

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-3000

JAN 17, 2003

**OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION**

Memorandum For: Carolyn Federoff, President, American Federation of Government
Employees, National Council of HUD Locals 222

FROM: Norman Mesewicz, Deputy Director, Labor and Employee Relations
Division, ARHL

SUBJECT: Decision - Grievance of the Parties

This is in response to the Grievance of the Parties (grievance) dated November 13, 2002 (attached). For the reasons specified below, I must deny the grievance and the remedies it seeks.

The grievance alleges violations of the following provisions of the HUD/AFGE Agreement (Agreement): Article 4, Sections 4.01 and 4.06, Article 9, Section 9.01 and Article 13, Section 13.01. Also alleged are unspecified provisions of the Federal Service Labor-Management Relations Statute (Statute) and other law rule and regulation. The grievance asserts that management advertised/filled certain positions with greater promotion potential (GS-13) than those encumbered by similarly situated HUD employees (GS-12). The remedy sought is that the full promotion potential for all similarly situated employees be GS-13, and any such other relief as may be just. The grievance concludes with a data request.

Section 7121(c)(5) of the Statute excludes from negotiated grievance procedures the classification of any position which does not result in the reduction in grade or pay of an employee. Moreover, Article 22, Section 22.05(5) of the Agreement tracks the language of the Statute. Your grievance asserts that certain positions are classified at grades that are too low. It presents no evidence that the advertising/filling of the above-noted positions resulted in the reduction in grade or pay of any employee. The requested remedy requires the reclassification of certain positions. Accordingly, the grievance falls within the scope of a statutory exclusion to the grievance procedure, and must be denied on that basis.

The statutory exclusion also relieves management of any obligation to respond to the data request. In this regard, please see IRS National Office, 21 FLRA 646 (1986) at footnote 3 (attached). If the union desires to submit further justification for the request management will reconsider its position.

In light of the foregoing facts, the grievance and the remedies it seeks are denied.

Attachments