



Out of Many/One Union
AFGE NVAC/AFL-CIO

NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

NATIONAL GRIEVANCE

NG-8/7/17

Date: August 7, 2017

To: Kimberly McLeod
Acting Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
kimberly.mcleod@va.gov
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 against the Department of Veterans Affairs for failing to notify and bargain with the Union regarding the National Transaction Report

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 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 failing to notify and bargain with the Union regarding the National Transaction Report (“NTR”). To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the VA violated Articles 2, 3, and 47 of the MCBA, 5 U.S.C. §7116(a), the Parties’ NTR Memorandum of Understanding, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

In May 2016, the Veterans Benefits Administration (“the Agency”) implemented the NTR.¹ On May 13, 2016, the Union filed a National Grievance against the Agency for failing to notify the Union and provide an opportunity to bargain prior to implementation (hereinafter, “NG-5/13/16”). To

¹ Historically, the NTR has also been referred to as the “Throughput Transparency Cost and Employee Throughput Report.” For purposes of this National Grievance, it will be referred to as the NTR.



resolve NG-5/13/16, the Parties bargained a Memorandum of Understanding, signed on October 24, 2016 (“NTR MOU”). The NTR MOU states, in relevant part:

2. As of the signing date of this MOU, the Agency agrees the National Transaction Reports are currently used as analytical tools and are not currently used to evaluate employee performance. Employee performance is currently evaluated using data from the ASPEN system.
3. If, in the future, the Agency intends to use the National Transaction Reports in a manner that triggers a duty to notify and bargain with the Union or develops a replacement for the ASPEN system, the Agency agrees to fulfill its bargaining obligations to the Union.
4. If the Union is made aware of issues with the National Transaction Reports that may adversely affect employees, both parties agree to informally discuss the issues and work to mutually resolve the issues. Should informal discussions not resolve the issues, the parties will proceed with the bargaining process, if necessary.

After signing the NTR MOU, the Agency began using the NTR to track employee activity. VBA did not provide notice and an opportunity to bargain to the Union prior to expanding the use of the NTR for this purpose. Data gathered through this expanded use has been used by local VBA management officials to support fact findings, investigations, and disciplinary actions against bargaining unit employees related to alleged instances of misconduct.

Paragraph 2 of the NTR MOU specifically states that, as of October 24, 2016, the NTR was being used as an “analytical tool.” In Paragraph 3, the Agency committed that if it intended to use the NTR report in a “manner that trigger[ed] a duty to notify bargain with the Union,” it would do so. Expanding the use of the NTR to track employee activity and initiate disciplinary actions constitutes a change in working conditions and triggers a duty to notify and bargain with the Union. Therefore, the Agency violated Paragraph 3 of the NTR MOU. In failing to “proceed with the bargaining process” on issues that “adversely affect employees” following unsuccessful attempts to resolve the Union’s concerns, the Agency also violated Paragraph 4 of the NTR MOU.

Further, in refusing to notify, consult, and negotiate in good faith with the Union prior to using the NTR to track employee activity, the Agency committed an unfair labor practice under 5 U.S.C. §7116(a)(1) and (a)(5).² Additionally, 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. Therefore, in violating 5 U.S.C. §7116, as set forth above, the Agency also failed to comply with Article 2. Article 3 encourages the parties to maintain a cooperative labor-management relationship that is based on mutual respect, open communication, consideration of each other’s views, and minimizing collective bargaining disputes. By failing to notify, consult, and negotiate with the Union prior to using the NTR to track employee activity, the Agency renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes. Finally, the Agency violated Article 47, Section 2, which sets forth the Parties’ responsibilities regarding mid-term bargaining at the national level.

² To the extent the Agency misrepresented the use of the NTR by omitting its then-forthcoming intention to track employee activity, without notice, the Agency also negotiated the NTR MOU in bad faith, in violation of 5 U.S.C. §7116(a)(1) and (a)(5).

Violation

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

- Paragraphs 3 - 4 of the NTR MOU: requiring the Agency to notify and bargain with the Union;
- Article 2 of the MCBA: requiring the Agency to comply with federal law and regulations;
- Article 3 of the MCBA: requiring the Agency to maintain an effective, cooperative labor-management relationship with the Union;
- Article 47 of the MCBA: requiring the Agency to comply with agreed-upon procedures for mid-term bargaining at the national level;
- 5 U.S.C. §7116(a)(1) and (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.

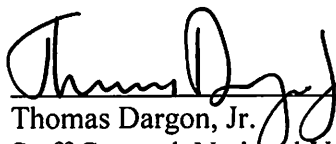
Remedy Requested

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

- To return to the status quo ante;
- To immediately cease and desist the implementation of the NTR;
- To make-whole any bargaining unit employee adversely affected by the NTR, including the rescission of related disciplinary actions, back pay, and attorney's fees;
- To fully comply with its contractual obligations under Articles 2, 3, and 47 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- 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 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
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC