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NATIONAL GRIEVANCE
NG-10/28/16

Date: October 28, 2016

To: Kimberly McLeod
Acting Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
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Sent via electronic mail only

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 contractual obligations, statutory requirements, and Agency policy regarding the conversion of the position of Veterans Crisis Line Responder from Title 5 status to hybrid Title 38 status.**

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 its failure to comply with contractual obligations, statutory requirements, and Agency policy regarding the conversion of the position of Veterans Crisis Line Responder (VCLR) from Title 5 status to hybrid Title 38 status.

On September 28, 2016, the Agency and the Union attended a 38 U.S.C. §7403(h) collaboration meeting in Tampa, Florida to discuss revisions to Agency policy and procedure resulting from the elimination of professional standards boards for hybrid Title 38 employees. At that time, the Agency provided the Union with documentation listing each Title 5 position then slated for conversion to hybrid Title 38 status, including the position of VCLR.

While Congress has conferred authority upon the Agency to convert certain government positions to hybrid Title 38 status, that authority is limited. In taking action to convert the position of VCLR to hybrid Title 38 status, the Agency violated the Master Agreement, federal law, and its own policy. To date, the Agency has failed to remedy these violations, and as such, is in continuing violation.

Specifically, the Agency violated the Article 2 of the MCBA, 38 U.S.C. §7401(3), VA Handbook 5005 (Staffing), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

The Agency informed the Union of its decision to convert the position of VCLR from Title 5 to hybrid Title 38 status on September 28, 2016.

Article 2 of the MCBA requires that the Agency comply with applicable federal statutes and regulations in the administration of labor-management relations with the Union. Federal statute 38 U.S.C. §7401(3), as amended by Section 601 of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111-163 (Caregiver Act), permits the Agency to extend Title 38 status to those “classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department. . . .” P.L. 111-163, Sec. 601(a)(1). The Secretary’s authority to convert additional occupations to hybrid Title 38 status is limited, as summarized in the Agency’s corresponding policy document.

VA Handbook 5005 (Staffing) outlines the statutory limitations on the Secretary’s authority to convert health care occupations to hybrid Title 38 status, as follows.

- (1) The Assistant Secretary for Human Resources and Administration, subject to the concurrence of the Under Secretary for Health, is delegated the authority to approve health care occupations for conversion to title 38 hybrid status under 38 U.S.C. §7401(3) provided such health care occupations:
 - (a) are not occupations relating to administrative, clerical, or physical plant maintenance and protective services;
 - (b) would otherwise receive basic pay in accordance with the General Schedule under section 532 of title 5;
 - (c) provide direct patient care services or services incident to direct patient care services; and
 - (d) would not otherwise be available to provide medical care of treatment for Veterans.

VA Handbook 5005, Part II, Chapter 3, Section A(2)(a).

Accordingly, the Agency, through the power of the Secretary and his designees, may only convert an occupation from Title 5 to hybrid Title 38 status if that occupation provides “direct patient care services or services incident to direct patient care.” Id.

Employees occupying the position of VCLR do not provide direct patient care services or services incident to direct patient care, and therefore, according to 38 U.S.C. §7401(3), as amended by the Caregiver Act, and VA Handbook 5005, the Agency may not convert that occupation to hybrid Title 38 status. VCLRs work exclusively at the Veterans Crisis Line (VCL), which is based at the Canandaigua VA Medical Center in Canandaigua, NY. The VCL is accredited as a suicide crisis hotline. Specifically, VCLRs working at the VCL are tasked with responding to anonymous, confidential calls, text messages, and online “chat” submissions from Veterans, service members, and family members of Veterans and service members regarding those individual in crisis and/or those who are actively contemplating suicide. The VCLRs are not providing clinical services, medical support, or health care administration to VCL callers.

Further, the VCL is free and available to individuals without regard to whether they are registered with the VA or enrolled in VA health care. In other words, an individual is not required to be a VA patient in order to benefit from the services provided by VCLRs. Since VCLRs do not provide “direct patient care services or services incident to direct patient care,” the Agency does not have the authority to convert this occupation to hybrid Title 38 status.

Violation

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

- Article 2 of the MCBA, requiring that the Agency comply with federal law and regulations;
- 38 U.S.C. §7401(3), as amended and VA Handbook 5005, requiring that the Agency comply with certain limitations in converting Title 5 occupations to hybrid Title 38 status, including that the occupation must provide direct patient care services or services incident to direct patient care in order to be eligible for conversion;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

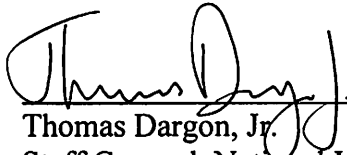
Remedy Requested

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

- Cease and desist from converting the VCLR position to hybrid Title 38 status;
- Fully comply with its contractual obligations under the MCBA;
- Fully comply with all applicable federal laws, rules, regulations, and VA policy;
- 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
Cathie McQuiston, Deputy General Counsel, AFGE