

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

American Federation of Government)	
Employees National VA Council No. 53)	ARBITRATOR'S
)	
and)	OPINION AND AWARD
)	
U.S. Department of Veterans Affairs (VA))	November 12, 2013
)	
Grievance: Contract Interpretation)	
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This Arbitration arose pursuant to Agreement between the American Federation of Government Employees, National Council No. 53, hereinafter referred to as the "Union", and the U. S. Department of Veterans Affairs hereinafter referred to as the "Agency or VA", under which C. ALLEN POOL was selected by the parties through procedures of Federal Mediation & Conciliation Service to serve as the Arbitrator. The Parties stipulated that the matter was properly before the Arbitrator and that his decision shall be final and binding.

The hearing was held in the City of Reno, Nevada at the VA Medical Center on September 4, 2013 at which time the parties were afforded the opportunity, of which they availed themselves, to examine and cross-examine witnesses and to introduce relevant evidence, exhibits, and argument.

Following the parties' opening statements and testimony of the Union's first witness, the parties, at the suggestion of the Arbitrator, agreed to submit closing briefs and arguments from which the arbitrator would render an award and opinion with respect to the issue. The written

closing arguments and briefs were timely submitted to and received by the Arbitrator on November 4, 2013 at which time the record was closed.

Appearances:

For the Union:

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For the Employer:

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The parties, unable to agree on framing the issue, authorized the Arbitrator to frame the issue as determined from the record.

ISSUE

Whether agents of the VA OIG, employees of VA and Bargaining Unit Employees (BUEs) are required to follow the expressed negotiated language in the Master Agreement with respect to an employee's right to representation as determined by N.L.R.B. v. Weingarten, 420 U.S. 251, 260 (1975).

BACKGROUND

The incident that led to this arbitration occurred during a slide presentation at the Reno VA Medical Center on November 14, 2012 that was conducted by agent(s) of the VA's Office of Inspector General (OIG). Before proceeding further, a few words about the VA's Office of Inspector General are necessary. As it was explained to the Arbitrator, agents of the OIG are employees of the VA belonging to an independent unit within the VA and charged with investigating fraud, theft, and other crimes occurring within the Agency. Their findings and recommendations are made directly to the Secretary of the VA and or to Congress. The OIG doesn't have the authority to discipline but can recommend discipline.

Going back to the incident of November 14th, the OIG's slide presentation on crime

prevention and awareness, 30 or more employees of the VA were in attendance. Included in the audience was Union Vice-President, David de Silva who was also a former employee of the VA. At some point during the slide presentation, VP de Silva interrupted OIG Agent Lore's presentation alleging that Agent Lore was putting forth incorrect information regarding bargaining unit employees (BUE) rights under the Master Agreement, specifically BUE rights as set for the in N.L.R.B. Weingarten, 420 U.S. 251, 260 (1975) and in the Master Agreement. A verbal exchange between the two men ensued that escalated into a physical altercation later in the hallway. The police were called who then took charge and handled the altercation.

The focus of this arbitration was not on the altercation between the two men but on the Union's allegation that the OIG agent had contended, during the slide presentation, that the OIG was not subject to the terms of the Master Agreement with respect to a unit member's Weingarten rights. A few comments about a BOE's Weingarten rights should be helpful.

The U.S. Supreme Court in Weingarten was very clear with respect to the rights of bargaining unit members. When a unit member is called for an interview or even during the course of an interview with a supervisor, a management official and (1) the unit member has reasonable belief that the interview could lead to discipline and (2) the unit member requests to have representation present during the interview, the interview must cease and the unit member must be allowed to have representation. If management does not wish to accommodate the request, management can terminate the interview.

DISCUSSION

This is a case that should never have progressed to arbitration. If the Union's VP and the OIG agent had behaved as mature adults and discussed their differences in a civilized manner, they would have found that their differences were imaginary and not real. They would have

realized that the negotiated language in the Master Agreement and Weingarten rights set forth by the U.S. Supreme Court apply whenever a bargaining unit is interviewed and he/she has a reasonable belief it could lead to discipline and requests representation during the interview, the unit employee's request must be granted. They would have also realized that OIG agents, in conducting investigations, are bound by these rights.

Therefore for the reasons discussed in the above, the conclusion of the Arbitrator is that agents of the VAOIG, as employees of the VA and BUEs, are required to follow the expressed negotiated language in the Master Agreement with respect to an employee's right to representation as set forth in N.L.R.B. v. Weingarten, 420 U.S. 251, 260 (1975).

AWARD

Agents of the VAOIG, employees of the VA and BUEs are required to follow the expressed negotiated language in the Master Agreement with respect to an employee's right to representation as determined by N.L.R.B. v. Weingarten, 420 U.S. 251, 260 (1975).



Date: November 12, 2013

C. ALLEN POOL, Arbitrator