

AFGE



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NATIONAL GRIEVANCE
NG-9/9/16

Date: September 9, 2016

To: Larry Bennett
Staff Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420

From: Thomas Dargon, Jr., Staff Counsel, National Veterans Affairs Council (#53) (NVAC), American Federation of Government Employees, AFL-CIO

RE: **National Grievance in the matter of the Department of Veterans Affairs for its failure to comply with its contractual and statutory obligations to notify and bargain with NVAC regarding a nationwide elimination of bargaining unit work in the processing of Compensation and Pension Exams and in the Office of Disability and Medical Assessment.**

STATEMENT OF CHARGES

Pursuant to the provisions of Article 45, Section 3 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) (“MCBA” or “Master Agreement”), American Federation of Government Employees/National Veterans Affairs Council (“the Union”) is filing this National Grievance against you and all other associated officials and/or individuals acting as agents on behalf of the Agency for violations regarding the Agency’s failure to comply with its contractual and statutory obligations to notify and bargain with NVAC regarding a nationwide elimination of bargaining unit work in the processing of Compensation and Pension Exams and in the Office of Disability and Medical Assessment.

The VA announced the contracting out of bargaining unit work amounting to a nationwide elimination of positions in the Office of Disability Medical Assessment and in the Medical Disability Examination and Compensation and Pension Programs (“Compensation & Pension Employees”). In taking these actions, the VA violated federal law and regulations, as well as the Master Agreement. To date, the VA has failed to remedy this violation, and as such, the VA is in continuing violation of contractual obligations and statutory requirements.

Specifically, the VA violated the Articles 2, 11, 13, 28, 47, 49 of the MCBA, 5 U.S.C. §7116(a)(1) and (5), 41 U.S.C. §1710, 31 U.S.C. §501, 5 CFR 351, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

The Agency announced its decision to contract out bargaining unit work during a national Compensation & Pension conference on August 10, 2016. The Agency's decision to eliminate bargaining unit work, without providing notice and an opportunity to bargain to the Union, violates both the MCBA and federal law and regulation. Further, direct dealings with bargaining unit employees concerning changes in conditions of employment resulting from the contracting out of Compensation & Pension examinations, which, for example, has taken place in AFGE Local 17 (Washington, DC), constitutes an unlawful bypass of the Union in violation of 5 U.S.C. §7116(a)(1) and (5).

Article 2 of the MCBA requires that the Agency comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Federal statutes 41 U.S.C. §1710 and 31 U.S.C. §501 prohibit government agencies from converting work from federal employees to contractors without first conducting a formal cost comparison. The cost comparison process is currently governed by OMB Circular A-76; however, the VA failed to conduct a formal cost comparison before awarding the private contracts. Therefore, in disregarding 41 U.S.C. §1710 and 31 U.S.C. §501, the Agency violated Article 2 of the MCBA.

Article 11 of the MCBA includes a series of obligations concerning the contracting out of bargaining unit work. Under Section 1, the Agency was required to provide periodic briefings to Union officials at the local and national levels concerning formal cost comparison processes, which it failed to do. Under Section 3, the Agency was required to notify the Union and provide an opportunity to negotiate when it determines that bargaining unit work would be contracted out, which it also failed to do.

Article 13 of the MCBA requires that the Agency notify the Union and provide a series of information when it decides to administratively and involuntarily reassign bargaining unit employees, such as the Compensation and Pension Employees whose functions have been apparently converted to private contractors. Under Section 5, the Agency was required to provide the Union with the "reasons for the action, the number/title(s) of the positions affected, and the actions the Department intends to take to reduce the impact on employees," which it failed to do.

Article 28 of the MCBA sets forth the contractual obligations applicable to a reduction-in-force ("RIF"), which takes place when the Agency releases a competing employee from their competitive level. Under this Article, the Agency was required to provide notice to the Union at the national level no later than 90 days prior to the effective date of the RIF (Section 4), to provide notice to the individual employees adversely affected by the RIF (Section 7), and to provide information to affected employees explaining the Agency's planned actions (Section 9). However, the Agency failed to comply with each of these requirements in Article 28 and the parallel statutory requirements in 5 CFR 351.

Article 47 of the MCBA, entitled Mid-Term Bargaining, and Article 49, entitled Rights and Responsibilities, both require that the Agency provide written notice and an opportunity to bargain to the Union when proposed changes in the conditions of employment affect two or more local unions. Despite its decision to eliminate the processing of Compensation and Pension Examinations from bargaining unit work, a decision impacting thousands of employees, the Agency failed to notify the NVAC President in accordance with the Master Agreement. Likewise, by refusing to consult and negotiate in good faith with the Union regarding the elimination of bargaining unit work, the Agency also violated 5 U.S.C. §7116(a)(5).

Violation

By failing to fulfill its contractual obligations and follow statutory requirements, the VA violated, and continues to violate, the following:

- Articles 2 and 11 of the MCBA, requiring the Agency to comply with federal law and regulations, notify the Union, and provide an opportunity to bargain when the Agency contracts out bargaining unit work;
- Articles 13 of the MCBA, requiring the Agency to notify the Union and provide detailed information concerning the administrative, involuntary reassignment of bargaining unit employees;
- Article 28 of the MCBA, requiring the Agency to comply with its contractual obligations to the Union and to comply with 5 CFR 351 when a RIF affects bargaining unit employees;
- Articles 47 and 49 of the MCBA, requiring the Agency to notify the Union and provide an opportunity to bargain concerning proposed changes in working conditions of bargaining unit employees;
- 5 U.S.C. §7116(a)(1) and (5), requiring the Agency to communicate with the Union, not directly with bargaining unit employees, concerning changes in conditions of employment;
- 5 U.S.C. §7116(a)(5), requiring the Agency to consult and negotiate in good faith with the Union;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

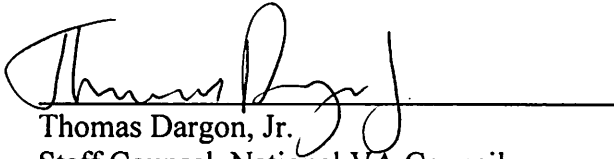
Remedy Requested

The Union asks that, to remedy the above situation, the VA agree to the following:

- To return to the status quo ante until the Agency has properly notified NVAC and provided NVAC an opportunity to bargain concerning the proposed changes in working conditions;
- To fully comply with its contractual obligations under the MCBA;
- To fully comply with all applicable federal laws, rules, and regulations;
- Cease and desist from illegally contacting out bargaining unit work;
- To agree to any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance, and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions regarding this National Grievance, please feel free to contact the undersigned at AFGE Office of the General Counsel.



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cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
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