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**NATIONAL GRIEVANCE**  
**NG-10/5/16**

**Date:** October 5, 2016

**To:** Kimberly McLeod  
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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 (AFGE)

**RE:** **National Grievance in the matter of the Department of Veterans Affairs for violating contractual requirements and federal law regarding the contracting out of bargaining unit work in the VBA File Removal Project.**

**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), 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 violating contractual requirements and federal law regarding the contracting out of bargaining unit work in the VBA File Removal Project.

The VA, by and through its representatives and/or agents, has, and continues, to contract out bargaining unit work as a part of the VBA File Removal Project. This involved the boxing-up and transmission of non-active VBA files for scanning and destruction. To date, the VA has failed to remedy this violation, and as such, the VA is in continuing violation of contract and law.

Specifically, the VA violated Articles 2 and 11 of the MCBA, 41 U.S.C. §1710, 31 U.S.C. §501, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

## STATEMENT OF THE CASE

### **Background**

On June 24, 2016, the Agency provided a “courtesy union notification” to the NVAC VBA Mid-Term Bargaining Committee, via email, regarding the File Removal Project. The email stated that “[a]lthough this project will have no impact on the conditions of employment for the bargaining unit employees, in the spirit of partners, management wanted to share this information with the Mid-Term Bargaining Committee as a courtesy notification.” The email then went on to explain that the Agency would be dispersing private contractors from the existing VBA scanning vendor to Regional Offices in St. Petersburg, FL, New York, NY, and Philadelphia, PA to “box-up and prepare all non-active files for scanning.” The Agency stated that once the project was completed in these three Regional Offices, they would “complete the same actions in all the remaining ROs until all paper files have been removed.” Upon information and belief, the File Removal Project is currently in progress at various Regional Offices across the country.

The Agency claimed that the need to hire and disperse private contractors to VBA Regional Offices was due to the fact that it did not have the “capacity or resources” to complete the File Removal Project. However, this work was previously being completed by bargaining unit employees, and therefore, the VBA File Removal Project amounts to a direct conversion of bargaining unit work. Employees within the bargaining unit, including File Clerks and Claims Assistants, were tasked with boxing-up non-active claims files for transmission to VBA scanning vendors. Bargaining unit employees frequently received overtime when performing these job duties, but since the contracting out of this function, these employees have lost opportunities for overtime pay. Therefore, although the VBA File Removal Project has affected the conditions of employment of bargaining unit employees, the Agency has refused to consult and negotiate in good faith with the Union regarding the elimination of bargaining unit work, in violation of 5 U.S.C. §7116(a)(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 for the VBA File Removal Project before contracting out bargaining unit work to private contractors. Therefore, in disregarding 41 U.S.C. §1710 and 31 U.S.C. §501, the Agency also 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.

## Violation

By failing to fulfill its obligations, the VA violated, and continues to violate, the following:

- 5 U.S.C. §7116(a)(5), requiring the Agency consult and negotiate in good faith with the Union regarding the elimination of bargaining unit work;
- 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;
- 41 U.S.C. §1710 and 31 U.S.C. §501, prohibiting government agencies from converting work from federal employees to contractors without first conducting a formal cost comparison;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

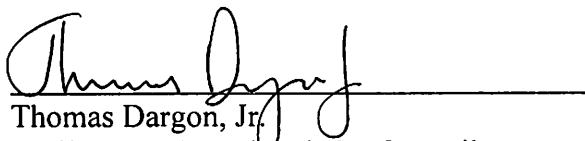
## Remedy Requested

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

- Return to the status quo ante until the Agency has properly notified NVAC and provided NVAC an opportunity to bargain concerning changes in working conditions;
- Cease and desist from illegally contacting out bargaining unit work;
- Fully comply with its contractual obligations under the MCBA;
- Fully comply with all applicable federal laws, rules, and regulations;
- 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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