



United States Department of Agriculture

Research, Education, and Economics
Agricultural Research Service

July 12, 2019

Mr. Peter Winch
Special Assistance to the National Vice President
80 M Street, Southeast, Suite 340
Washington, DC 20003

Dear Mr. Winch,

On June 18, 2019, and June 28, 2019, respectively, AFGE Local 3403 issued the Economic Research Service (ERS) and the National Institute of Food and Agriculture (NIFA) Demands to Bargain over the proposed relocation of NIFA bargaining unit employees (BUEs) who were slated to be relocated from Washington, DC to the Kansas City region. Included in the Demands to Bargain were proposals that the Union intended to bargain over. Through this response, the Agency provides a response or counter-proposal to the Union's initial proposals that were included in both the ERS Demand to Bargain ten (10) proposals dated June 18, 2019, and the NIFA Demand to Bargain eleven (11) proposals dated June 28, 2019.

Additionally, in light of the analogous Demands to Bargain submitted by AFGE Local 3403, the Agency proposes meeting on the relocation matters jointly, with both the ERS and NIFA bargaining units.

The Agency maintains that given ERS and NIFA will be co-located in Kansas City, joint negotiations serve in the interest of consistency, time, and resources for both the Union and management. The enclosed proposal for ground rules recommends a joint negotiation between ERS and NIFA for all bargaining related to the planned relocation of the two (2) Agencies to Kansas City.

Concerning the demands in their entirety, the Agency declines to agree to any proposal that would precondition the exercise of any management rights on the completion of bargaining. Nor will the Agency delay the implementation of any management action that is necessary for the functioning of the Agency.

In regard to the Union proposals, the Agency provides the following responses and counter-proposals:

1. Union Proposal: AFGE Local 3403 stewards and officers be granted official time to attend all the 'small group sessions' regarding relocations plans.
Agency Counter Proposal: The 'small group sessions' have been completed and Union representation was invited to be present. To the extent that additional 'small

group sessions' are held, the Agency agrees to provide the Union with Official Time that is reasonable, necessary and in the public interest to attend the sessions. The Agency will notify the Union if there are additional 'small group sessions' scheduled at the NIFA.

2. Union Proposal: NIFA conduct a Civil Rights Impact Analysis (CRIA) for this move, focused on the impact on those ERS staff who have dedicated their lives to the agency but don't have college degrees and their ability to find work at the same pay they are making currently.

Agency Response: Departmental Regulation (DR) 4300-4, CRIA, provides that a CRIA is an analytical process used to determine the scope, intensity, direction, duration, and significance of the effects of an Agency's proposed employment and program policies, actions, and decisions. A CRIA identifies the effects of: (1) proposed employment actions; (2) eligibility criteria for USDA benefits; (3) methods of implementation, (4) underrepresentation or lack of diversity within its programs; or (5) any other Agency-imposed requirements that may adversely and disproportionately impact employees or program beneficiaries based on their membership in a protected group. Conduct of a CRIA remains in the agency's sole and exclusive discretion.

In June 2019, the Research, Education and Economics (REE) Mission Area conducted a CRIA to analyze whether the relocation of certain positions will have a disproportionate or adverse impact on affected ERS and NIFA employees who are members of a protected class. The analyzed trends suggested the absence of disparate treatment based on a protected class. Consequently, the findings suggest no need for further quantitative analyses. Moreover, because all employees will retain their jobs, an assessment of education level or employability is not relevant.

3. Union Proposal: Employees with a hardship reason for wishing to retain a "stay" position and not be relocated shall be entitled to have their case for a hardship exemption related to disability, family circumstances, etc., be heard directly by Dr. Angle.

Agency Response: The Union's proposal is an infringement on management rights to determine its organization and to assign work under § 7106(a)(1) of the Statute. See *Int'l Fed'n of Prof'l and Technical Eng'rs, Local 96, 56 FLRA 1033, 1035 (2000)*; *NFFE, Local 7, 53 FLRA 1435, 1438-39 (1998)*.

4. Union Proposal: Employees who choose to relocate will be notified in writing that:
 - a. they may change their decision any time before September 27, 2019,
 - b. An employee who is removed by adverse action for declining geographic relocation is eligible for the benefits that are available to a displaced employee separated by reduction in force (e.g., intra- and interagency hiring priority, severance pay, discontinued service retirement, etc.).
 - c. Those employees electing to relocate will receive a notice that will indicate that "Relocation expenses will be paid,"

- d. Upon request all relocating employees will be detailed to the National Capital Region for 90 days after their relocation date.
- e. The notice will also indicate that those employees dissatisfied with ERS reimbursement decisions may appeal to the GSA Civilian Board of Contract Appeals.

Agency Response: This administrative action is considered a mandatory reassignment for NIFA and ERS employees. NIFA and ERS Employees were issued directed reassignment letters on or about June 13, 2019. The letters provided written notice of timeframes and the various options available for NIFA employees. The Agency will continue to provide notice to the Union which will contain content and timelines which are consistent with the Statute.

- 5. Union Proposal: All employees who do not agree to relocate be granted priority consideration for a period of two years for any and all REE Missions Area posted vacancies for which they are qualified, including all NIFA positions.

Agency Counter Proposal: Employees who do not agree to the mandatory reassignment will be granted the following priority considerations:

- a. Career Transition Assistance Plan (CTAP) which provides intra-agency selection priority for the Agency's eligible surplus and displaced employees. CTAP only applies while the surplus/displaced employee is still on the Agency's rolls. Eligibility begins on the date the employee was issued a notice of proposed separation for declining a transfer of function or directed reassignment outside the local commuting area. CTAP eligibility for selection priority expires upon the earliest of:
 - 1. On the date of the employee's resignation, retirement, or separation from USDA (including separation under adverse action procedures for declining a directed reassignment or transfer of function;
 - 2. Cancellation of the notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area;
 - 3. Being placed in another position, within the department at any grade or pay, either permanent or time limited before the agency separates the employee;
 - 4. Receiving a career, career-conditional, or excepted service appointment without time limit in any agency at any grade level;
 - 5. Declining a career, career-conditional, or excepted appointment without time limit within USDA for which the employee has applied and has been rated "well qualified;" or
 - 6. Failing to respond within a reasonable period of time to an offer or official inquiry of availability.
- b. Interagency Career Transition Assistance Plan (ICTAP) which provides eligible displaced Federal employees with interagency selection priority for vacancies in agencies that are filling positions from outside their respective

permanent competitive service workforces. The ICTAP selection priority does not apply in the ICTAP eligible's current or former agency and it does not prohibit movement of permanent competitive service employees within an agency. Eligibility begins on the date the employee is issued a formal notice of proposed separation for declining a transfer of function or directed reassignment outside the local commuting area.

ICTAP eligibility for selection priority expires upon the earliest of:

1. One year after separation;
 2. When the employee receives a career, career-conditional, or excepted appointment without time limit in any department at any grade level;
 3. When the employee no longer meets the eligibility requirements (e.g., under adverse action procedures for declining a transfer of function or directed reassignment outside the local commuting area).
6. Union Proposal: All employees who do agree to relocation be granted, upon request, shall be granted one year of remote telework to be accomplished from any location in the United States, and the employee's official worksite shall be the location of the employee's telework site, which may be extended indefinitely.

Agency Response: The Union's proposal interferes with management's right to assign work under § 7106(a)(1) of the Statute. However, the Agency agrees to accept and consider telework requests in accordance with DR 4080-811-02, *Telework*, or through the Reasonable Accommodation (RA) process.

7. Union Proposal: NIFA furnish the Union with a copy of all travel authorizations and service agreement signed by the employee prior to incurring relocation expenses.

Agency Counter-Proposal: This proposal raises privacy act concerns for the Agency and the Agency is not inclined to share privacy restricted information with the Union without a legitimate particularized need. NIFA BUE's who wish to furnish travel authorizations and service agreements to the Union may do so at their discretion. Otherwise, following request by the Union information will be provided in accordance with 7114(b) of the Statute.

8. Union Proposal: NIFA agree that, per Chapter 57, that these expenses shall be paid for all relocating employees:
- a. roundtrip transportation for a house hunting trip (not to exceed 10 days) for an employee and/or spouse,
 - b. transportation of the employee or employee and family to the new worksite,
 - c. the actual subsistence expenses of the immediate family of the employee for en route travel between the employee's old and new official stations.
 - d. The actual subsistence expenses of the employee and the employee's immediate family for a period of up to 60 days while the employee or family is occupying temporary quarters

- e. shipment of household goods (HHG),
- f. temporary storage of HHG,
- g. real estate expenses incurred in home sales and purchases,
- h. home marketing incentive,
- i. property management expenses in lieu of a home sale,
- j. shipment of a privately-owned vehicle,
- k. temporary quarters subsistence

Agency Counter Proposal: When authorized by applicable regulation, the Agency agrees to pay the following expenses for all NIFA employees who choose to accept the directed reassignment:

- a. Relocation incentives are relocation bonuses which is a one-time payment. USDA is not offering relocation incentives/bonuses. USDA is placing NIFA and ERS employees that accept the reassignment on relocation orders. Through relocation orders, employees are covered for the following costs per GSA Federal Travel Regulation:
 - a. Transportation & Per Diem for employee and immediate family members
 - b. Temporary Quarters
 - c. Miscellaneous expense allowance
 - d. Sell and buy residence transaction expenses or lease termination expenses
 - e. Transportation and temporary storage of household goods
 - f. Relocation income tax allowance (RITA)
 - g. Property Management Services
 - b. In addition, USDA is offering a house hunting trip
9. Union's Proposal: That in addition to payment of relocation expenses, that NIFA provide all employees agreeing to relocate as a relocation incentive a payment of 25% of basic pay.

Agency Counter-Proposal: The Agency will provide relocation incentives in accordance with Office of Personnel Management (OPM) guidelines, when authorized by applicable regulation.

10. Union's Proposal: All employees eligible to retire and chose to retire receive the appropriate VERA.

Agency Counter-Proposal: Eligible employees may apply for the Voluntary Separation Incentive Payment (VSIP) during the designated open period. The Agency will notify employees who have been approved for the VSIP to inquire how the employee plans to separate from the Agency (i.e. resignation, Voluntary Early Retirement Authority (VERA) or optional retirement).

11. Union's Proposal: That NIFA supply a like and comparable office space to the existing space in Washington for all NIFA employees agreeing to relocate, or, in the alternative, that all 100 seats for NIFA employees at the relocation site be reserved for BUE's.

Agency Counter Proposal: The Agency will provide the General Services Administration (GSA) with a copy of the Union's recommendations.

The Agency looks forward to hearing from AFGE Local 3403 in regard to holding joint discussions with ERS and NIFA for all matters relating to the planned relocation the week of July 15.

As always, please feel free to contact me with any questions.

Sincerely,

Chris Grondalski

Chris Grondalski
Labor Relations Officer