

## **AFGE's DHA TRANSFER GUIDANCE (As of 5/18/22)**

- 1. If the agency provides a notice that employees are transferring to DHA, but the notice is not specific and detailed about what changes in working conditions will happen for transferring employees:**

Send the Agency a Demand to Bargain.

In the Demand to Bargain, state that the Union issues this demand to bargain over the transfer of employees from the [insert agency] to DHA, but also make sure that you point out that the Agency's Notice of Transfer is legally insufficient and does not allow the Union to develop proposals because the notice fails to specify what changes will be made to the employees' terms and conditions of employment.

Under FLRA precedent, an Agency must provide notice that is "sufficiently specific or definitive regarding the actual change contemplated so as to adequately provide the union with a reasonable opportunity to request bargaining". A notice that is conditional and qualified is not sufficient. *Ogden Air Logistics Ctr., Hill AFB, Utah*, 41 FLRA 690, 698 (1991); *Internal Revenue Service*, 10 FLRA 326, 327 (1982). The Agency failed to identify what changes it proposes to implement as a result of the transfer. The Agency does not identify, for example, changes employees will have to their payroll processing systems, EEO complaint processing systems, managerial or supervisory chain of command, and/or other changes to the terms and conditions of employment for transferring employees. Thus, the Union reserves its right to bargain through the issuance of the Demand to Bargain but cannot submit proposals until the agency provides a legally sufficient notice of changes which specifically identifies the changes to the terms of conditions of employment for the Bargaining Unit employees.

- 2. Send the agency an information request seeking specific information (if not already provided) about the employees who are transferring and the changes that will occur both for the transferring employees and the ones who will remain. Also ask for specific information about what employees the agency has designated for readiness and are remaining with the agency.**

Send the agency the information request

Attached to this memo is a sample request. You should insert your information/letterhead and the Agency contact information. Make sure that you double check the template to ensure that no generic information or instructions remain so that it is a complete information request specifically tailored to your Local.

In addition to the Agency's telling us who is transferring to DHA, we also need them to tell us which employees they have designated as performing functions related to "readiness" and who are not transferring to DHA but remaining employed by the

Agency. There may be changes related to those employees as well even though the agency does not identify or mention this in the Notice of Transfer of Function.

**3. Ask the Agency to Provide the following additional information. If they will not provide it, then modify the provided formal information request to request it:**

- What DHA market/organization are the employees being transferred to?
- What other MTFs are transferring to the DHA market/organization?
- What is the number of employees from other MTFs who are transferring?
- Whether the employees who are transferring from other MTFs are represented by a labor organization?
- Please identify the other labor organizations and the employees (numbers and types) they represent?
- What is the HR structure after realignment and how will employees be able to contact HR?

**4. Here are some sample proposal topics for bargaining with your activity:**

- Continued access to personnel records;
- Continued access to timekeeping/financial records;
- Process/Timeframes for transferring TSP Loan information to DHA;
- Further Town Halls as more information is provided to the “losing” activity regarding DHA;
- Process and Procedures regarding transfer or continued enrollment of educational classes/certifications currently conducted by the “losing” activity or third party for which the “losing” activity is currently financially responsible.
- Process and Procedure for transferring leave requests/granted leave from the “losing” activity to DHA.
- Training on computer systems/programs required by DHA that are not currently required by the ‘losing’ activity.
- Training on processes and procedures that the transferred employees will need to know “Day 1” after transfer to DHA.
- Specific timelines on the transfer, and notification to the employees on what actions are to occur on which specific days leading up to the final day of the transfer to DHA. (Reminder: you do not have the ability to bargain with DHA as they are not the employer, so you cannot bargain the actions that occur post-transfer at this juncture.)

If you're having problems drafting a proposal to fit your specific authority and/or situation contact AFGE HQ's FSED through Franklyn Fragomene.

This guidance is accurate as of the date of this memo. The guidance may be modified or updated based on new information or developments.

If you have any questions or concerns regarding the instructions to this DHA Transfer Guidance Memorandum or regarding the template request below, please contact Cathie McQuiston at [mcquic@afge.org](mailto:mcquic@afge.org), or Franklyn Fragomene at [fragof@afge.org](mailto:fragof@afge.org).

[on letterhead addressed to HR contact]

This is a request on behalf of the American Federation of Government Employees, under 5 U.S.C. § 7114 (b)(4). For the purpose of this request, the term “information, documents, and other materials” (hereinafter “materials”) includes, but is not limited to, any typewritten or handwritten memoranda, reports, summaries, notes, charts, computer database materials, issuances, advisory letters, audio and/or video recordings, or other data in whatever form it might appear.

It is necessary that AFGE receives the following information to prepare proposals for bargaining pursuant to the agency’s notice of its intent to transfer certain employees from the [agency] to the Defense Health Agency (DHA).

1. AFGE requests the agency provide a listing of employees it has designated as performing a readiness function and who will not transfer to DHA. I am requesting that these lists include the name, job title, organization/department and first, second and third level supervisor for each of the employees.

AFGE has a particularized need for the information so that the union can develop proposals pursuant to the agency’s notice of transfer of employees to DHA. This information is also necessary so the union may determine whether it should file a grievance or unfair labor practice over the unlawful practice of having bargaining unit employees supervised by another agency. Co-employment is unlawful under 5 U.S.C. Chapter 71 and the union requires the requested information to determine whether there is a violation of law and the proper forum to bring its complaint.

2. AFGE also requests that the agency provide a listing of employees who are transferring from the [agency] to DHA that includes the name, job title, organization/department and first, second and third level supervisor for each of the transferring employees.

AFGE has a particularized need for the information so that the union can develop proposals pursuant to the agency’s notice of transfer of employees to DHA. This information is also necessary so the union may determine whether it should file a grievance or unfair labor practice over the unlawful practice of having bargaining unit employees supervised by another agency. Co-employment is unlawful under 5 U.S.C. Chapter 71 and the union requires the requested information to determine the proper forum to bring its complaint.

3. AFGE also requests that the agency provide an organizational chart showing the chain of command for employees who are transferring to DHA.

AFGE has a particularized need for the information so that the union can develop proposals pursuant to the agency’s notice of transfer of employees to DHA.

Should you not completely satisfy this information request under the authority cited above, please provide me with the name and title of the person denying this request along with a written statement of the authority and reason(s) relied upon for not releasing each specific item denied. In the event you deny any portion of the request, please provide the remaining information. We also reserve the right to make any necessary supplemental requests for information. If you have any questions, please call me at