount of square footage, allows for flexibility in reconfigurations, provides the efficient storage capacity, and is more ergonomically correct and adaptable.
12. **Space Management Objectives:** Several factors determine when an office will get new ergonomic furniture – availability of funds, requirements of the Office and age/life cycle of existing furniture. Major realignments and renovations and office relocations will be given priority over internal office moves.
13. **Systems Furniture Workstation Standards:** To ensure systems furniture workstations are equitable, when it has been determined that an office will receive new systems furniture, a workstation standard for employees will be established. The workstation standard and the impact on bargaining unit employees shall be negotiated at the local level from the options provided to the Office of Administration from the vendor. This standard shall apply to new leases, office relocations or office renovations. If it is determined that the office space will not accommodate workstations of 64 square feet (8X8), the size of the workstations may be reduced to no less than 56 square feet (7X8).
14. **Workstation Allocation:** Management will ensure that systems furniture is distributed in a fair and reasonable manner to ensure consistency within the office. Upon request, Management shall provide the Union with the proportion of the single systems furniture workstation used for the bargaining unit.
15. **Outstationed Employees:** Employees outstationed from Headquarters or other Field Offices will be provided space that conforms to the office standard where the employee is physically located.
16. **Unoccupied Private Office Space:** An unoccupied private office shall not be used as a temporary space for anyone who is not entitled to a private office as described in Chapter 13. However, it may be used for other purposes, as negotiated at the local level, until the private office vacancy is filled.
17. **Seating Assignments:** Seating assignments are not determined by the pay grade of the employee. Employee specific seating assignments shall be determined at the local office level in accordance with Article 5 of the Agreement.
18. **Space Preference:** Management agrees that HUD employees shall have preferences in space, workstation location over contracted employees.
19. **Quiet Working Conditions:** To maximize quiet and efficient working conditions, each employee workstation in open areas will be separated by padded or insulated, flame retardant partitions. The height and size of these partitions shall be consistent with the overall design of each office.

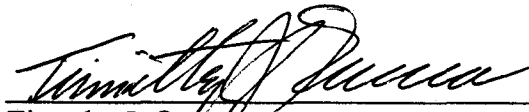
20. **Enclosed Space:** All private office space or enclosed space that is larger than 10x10 must have at a minimum one (1) direct air vent.
21. **Natural Light:** The access to natural light shall be maximized in the space occupied by employees.
22. **Union Office Relocation/Renovation:** When replacement furniture is part of an office relocation or renovation, the Union office shall also receive replacement furniture consistent with the office standard.
23. **Union Office Equipment:** Each union office shall be provided a speaker phone with long distance capability, a lockable file cabinet, and a fax machine. If this equipment is not currently in the union office, the local president shall request the equipment through the Labor and Employee Relations Division and/or the Administrative Resources Division.
24. **Space Alterations:** The Local Union shall be consulted and included in the overall planning process of any space alterations.
25. **Post-alteration Inspection:** The local Union will be given the opportunity to participate in a post alteration inspection upon completion of the alterations to ensure that the space has been prepared in accordance with the space design drawings, construction drawings and the terms of the contract.
26. **Pre-Occupancy and Post-Occupancy Review and Inspection:** A pre-occupancy and post-occupancy review and inspection of the facility will be conducted by the appropriate GSA, HUD, and local Union representatives.
27. **Break Rooms:** Break rooms will be provided at a ratio of 2 square feet per employee but not less than 100 square feet.
28. **Bulletin Boards:** In accordance with Section 8.06 of the HUD/AFGE Agreement, the number, size appearance (glass enclosed) and location of bulletin board shall be locally negotiated.
29. **Parking:** The amount reported as a fringe benefit for parking spaces provided, as the result of a reasonable accommodation, will be reported in accordance with Internal Revenue Service regulations.
30. **Copy of Supplement:** Management shall provide members of this negotiation team an executed copy of this document within 30 days.
31. **Effective Date of Supplement:** This Supplement shall become effective upon the signature and approval of both parties.


SUBJECT: HUD Handbook 2200.01, Chapter 13 – Space Management

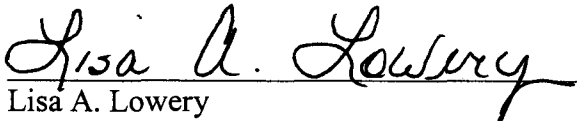
MANAGEMENT

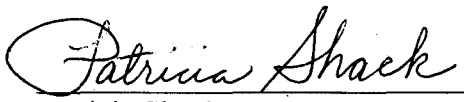
UNION



Joann T. Robinson
Chief Negotiator

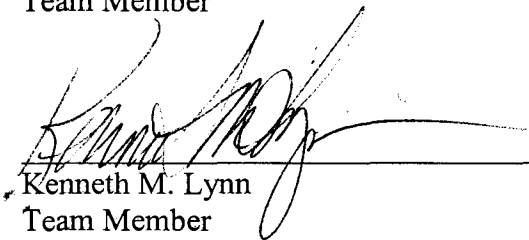

Timothy J. Oravec
Chief Negotiator

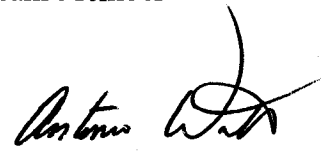

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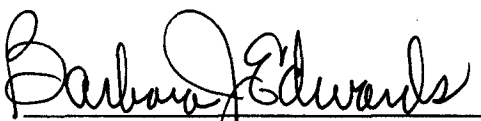

Darlene Barr-Taylor
Team Member

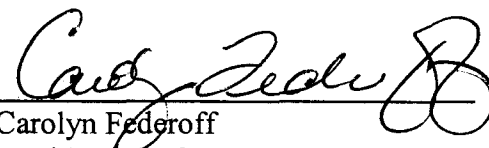

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APPROVED

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Date Approved 3/17/06

Date Approved 3/14/06

AFGE Local 476 and HUD, Exhibit 3
Agency Open Space Layout Agenda - Nov 4